



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**Miscellaneous Application 245 of 2009**

**KYANZAVI FARMERS COMPANY LIMITED ..... PLAINTIFF**  
**VERSUS**  
**THE REGISTRAR OF COMPANIES ..... RESPONDENT**

**RULING**

1. On 16/7/2009, I granted Kyanzavi Farmers Company Ltd leave to apply for orders of certiorari to quash the decision of the Registrar of Companies dated 1/7/2009 calling for the convening of the Annual General Meeting of the company for the years 2007 and 2008 which meeting was slated for 29/7/2009. I also granted orders that the leave does operate as a stay of the said decision.
2. On 21/7/2009, the Registrar of Companies filed a Notice of Motion seeking orders that the order of stay be set aside and the Annual General Meeting be allowed to proceed. It is the Registrar's case that the order of stay was obtained by concealment of material facts and that the company misled this court by relying on non-existent orders allegedly obtained in **H.C.C.C. 542/2008 (Milimani)** and **J.R. Misc. Application 387/2008 (Nbi)**. Orders obtained in those suits are annexed to the Supporting Affidavit of one Mary Anne Mucheru sworn on 21/7/2009. I should allude to one other issue raised in that Affidavit i.e the reason why the letter dated 1/7/2009 calling for the Annual General Meeting was written; that the District Commissioner, Machakos District wrote to seek the holding of the AGM to solve all the problems bedeviling the company and the Registrar complied with that request hence the present proceedings.
3. In his Replying Affidavit sworn on 23/7/2009, Patrick Pius Mutune Katula, Director and Chairman of the company, deponed that he disclosed all relevant matters to this court when he obtained leave and that no meeting of the company could be held in view of **H.C.C.C. 452/2008** and that there are other proceedings in **H.C.C.C.301/2008 (Nbi)** between the same parties. Further that the Registrar has taken sides with one party and is intent on frustrating and circumventing the law in as far as the company's operations are concerned.
4. For my part, the power to grant an order of stay after leave has been granted is a matter entirely at the discretion of the court – See Order LIII Rule 1 (4) of the Civil Procedure Rules. The court can also recall the leave and stay order under its inherent jurisdiction if sufficient reasons are placed before it to warrant that fact – See **R vs Kenya National Federation of Co-operatives Ltd ex-parte Communications Commission of Kenya (2005) 1 KLR 242** per Ibrahim J Contrary to assertions by counsel for the Kyanzavi Company Ltd, the leave can remain intact but the stay order can be set aside if the court thinks that it was obtained improperly, including by concealment of material facts.

5. In the case before me, I granted the order of stay because I was informed that prior orders of the High Court at Nairobi had stopped **“any meeting”** of the company and the call by the Registrar of Companies for an **“Annual General Meeting”** before those orders were discharged was an attempt at circumventing that order and by extension, the law.
6. I have now had the advantage of reading the entire judgment of Nyamu J (as he then was) in **H.C.C.Misc. 387/2008**. In it he quashed the decision of the Registrar General to register certain officials of the company pursuant to elections held on 27/6/2008. The learned judge relied on the injunction order issued in **H.C.C.C 301/2008** stopping **“the holding and/or convening of an Annual General Meeting of the company for the year 2007 and any other meeting pending the hearing and determination of that suit”**. It was his view that since the meeting of 27/6/2008 was held in contravention of that order, then the elections were null and void and similarly the registration of the new officials was a nullity hence his decision to quash the registration.
7. The Registrar General complied with the orders above and removed the new officials from the register and the team led by Patrick Pius Mutune Katubi was reinstated as Directors of the Company, a fact confirmed by a letter dated 7/5/2009 from the Registrar of Companies to the Directors of the Company.
8. On 30/4/2009, in the meantime, the Registrar General filed a Notice of Appeal against the decision of Nyamu J in **J.R. Misc. Appl. 387/2008** and to-date it is unclear what the status of that appeal is.
9. I have also perused the order of injunction issued in **H.C.C.C 452/2008 (Milimani)** by Lesiit J. That suit is between one Dominic Nyamai and one Gideon Kivinda as Plaintiffs against James Muema and Kyanzavi Co. Ltd as Defendants. In that suit, the learned judge issued orders that **“the Defendants/Respondents, their agents, servants or anybody claiming to be a board member of the 2<sup>nd</sup> Defendant, Respondent (be restrained) from convening, holding or causing to be held an extra ordinary meeting of the 2<sup>nd</sup> Defendant Company scheduled for 16<sup>th</sup> August 2008 or any other meeting until the final determination of this suit.”**
10. In the Notice of Annual General Meeting dated 1/7/2009, Mary Anne Mucheru, Assistant Registrar of Companies invoked Section 131 (2) of the Companies Act, Cap 486 Laws of Kenya to convene the meeting on 29/7/2009. Is that Notice prima facie a contravention of any of the orders issued in prior suits? Clearly, the issue in Nyamu J’s judgment has been resolved and there is nothing the Registrar has done in breach thereof. In fact by compliance with the order, the matter is settled. What of the injunction order issued by Lesiit J in **H.C.C.C 542/2008 (Milimani)?** It is argued that **“no meeting”** of the company can be held until that suit is heard and determined. That may be the reasonable interpretation that attracts those who do not wish that the company should not hold elections. However, my view is that the Order is limited to the meeting called for 16/8/2008, the agenda in it and any other meeting called to pursue that agenda. To hold that a limited liability company should hold no meeting whatsoever, including its Annual General Meeting, is an absurdity not backed by reason or law. How then can the company transact its business if no meetings of whatever nature are held? How can a company with multiple shareholders fail to hold its annual General Meeting since 2006, spends its time and resources fighting in multiple lawsuits and expect that the courts in Nairobi and Machakos will micromanage its affairs.
11. I am certain that had all the above matters been properly placed before this court, this court would most likely than not have refused to grant the stay order now being challenged.
12. In the end, I am satisfied that the order of stay and probably even the leave, was obtained improperly and since only the stay order is challenged, I will set it aside.
13. In doing so, it is my hope that the Registrar General will issue a fresh Notice of Annual General Meeting and elections should not be the only subject of that meeting. No Annual General Meeting is complete without other substantive agenda items being concluded.

14. The stay of proceedings issued on 16/7/2009 is set aside with no order as to costs.

15. Orders accordingly.

Dated and delivered at Machakos this **19<sup>th</sup>** day of **August** 2009.

**ISAAC LENAOLA**

**JUDGE**

In presence of:           Mr Gichera for Applicant

Mr Mugikoyo for Respondent

**ISAAC LENAOLA**

**JUDGE**