



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 250 of 2007

NANGA KIHOTO/NAIVASHA LTD1ST PLAINTIFF
PHARIS MBURU NGUGI.....2ND PLAINTIFF
BENJAMIN N. KINUTHIA.....3RD PLAINTIFF
KAMAU KARIUKI.....4TH PLAINTIFF
DANIEL MWANGI KANGETHE.....5TH PLAINTIFF
KURIA GICHERU.....6TH PLAINTIFF
NJOROGE KINYANJUI.....7TH PLAINTIFF
HARUN KIMANI.....8TH PLAINTIFF

VERSUS

GABRIEL KABURU KAGUNYA.....1ST DEFENDANT
DAVID WAWERU NGANGA.....2ND DEFENDANT
JOSEPH KARA.....3RD DEFENDANT
KAHINGA GAKERE.....4TH DEFENDANT
JAMES MWANGI KARANJA.....5TH DEFENDANT
ELIJAH MWENDA.....6TH DEFENDANT
FRANCIS KIGURU MWAURA.....7TH DEFENDANT

RULING

The 1st applicant in the Notice of Motion dated 24th January 2008 is a limited liability company and the 1st Plaintiff in the suit herein. The 2nd to 8th Plaintiffs are co-plaintiffs of the 1st plaintiff/applicant and its directors, having been elected as such at an Extra Ordinary General Meeting held on 29th in July 2007

wherein the 1st to 7th Defendant/Respondents were voted out. A notification of Change of Directors to that effect was filed with the Registrar of Companies on 30th August 2007 and the Register updated accordingly.

The applicants seek an order in the form of a mandatory injunction to compel the Respondents to hand over the company's properties, records and/or documents itemized as (a) to (u) in paragraph (a) of the application. The said properties, records and/or documents are said to have come into the custody of the Respondents during their tenure as directors of the 1st applicant. The applicants say that the Respondents have no legitimate reason to hold onto the said properties, records and/or documents and that their continued failure to surrender the same has negatively impacted on the running of the 1st applicant's affairs and jeopardized the operations of the company.

The application is supported by an affidavit sworn by the 2nd applicant to which documents evidencing the change of guard at the 1st applicant are annexed. Despite being given time to do so, the Respondents did not file any Replying Affidavit. No grounds of opposition were filed either. Mr. Njoroge, counsel for the Respondents appeared at the hearing of the application but intimated that he was not in a position to reply even on points of law. The application therefore remains unopposed.

I have considered the application and supporting documentation as well as submissions made in support thereof. I am satisfied that the Respondents have no legal basis to continue clinging onto the properties, records and/or documents sought herein. Being equally satisfied that the same are vital to the day to day running of the 1st applicant's affairs by the 2nd to 8th applicants, the application is allowed.

I order and direct that the Respondents do release the properties records and/or documents sought herein to the applicants forthwith, and in any event not later than the close of business on 28th July 2008. The costs of this application shall be borne by the Respondents.

Orders accordingly.

Dated and delivered at Nakuru this 24th day of July 2008

M.G.MUGO

JUDGE

In the presence of:

Mr. Karanja Mbogua for the Applicant.

Mr. Njoroge for the Respondent.