



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI COMMERCIAL COURTS COMMERCIAL TAX DIVISION)
CIVIL CASE 154 OF 2007

KADDU KIDERU 1ST PLAINTIFF

YUNUS KAMULEGEYA 2ND PLAINTIFF

NAIGA MATOVU 3RD PLAINTIFF

SEREMBA SULAIMANI 4TH PLAINTIFF

HARUN SEBAGGALA 5TH PLAINTIFF

ISA LUKWAGO 6TH PLAINTIFF

VERSUS

IGA SAIDI BUKENYA 1ST DEFENDANT

KENNEDY O. ODERA 2ND DEFENDANT

DAVID OYATTA *t/a* OYATTA & ASSOCIATES3RD DEFENDANT

R U L I N G

Chamber Summons dated 26/03/07 filed under **Order XXXIX (39) Rule 1, 2, 3 and 9 Civil Procedure Code, Section 3 and 3A Civil Procedure Act**. The applicants say they are directors and shareholders of a company called Link Forex Bureau Kenya Ltd. They accuse the first defendant of denying them access to the premises of the company and to bank accounts and they are not able to participate in the running of the company.

They say the first defendant is not a lawfully appointed director of the company. According to Notification of Change of Directors and Secretaries in their particulars Form 200 P filed on 16/7/2004. It is recorded that from 9/6/2004, **Harun Sebagalla, Isa Lukwago, Abdul Hamid, and Juba Masagazi** ceased to be directors and new directors; **Nsibambi Yusufu, Hahaya Segnya and Katende Rashid** were appointed.

Therefore the plaintiffs in this case namely;

1. Jumba Musagazi
2. Harun Sebagala
3. Isa Lukwago

are no longer directors.

The provisions as to directors of a private company must be at least one. But this company has **Kaddin Kideru, Yunus Kamulegeya, Naiga Matovu, Seremba Sulaimani, Nsibambi Yusuf, Yahaya Segnya** and **Katende Rashid**. This is in accordance with documents filed in the office of the Registrar of Companies in Kenya. The law does not demand that directors have shareholding in the company except where the Articles of Association demands no evidence is shown here that the directors hold any shares.

Regarding the validity of actions of directors, **Section 181 Companies Act** provides that such acts shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. It is not disputed that the first defendant has been running the company since 2004. However, it is trite law that the affairs of the company are managed with the authority of Board of Directors.

It appears here that the first defendant has been managing the company affairs single handedly for 4 years. He does not show any notice to the other directors to attend any meeting of the Board. I have considered that this dispute concerns the individuals who described themselves as directors and shareholders of the company as to their positions as directors of the company.

I have also noted that a private company can operate with only one director and therefore the activities of first defendant are not contrary to provisions of the **Companies Act**. It is clear that if the orders sought were to be granted the business and affairs of the company would be affected. The company is not before the court to defend its interests. The money in the bank and other assets belong to the company and it alone has a right to sue in that respect.

It is my opinion that the applicants have not demonstrated a *prima facie* case to warrant issue of an injunction. Instead they are asking that court do order the removal of company's affairs with the respondents to themselves. The remedy in such case is monetary and can be compensated in damages and the balance of convenience tilts in the favour of the first defendant who is in possession of the companies assets and is managing its affairs.

Regarding the 2nd and 3rd defendants there are allegations of fraud and misrepresentation. Those are issues to be subjected to trial and cross-examination. The parties should set down the suit for hearing.

The application is therefore dismissed with costs.

It is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 9th day of October 2009.

JOYCE N. KHAMINWA

JUDGE