



**NDEFFO LIMITED & 7 OTHERS.....PLAINTIFF**

**VERSUS**

**JOSEPHAT KARUNGU & 12 OTHERS.....DEFENDANTS**

**RULING**

Onesmus Mathenge Ndegwa together with others filed this suit on 2<sup>nd</sup> October 2008 seeking for orders that a declaration be issued to the effect that the purported transfer of the suit land from 1<sup>st</sup> -12<sup>th</sup> defendant to the 13<sup>th</sup> defendant without taking the interest of the 1<sup>st</sup> plaintiff's members is illegal, null and void and the title deed be cancelled by this court. The plaintiff also sought for an order directing that an annual general meeting be convened by the 1<sup>st</sup> -12<sup>th</sup> defendants and elections be conducted at the meeting and returns filed with the registrar of companies. The meeting should be attended by the District Commissioner, Nakuru to oversee the exercise.

Simultaneously with the filing of the plaint, the applicants also filed a chamber summons under **order 39 of the Civil Procedure Rules** seeking for orders that the Registrar General do convene an annual general meeting within 21 days and elections be conducted to elect new directors. They also sought for a restraining order against the defendants from transacting any business on behalf of Ndeffo Company Limited. When the application was served upon the defendants, they also filed High Court Civil Case No. 210 of 2008 against Onesmus Matheri Ndegwa and 7 others who were plaintiffs in Civil Case No. 203 of 2008. Ndeffo Company Limited sought for an order of perpetual injunction restraining the defendants by themselves, their servants or agents from interfering with the plaintiffs' directors, and in the management of the company. Simultaneously with the filing of the suit, they also filed an application under Order 39 seeking for interim orders of injunction restraining the defendants from interfering with the management of Ndeffo Company Limited and the Directors.

These two matters were consolidated and the two applications were heard under the holding file HCCC No. 203 of 2008. From the court records, there are notices to withdraw the suit by John Waweru, Jacob Njoroge and Joseph Mwaura. **Onesmus Matheri Ndegwa, Geoffrey Chuchu, Peter Mwangi and Fredrick Githonga will be referred to as the plaintiffs** for ease of reference and **Ndeffo Company Limited** will be referred to as **the defendants together with 1<sup>st</sup> and 13<sup>th</sup> defendants**.

On the outset it is clear that the plaintiffs wrongly joined Ndeffo Company Ltd as the plaintiff. The defendants have annexed the list of the directors held by the Registrar of Companies. It is evident that the plaintiff had no authority from the directors to enjoin Ndeffo Limited as a party in this suit. Pursuant to the provisions of **Order 1 rule 9** I strike the name of Ndeffo Co. Ltd as a plaintiff in HCC No. 203 of 2008.

According to the plaintiffs, the defendants have failed to call an AGM from the year 2005 when they were elected in the office. They alleged that the directors have contravened the provisions of the **Memorandum and Articles of Association** of the Company that require  $\frac{1}{3}$  of the directors of the company should leave office my rotation. Counsel asked the court to make an order that an AGM be conducted. The defendants were also accused of mismanaging the company by selling the properties of the company without the authority by the shareholders and thereby dispossessing the shareholders.

On the application by the defendants, counsel for the applicant submitted that they have been peaceful. They denied having interfered with the defendant or the directors. They contended that they merely sought to enforce their rights as shareholders by requesting for accountability and an AGM be held.

This application was opposed by the defendants. Firstly, the plaintiff sought leave to file a representative suit on behalf of over 3000 members but that prayer was not argued in this application. According to the defendants the plaintiffs have recourse under section 135 of the Companies Act where provision is made

for the applicants to requisition for a general meeting. The applicants have not shown that they have made any attempt to requisition for an AGM before filing this application seeking for the intervention by the court. The plaintiffs have also made general allegations that the defendants have sold the assets of the company but no documents have been annexed to show that the property which is registered in the name of the 13<sup>th</sup> defendant was sold by the Directors of Ndeffo Company Limited.

Counsel contended that the property known as Bahati/Kabatini Block 1/1/6948 never belonged to Ndeffo Company Limited. As regards the application by Ndeffo Company Limited seeking a restraining order against the plaintiffs, counsel made reference to a communication purportedly written by the plaintiffs calling themselves probe committee of Ndeffo Limited. A matter was also reported to the Police where Onesmus Matheri Ndegwa threatened one Waweru Kanari. These activities are interfering with the management of the company thus the defendant sought for an order restraining the plaintiffs from interfering.

Upon consideration of these applications it is evident that there are problems regarding Ndeffo Company Ltd between the shareholders and the directors. These allegations touch on whether or not the defendants are conducting the affairs of Ndeffo Company Limited according to the memorandum and Articles of Association. Whether or not the company has conducted AGM and the election of the directors and whether the directors have acted ultra vires their powers and disposed of company assets. There are also allegations that the plaintiffs are usurping the powers of the directors and holding themselves out to conduct meetings in the name of the company. All these issues cannot properly be handled by way of interlocutory applications. These are allegations and counter allegations which can only be determined at a full hearing by way of oral evidence. Accordingly I am unable to grant any interim orders. I direct the suit be heard by way of oral evidence. Both applications are disallowed; costs shall in be in the cause.

It is so ordered.

**Ruling read and signed on 27<sup>th</sup> day of March 2009**

**M. KOOME**

**JUDGE**