



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Civil Case 62 of 2004

NDATHI MUGUNDA COMPANY LTD PLAINTIFF

VERSUS

- 1. PATRICK MATU GITHINJI)**
- 2. MICHAEL NDUNGU NDEGWA)**
- 3. JOSEPH GAKONYO WANYIRI)**
- 4. MICHAEL NDUNGU KAGECHA)**

5. JOHN KIRUGI MWANIKI) DEFENDANTS

RULING

The plaintiff Ndathi Mugunda Company Ltd filed this suit. In June 2004 and in the claim sought the following prayers:-

- a) *A declaration that the Defendants are intermeddlers as related to the affairs of the plaintiff company.*
- b) *A declaration that the meeting scheduled and held on 26.06.2004 was an illegality as it had been called by persons with no locus standi. And that any resolution that may have proceeded therefrom be nullified.*
- c) *A permanent injunction restraining the defendants, their agents or persons claiming under them from interfering with the running of the plaintiff company.*
- d) *Costs of the suit.*
- e) *Any other relief the Honourable Court may deem appropriate to issue.*

The suit was fixed for hearing on 28th October 2008. Before that hearing the plaintiff has brought a chamber summons dated 6th October 2008. The same was brought under certificate of urgency. That application is brought under Order XXXIX rule 2 of the Civil Procedure Act and Civil Procedure Rules, Section 3A of the Civil Procedure Act and section 132 of the Companies Act. The plaintiff seeks an injunction to restrain the defendants whether by themselves, their agents or any other person claiming under them from holding the meetings slated for 17th October 2008 pending the hearing and the

determination of this suit. The plaintiff seek that the order issued by this court be served upon the District Officer Nyeri North district, the Officer Commanding Station Kiganjo Police Station and the Officer Commanding Police Division Nyeri for implementation. In the affidavit in support the plaintiff reiterates what is pleaded in the plaint that the defendant are not members of the plaintiff company but that they are strangers. That the defendants have organized to hold a meeting of the plaintiff company on 17th October 2008 at Chaka stadium. The plaintiff got this information firstly through the media and later through the notices that were brought to their attention. The persons who intend to hold the meeting all of them have outstanding suits before court where their membership to the plaintiff company is being questioned. The plaintiffs are of the view that to allow the meeting to proceed would cause great prejudice since those holding the meeting are not members nor are they office holders of the plaintiff. The plaintiffs annexed a letter from the department of the registrar general dated 8th May 2008 which confirmed the names of the directors of the plaintiff company. According to that list the deponent of the plaintiff affidavit is shown as one of the directors. The defendants opposed the plaintiff's application. In their replying affidavit the defendants deponed that the notice to hold the meeting was properly issued in compliant with section 132 of the Companies Act. That the plaintiff existing directors had failed to hold a directors meeting for the last eight years. As a result members of the plaintiff were said to be anxious to hold an annual general meeting and that was the meeting the defendants want to hold on 17th October 2008. It was alleged that the company secretary was running the plaintiffs business as a personal affair. Finally that the reason why the injunction is sought is because the existing directors were fearful of producing audited report for the last eight years. What the plaintiff seeks is an injunction against the defendants. The principles of granting an injunction were stated in the celebrated case of *Giella v CASSMAN BROWN & CO Ltd [1973] E.A.* where it was held as follows:-

“An applicant must show a prima facie case with a probability of success. An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury. When the court is in doubt, it will decide the application on the balance of convenience.”

In considering those principles I find that the plaintiff has shown in the present application a prima facie case with probability of success. The plaintiff in support of the application annexed a letter from the registrar general whereby the office holders of the plaintiff company were shown. The defendants are none of those office holders. Bearing that in mind and the fact that the plaintiff's suit seeks a declaration that the defendants are not members of the plaintiff company, the plaintiffs claim in this application has a probability of success. This is because the defendant on their part did not show that they are office holders. I also find that if the orders sought by the plaintiff are not granted the plaintiff company might suffer irreparable injury. This is because if such a meeting was held far reaching decision may lead to detriment of the plaintiff company. I therefore also find that the plaintiff's application satisfies the second limb of the principles of granting an injunction. The defendants' advocate argued that the plaintiff's claim that the defendants were intermeddling with the affairs of the plaintiff could not be sustained in the absence of the Memorandum and Articles of the company has no basis. As rightly responded by the plaintiff's counsel such a document does not contain the names of the members or shareholders of the company. Further the defendant argued that no prejudice will be suffered if the meeting proceeded. It was argued that such a meeting would after all be good for the company. I have already stated that I find that there is likelihood of adverse decisions being made against the plaintiff company to its detriment. I am therefore of the view that prejudice may be suffered. The hearing of this case is due on 28th October 2008. In the main suit it is claimed that the defendants are not members of the plaintiff company. If that be so to allow the meeting to proceed might be to allow elections and other decisions to be made by persons who are not members of the company. I am of the view that the injunction sought is merited. I therefore grant the following orders:-

1. ***That this Honourable does hereby grant an injunction restraining:-***
 - a) ***Patrick Matu Githinji***
 - b) ***Michael Ndungu Ndegwa***
 - c) ***Joseph Gakonyo Wanyiri***

d) *Michael Ndungu Kagecha*

e) *John Kirugi Mwaniki*

Whether by themselves or their agents or any person claiming under them from holding the meeting of the plaintiff company on 17th October 2008 or any other time pending the hearing and the determination of this suit.

2. *This order shall be served upon the office of the District Officer, Nyeri North District, the Officer commanding station, Kiganjo police station and the officer commanding police division, Nyeri, for implementation.*

3. *The costs of the chamber summons dated 6th October 2008 are awarded to the plaintiff as against the defendants.*

Dated and delivered at Nyeri this 16th day of October 2008.

MARY KASANGO

JUDGE