

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 385 of 2009

NEW NYAMAKIMA COMPANY LIMITED..... PLAINTIFF/APPLICANT

VERSUS

JEREMIAH WAWERU MWANGI1ST DEFENDANT/RESPONDENT

JOHN MUTHOGA MUCHORI2ND DEFENDANT/RESPONDENT

STEPHEN NGURE MWANGI.....3RD DEFENDANT/RESPONDENT

PETER MWANGI WAWERU4TH DEFENDANT/RESPONDENT

JULIUS MAINA KAHUTU5TH DEFENDANT/RESPONDENT

DAVID MUCHORI MACHARIA6TH DEFENDANT/RESPONDENT

RULING

The dispute between the plaintiff and the defendants is over the directorship of the plaintiff a limited liability company. It is alleged that the defendants have forcefully and without any justification taken over the management of the plaintiff including converting the properties and offices and interfering with the plaintiffs business while holding themselves out as directors. The plaintiff therefore seeks for an interlocutory order of injunction restraining the defendants from holding themselves as directors of the plaintiff or interfering with the management and the assets of the plaintiff.

The application is based on the grounds stipulated on the body thereto and the supporting affidavit by John Muchori Kahunga sworn on 26th May 2009. It is alleged sometimes in November 2008 the defendants purported to file Milimani CMCC No.7367 of 2008 while purporting to be the directors of the plaintiff. In that suit the defendants obtained certain orders which they have been using to transact business on behalf of the plaintiff. Further, that suit was struck out but the defendants have persisted to deal with the plaintiff, a limited liability company whose affairs are run through a board of directors.

Although the plaintiff was not a party to that case, the defendants have been holding themselves as directors and purported to take over the running and transacting business on behalf of the plaintiff. This matter has even been reported to the police, but the defendants persist in interfering with the operations of the plaintiff. The plaintiff therefore seeks for restraining orders pending the hearing and the determination of the suit.

This application was opposed, counsel for the respondent relied on the replying affidavit by Jeremiah Waweru Mwangi. According to the defendants on 30th August 2008 the plaintiff held an Annual General Meeting in which the defendants were elected as directors for the company. It is alleged that the former directors of the plaintiff purported to scuttle the Annual General Meeting. The former directors have also not held a meeting over five years in which they have been in the office and there are allegations of mismanagement of funds. The defendants contend that they are in office with the support of the shareholders. The defendants are ready to go for an Annual General Meeting to resolve the leadership problem.

Going by the scanty information in this application what is discernable, is that there are leadership wrangles over the directorship of the plaintiff company between the shareholders and the directors (whoever they are). The suit herein seeks for a permanent order of injunction against the defendants from interfering, trespassing or ousting the plaintiff's directors from office. This is the only order sought in the main suit. This is an equitable relief; it is trite that a party seeking for an interim order of injunction must establish a prima facie case with a probability of success. The plaintiff is a limited liability company, and it is not disputed that the defendants are also share holders. Under the company law and in particular the memorandum and articles of association, there are clear provisions on how to resolve the issues of leadership and management of a company such as the plaintiff. The court can not offer solution for issues which should be sorted by the shareholders themselves on how they intend to run their own company.

Very little information is provided by the plaintiff, even the issues raised by the defendants regarding mismanagement and failure by the plaintiff to hold an AGM have not been responded to. A Party seeking an equitable relief must not withhold essential information, on whether it has held Annual General Meetings. In that way the court, can be able to know whether the plaintiff has approached the court in good faith and in clean hands.

With the material before this court, I am not persuaded that the plaintiff should be granted the restraining orders which are likely to perpetuate a status quo of not calling an Annual General Meeting to resolve the matters of the management of a company in the laid down procedure. It goes without saying that parties are bound by their pleadings, but I can offer UN solicited advice, that the plaintiff should convene an Annual General Meeting; alternatively the defendants can requisition for one to resolve the issues of leadership and management.

The application before me renders itself for dismissal with costs to the defendants.

RULING READ AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY 2009.

M.K. KOOME

JUDGE