



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Winding Up Cause 19 of 2004**

**AUGUSTINE MAINA NGETHA .....APPLICANT**

**AND**

**MURAKARU WAIREGI .....1<sup>ST</sup> RESPONDENT**

**MURATHE NJOROGE .....2<sup>ND</sup> RESPONDENT**

**RULING**

The Applicant by his Chamber Summons of the 15.12.2005 seeks the following orders:-

**4. THAT this Honourable court be pleased to grant an interlocutory injunction restraining the Respondents and/or their servants and/or agents from carrying away, removing, dismantling, alienating or otherwise disposing of the assets of Thika Mining Limited namely:**

**1. Rock excavator**

**2. Tractor**

**3. Money collected on behalf of the Company pending the hearing and determination of this Petition.**

**5. THAT the O.C.S. Juja Police Station do assist and supervise in the enforcement of the courts herein.**

**6. THAT this Honourable court be pleased to appoint an interim liquidator pending the hearing and determination of this Petition.**

This application is supported by the supporting affidavit of the Applicant and grounds contained in the Chamber Summons.

It appears that differences have arisen between the Applicant and Respondents who are shareholders and directors in Thika Mining Limited which the Applicant is seeking to wind up on the grounds that he alleges the affairs of the Company are being conducted in a manner oppressive to him.

The Applicant complains that he was duped into altering the bank mandate for the Company's bank account as a result of which he is no longer a signatory to the account. He also alleges there was an attempt to take away the Company's tractor, wheel loader and that he found the operator preparing to load the tractor onto the second Defendant's vehicle.

Further that the accountant has been sacked and he believes the Respondents are collectus the Company's money.

In his replying affidavit the 1<sup>st</sup> Respondent stated that the machinery was essential to the working of the company and there was no question of removing it.

He dealt with the question of the bank mandate by producing a copy of a letter dated the 5.12.2005 signed by him and the Applicant for the account to be operated by himself and the 2<sup>nd</sup> Respondent.

That due to the Applicant dissociating himself with these instructions the bank account could not be operated causing the Respondents to deal with the company's money in cash.

The Second Respondent also took issue with the applicant in his allegations and gave similar evidence to that of the 1<sup>st</sup> Respondent.

The Applicant seeks in his Petition an order for the winding up of the Company. A Company, however, is to be run by its directors and it is for these reasons that any dissatisfied shareholder has a right to petition for the Company to be wound up.

The relief of the granting of an injunction is equitable and allows the court to restrain any wrong doing which will adversely affect either parties with whom he has a relationship with or is likely to be affected by the wrongdoing of such person or he has threatened some injury to that person.

The principles on which an injunction is granted was laid down in the well known case of **Giella v Cassman Brown**.

I cannot, however, see that the Applicant has any right to dictate on matters relating to the management of the Company including the use or disposal of its assets or the application of its finances.

The Companies Act provides for remedies including the right of a shareholder to remove directors if the shareholder is not in agreement with their actions. Unfortunately, for the Applicant he is not a majority shareholder and cannot exercise that right. What he has properly done is to bring this Petition. This applies equally to the remedy sought to appoint a Receiver.

I would hesitate to say that in no circumstance can a member of a Company or a director seek an injunction to restrain other members of the company from doing some wrongful act but the circumstances must be rare and very special.

I do not think the Applicant has any right to the relief sought in this application. The Applicant must await the outcome of the Petition to obtain his remedy.

In the result I dismiss this application with costs.

Dated and delivered at Nairobi this 24th day of March 2006.

**P. J. RANSLEY**

JUDGE