

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 101 of 2007

JOSEPH KIBUBA KIOKO1ST PLAINTIFF

JUDAS MBILI NDAWA2ND PLAINTIFF

PATRIC PIUS MUTUNE KATUBI3RD PLAINTIFF

VERSUS

MANGU NGOLO1ST DEFENDANT

KYANZAVI FARMERS COMPANY LIMITED.....2ND DEFENDANT

RULING

In this application the applicants seek two orders:

(1) THAT, the Honourable Court be pleased to vary the order made on 21st May 2007 and order for substitution of Mangu Ngolo, Jackson Musyimi (deceased) and Juvenalis Musyoki Kavita as signatories to the company's bank accounts and replace them with Patric Pius Mutune Katubi and Christopher Kasango Kanyambu.

(2) THAT, the Honourable Court do order that the Signatories to the company's bank accounts shall be:-

- (i) Patric Lius Mutune Katubi – chairman
- (ii) Judas Mbili Ndawa - Treasurer
- (iii) Christopher Kasangu Kanyambu – Secretary

Having considered the application and submissions by the learned counsels for the parties it is my humble view that the application cannot lie in law as there is no suit in existence in the light of the consent order made herein on 21st May 2007 between the parties herein. On 21st May, 2007 Mr. Mogire learned counsel for the plaintiff/applicant and Mr. Sehmi for the defendant/respondent appeared before this court and recorded a consent and one of the terms to the said consent was that:

“By consent the suit herein dated 23rd February 2007 and filed on the same day and the chamber summons dated and filed on 23rd February, 2007 are hereby withdrawn and marked as settled”.

Since that order was recorded, none of the parties made an application to review and/or reinstate the suit for purposes of obtaining further orders and/or seeking further intervention of this Honourable court. It is therefore my humble view that the present application is an abuse of the process of this court since there is no suit in existence between the parties the same having been withdrawn on 21st May 2007. In the premises the application is dismissed with no orders as to costs.

Dated, signed and delivered at Nairobi this 19th day of May, 2008.

M. A. WARSAME

JUDGE