



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 514 of 2006**

**KENSINGTON INTERNATIONAL LTD .....  
PLAINTIFF**

**V E R S U S**

- 1. COLLIN STEPHEN FORD**
- 2. ANNEMARIE FORD**
- 3. GILLIAN FORD**
- 4. JONATHAN NGALA OSIAKO .....  
DEFENDANTS**

**J U D G M E N T**

In this suit, the Plaintiff seeks judgment against the Defendants, jointly and severally, as follows:-

- (i) A permanent injunction restraining the Defendants, whether by themselves or by their agents or donees, **“from claiming to be directors of the Plaintiff or otherwise purporting to act on the Plaintiff’s behalf, or instructing any advocate to act on behalf of the Plaintiff or commence or defend any proceedings on behalf of the Plaintiff, or in any other manner claiming to have authority to act on behalf of the Plaintiff.”**
- (ii) Costs of the suit.

The Plaintiff’s case as set out in the plaint dated 13<sup>th</sup> September, 2006 is that it was incorporated on or about 19<sup>th</sup> December 2000 under certificate of incorporation Number C 92271; that at all material times its lawful directors were and still are one STEPHEN WAVOMBA WANGILA and YAHYA SULEIMAN MBUTHIA; that in the year 2004 the 4<sup>th</sup> Defendant, purportedly acting under a power of attorney donated to him by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, represented to the Plaintiff and its directors that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were the lawful directors and shareholders of the Plaintiff; and that the 4<sup>th</sup> defendant, while acting as the agent or attorney of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, presented to the Plaintiff’s directors two separate copies of memorandum and articles of association to the purported effect that the Plaintiff was incorporated under certificate of incorporation Number C 84444.

The Plaintiff has further pleaded that it investigated the matter and established from the Registrar of Companies and the Criminal Investigation Department that there was no company lawfully registered

under certificate of incorporation Number C 84444, or one bearing the same name as the Plaintiff; the Defendants' actions are therefore illegal, fraudulent, null and void. Particulars of fraud and/or misrepresentation are given.

It is further pleaded that the Defendants have purported to act as the directors of the Plaintiff and as such have instructed the firm of FADHIL & KILONZO, ADVOCATES, to act for the Plaintiff in **MOMBASA HCCC NO. 306 OF 2001** and **MOMBASA RMCC NO. 1224 OF 2005**, without the consent or authority of the Plaintiff. Finally, the Plaintiff has pleaded that the Defendants' unlawful actions have occasioned it irreparable harm and damage, and will continue to cause such harm and damage unless arrested by the court.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were never served with summons to enter appearance and copy of the plaint. The suit against them was subsequently withdrawn by notice dated 5<sup>th</sup> October 2006.

The 1<sup>st</sup> and 4<sup>th</sup> Defendants were duly served. They neither entered appearance nor filed defence. The Plaintiff therefore proceeded *ex parte*. Only one witness testified. He is STEPHEN WAVOMBA WANGILA (PW1), one of the directors of the Plaintiff. In the course of his testimony he produced in evidence various documents, including the Plaintiff's certificate of incorporation (Exhibit P1), its memorandum and articles of association (Exhibit P2), and a letter from the Registrar of Companies dated 27<sup>th</sup> June 2006 (Exhibit P5) confirming the Plaintiff's directors to be PW1 and one YAHYA SULEIMAN.

I have considered the testimony of PW1. I am satisfied that the Plaintiff is duly incorporated under the laws of Kenya

m also satisfied that PW1 and YAHYA SULEIMAN are, and were at all material times, the lawful directors of the Plaintiff.

I am further satisfied, on a balance of probabilities, that the 1<sup>st</sup> and 4<sup>th</sup> Defendants have unlawfully held themselves out as the directors of the Plaintiff when fully knowing that they are not. As such false directors of the Plaintiff, they have conducted themselves, made certain misrepresentations and taken certain actions in the name of the Plaintiff and on its behalf. Such actions have been unlawful and to the detriment of the Plaintiff.

After considering all the evidence placed before the court, I am satisfied that the Plaintiff has proved, on a balance of probabilities, its case against the 1<sup>st</sup> and 4<sup>th</sup> Defendants. It is entitled to the reliefs sought and I will grant them.

I will therefore enter judgment for the Plaintiff against the 1<sup>st</sup> and 4<sup>th</sup> Defendants jointly and severally as sought in the plaint. The Plaintiff will also have costs of the suit. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT**

**THIS 14<sup>TH</sup> DAY OF SEPTEMBER, 2007**

**H. P. G. WAWERU**

**J U D G E**