



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Suit 158 of 2005

LUCY WANJIRU NJUNGE.....1ST PLAINTIFF

MICHAEL KINYARI KIRERU.....2ND PLAINTIFF

JOSEPH MUGUKU MUNYUNE.....3RD PLAINTIFF

VERSUS

JOB MWANGI MACHARIA.....1ST DEFENDANT

PAUL NJUGUNA.....2ND DEFENDANT

DAVID NGIGI MATIRU.....3RD DEFENDANT

DUNCAN MUTURI ELIJAH.....4TH DEFENDANT

STEPHEN WANGOMBE MWANGI.....5TH DEFENDANT

JOHN KIMUHU KAMAU.....6TH DEFENDANT

SAMUEL MURIITHI MUTHANGA.....7TH DEFENDANT

DAVID NJOGU.....8TH DEFENDANT

JOHN NDUNGU.....9TH DEFENDANT

AKUISI FARMERS CO. LIMITED.....10TH DEFENDANT

RULING

The plaintiffs filed this suit on 13th June, 2005 against the first to 9th defendants who are purportedly directors of the tenth defendant, **AKUISI FARMERS COMPANY LIMITED** hereinafter referred to as **“the Company”**. The Company is the 10th defendant. The plaintiffs are also shareholders of the said company.

In their plaint, they stated that the Company had called an annual general meeting to be held at one of the Company’s property known as **Chui Farm** on 18th June, 2005. The plaintiffs alleged that the said meeting had been announced on 3rd and 4th June, 2005 through the radio and the venue was not suitable as there had been serious security problems during previous meetings at the said venue. They therefore stated that such meeting ought to have been held in another ground and they suggested the Afraha Municipal Stadium, Nakuru. The plaintiffs also claimed that the mode of announcing the intended general

meeting through the radio was illegal as the announcement ought to have been made in writing by sending out a 21 days notice as per Article 53 of the Company's Articles of Association. They therefore urged the court to cancel the intended meeting and direct that the Company's annual general meeting be held elsewhere apart from the said **Chui Farm**. The plaintiffs also had other complaints against the defendants but those are not relevant for the purposes of this ruling.

The plaintiffs also filed an application by way of a Chamber Summons and prayed for an order that:-

“Pending the hearing and ultimate determination of this application inter-partes this court be pleased to issue an injunction against the respondents/defendants (jointly and severally) restraining them by themselves, their agents and servants from convening a meeting on 18th June, 2005 at Chui Farm due to insecurity there and the same be held at neutral ground preferably at the Afraha Stadium in Nakuru or on any other date/day.....”

There were also other orders that were sought in the said application but the above quoted are, albeit not the whole of it, is the relevant one for now.

All the plaintiffs had sworn verifying affidavits to accompany the plaint and had stated in paragraphs 2 of their respective affidavits as hereunder:-

“2. That there is no other suit pending; and there have been no previous proceedings, in any court between me and the defendants over the same matter save for NKU CMCC No. 2186 of 2003 which was dismissed for want of jurisdiction and HCCC No. 142 of 2005 which was struck out on technicalities but in both cases I was not a party”.

Before the said applications by the plaintiffs was heard, the 1st, 5th and 10th defendants filed a notice of preliminary objections through M/S Mirugi Kariuki & Company Advocates. Mr. Karanja for the said three defendants argued that the plaintiffs had sworn false verifying affidavits saying that they were not parties to the other two suits aforesaid while the truth was that they were all parties in **HCCC No. 142 of 2005**. He submitted that a suit could not be sustained on false verifying affidavits.

The second preliminary issue that Mr. Karanja raised was that all the issues that had been raised in the present suit had previously been raised in **HCCC No. 142 of 2005** wherein Kimaru J had delivered a ruling on 3rd June 2005 and struck out the entire suit with costs. He said that the court had held that the plaintiffs' complaints were not justiciable.

Mr. Karanja further argued that the plaintiffs were estopped from arguing that the notice given was less than 21 days because an annual general meeting had been called earlier but the plaintiffs and others went to court on the eleventh hour and obtained a court order to stop the holding of the said meeting. He quoted Article 54 of the Company's Articles of Association which states that the accidental omission to give notice or the non receipt of the notice by any member could not invalidate the proceedings of any general meeting. This third issue, in my view, cannot qualify to be argued as a preliminary objection because of its very nature as it would entail a thorough examination of many averments in the pleadings as well as a close scrutiny of Articles 53 and 54 and possibly a few other Articles.

Counsel also argued that the plaintiffs, being minority shareholders of the Company, if they felt oppressed by the majority, could only seek protection under Section 211 of the Companies Act. In reply, Mrs Ndeda for the plaintiffs told the court that in **HCCC No. 142 of 2005** there were 474 plaintiffs and she had never met all of them and could not identify them physically. She admitted having drawn the pleadings in that matter as well as in this one and said that it was her who drew the verifying affidavits indicating that the plaintiffs were not parties in **HCCC No. 142 of 2005** while indeed they were. She urged the court not to punish the plaintiffs for her mistake. She emphasised that the main complaint of the parties was the way in which the Company was being run and the way in which the previous meetings had been held. She stressed that the meeting had been called in an illegal manner contrary to Article 53 of the Company's Articles of Association and therefore it would amount to sanctioning an illegality by allowing the scheduled meeting to go on.

I have anxiously considered the preliminary issues that were raised before me as well as the response made thereto. It is not in dispute that the plaintiffs herein, and in particular the first and the second plaintiffs were also plaintiffs in **HCCC No. 142 of 2005**. There is some doubt with regard to the third plaintiff because of the way in which his names appear in the pleadings in the two suits. The first two plaintiffs openly lied under oath and actually committed perjury by stating that they were not parties to the suit **HCCC No. 142 of 2005** while indeed they were. An affidavit cannot be amended by counsel's verbal word that a technical omission was made by her and seek to exonerate the deponents from any fault yet they are the ones who swore to the truth of their depositions. I hold that the verifying affidavits are improper and bad in law and must be struck out which I hereby do.

Turning to the issue regarding the alleged illegality of announcing the holding of the general meeting through the radio as opposed to the 21 days notice, I would say that whereas the provisions of the Company's Articles are clear on how such meetings ought to be called, any breach thereof is not sufficient to cause this court's intervention to the extent of issuing an order to restrain the Company from holding such a meeting. That is an internal affair of the Company which can be taken up at the start of the meeting by any member of the Company who may feel aggrieved. I agree with Kimaru J that this court ought to intervene in a company's affairs only where the law is shown to have been breached. The prayer for an injunction to restrain the holding of the said meeting is only one in the plaint

It was properly stated in **JAMES ORINA & ANOTHER VS KENYA TEA DEVELOPMENT AGENCY & ANOTHER C.** A. Civil Application No. NAI 22 of 2004 at Nairobi (unreported) that "***courts are ill-equipped to manage the affairs of companies especially where the dispute involves the internal management and operations of a company which is administrative in nature***". I concur with Kimaru J in his ruling in **HCCC No. 142 of 2005** that the plaintiffs' complaints as pleaded are non justiciable.

They may have valid grounds of bringing up a petition under Section 211 of the Companies Act but not in the manner they have presented their complaints herein. For the reasons aforesaid, this suit is unsustainable and the preliminary objections are upheld with the result that the plaintiffs' suit is struck out with costs to the 1st, 5th and 10th defendants.

DATED, SIGNED & DELIVERED at Nakuru this 17th day of June, 2005.

D. MUSINGA

JUDGE

17/6/2005