



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

Civil Case 19 of 2006

KIMUNYA TEA FACTORY LTD.....PLAINTIFF

VERSUS

LABAN. W. KIMOTHO.....1ST DEFENDANT

JAMES. M. CIICHIBI.....2ND DEFENDANT

JOSEPH MURIUKI WANJOHI.....3RD DEFENDANT

RULING

Notice of Motion dated 1st day of March 2006 seeks orders to set aside and/or vacate the exparte order made herein on 24/2/2006 restraining defendants/Applicants, by themselves their servants and/or agents from holding an extraordinary meeting of the Plaintiff company shareholders scheduled for first day of March 2006. Pending hearing of the application inter parties on 9/3/2006.

On the first of March when this application was filed under certificate of urgency this court ordered the same to be served for hearing inter parties on 2/3/2006. The application was heard inter parties on 2/3/06 although the Respondent had not filed grounds of opposition or Replying Affidavit. Mr Nyandieka for the applicant said that it was not true that third requisitioner was not a member of the company and he showed the court a certificate of his shares.

It is not true that the Plaintiff was not issued with the requisition of the meeting but it was admitted by both parties that Requisition was served on 8/2/06. The law requires that the requisition notice be deposited at the registered office of the Company. It is not true that the Companies Registered Office was in Nairobi as stated by the Plaintiff. However the notice was deposited at the Factory at Kimunye. Note that no proof of the situation of the company's registered office was offered by the applicant.

In the supporting Affidavit there is attached list of many people who are said to represent 1/3 paid up capital for in excess of 1/10 required by law. It is to be noted here that there is a large bundle of papers mostly illegible containing :-

1. Names of people
2. their I.D Numbers
3. Growers Number
4. Blank column

5. list of signatories.

No number of shares held by any one person and their value is indicated. These lists are of no evidential value in this case. Nevertheless the Plaintiff who should know states that first and second members hold Shs.34, 690/= value in shares 6,600/= and 398 respectively while the paid up capital value of Plaintiff is Shs. 97,093,510/=. The Applicants herein state that (Paragraph 5.) requisitionists by over 2000 members who are over 1/3 of entire shareholders of the plaintiff Company. The law requires not less than 1/10 (one tenth of the **“paid up capital”** . The Court is not shown that 2000 shareholders hold 1/10 of the paid up capital of the company. The operative date is the date the requisition was deposited not when it was dated. Here it is said to be 8/2/06 see Section 132 (3) of Act. **“If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists or any of them representing more than ½ of the total voting rights of all of them. (Requisitionists) may themselves convene a meeting but any meeting so convened shall not be held after expiration of 3 months from the said date.”**

Therefore the period after 8th February to February 28th is exactly 21 days. The requisitionists were not entitled to hold the meeting until after the said 21 days. This is the period given to the Board to convene the meeting.

To commence a meeting is to give notice to members entitled to attend. In this case only the Directors were given Notice by requisitionists. The proposed meeting of 1/3/06 was not with notice to members. The letter dated 24/2/2006 gave 6 days notice during the period not prescribed period of Notice and also during the time the Board was still entitled to act.

The supporting affidavit confirms that **“whereas the registered office of the company is in Nairobi KTDA Farmers building”** (See paragraph 6C thereof.) The law demands the deposit in the registered office. The law must be complied with.

It is also submitted that there is non disclosure of material facts in obtaining exparte injunction that Respondent misled the court as to the situation of registered office. This is shown not to be so the registered office is KTDA Farmers House Nairobi as stated by the Plaintiff. When the law requires that the service be at any other place it specifically mentions of principal place of business see Rule 2 (b) Civil Procedure Rules Order V.

It was submitted that the Plaintiff failed to disclose that the requisitionists were more than the 3 listed and who signed the requisition. It is clear from the Notice itself was signed only by 3 persons. There is provision under section 132 (2) that the requisition may consist of several documents in like form each signed by one or more requisitionists the lists now exhibited do not form part of the Notice of requisition. There is no connection with the same and it is not disclosing the value of the paid up share capital. The case relied on by the Applicant, ***Tiwi Beach Hotel Ltd vs Stam [1990] 2 KAR***. It was held that there is a duty for an applicant seeking relief from the court particularly on an exparte application to make full disclosure of all the facts material to the application which are known to him or her.

I am not satisfied that the matters now alleged by the Plaintiff were within its knowledge as to the number of requisitionists up to now it is not shown where or when the lists were made and if they comprise in value 1/10 of paid up capital whether or not one of the requisitionists was a member of the company is a minor event. What was his value in paid up capital?.

I do not find that the Plaintiff went out to deceive the court in order to obtain the orders of injunction. As I have said above the meeting was not validly convened . For the above reasons, I dismiss this application with costs.

Dated this 9th day of March 2006.

J.N. KHAMINWA

JUDGE