



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE 507 OF 2003

RAPHAEL KAVAI MAITHA.....1ST PLAINTIFF
JOYCE MUTIO MUTAU..... 2ND PLAINTIFF
JAMES NJUGUNA MIIRA 3RD PLAINTIFF
EUNICE NJERI KARIUKI4TH PLAINTIFF

VERSUS

JAYS SYNDICATE LTD.1ST DEFENDANT
LAKE VIEW DEVELOPMENT CO. LTD.2ND DEFENDANT
BELGO HOLDINGS LIMITED 3RD DEFENDANT
JOSEPH S. M. MAINA 4TH DEFENDANT

RULING

The 3rd defendant seeks to set aside the ex-parte judgement herein. It is supported by the application of Mr. Akber Abdullah Kassam Esmail who depones that he and his mother are the directors of the 3rd Defendant.

This statement is challenged in the affidavit of Raphael Kawai Maitha who claims that Robert Kotch Otachi and Wilson Birir are the true directors.

Mr. Githu Muigai for the Respondent wishes to cross-examine Mr. Esmail on his statement that he and his mother are the true directors.

Mr. Ochieng Oduol for the Applicant opposed the application and referred to a ruling of Mr. Justice Njagi of the 27.6.2005 in the case of Belgo Holdings Ltd. v Robert Kotch Otachi and Wilson Birir HCCC. No. 454 of 2004 in which he made an order extending an interim order made in that suit extending an order issued therein on the 13.8.2004. The purpose of that order was to restrain the two Defendants from claiming to be directors of the Plaintiff or from acting on its behalf.

The issue of whether they are directors is still alive in that case.

As the authority of Mr. Esmail to bring this application is challenged it is a matter which I must resolve in order to give a decision on whether the said judgement should be set aside or not.

At some time or other this issue must be resolved and I therefore make an order that Mr. Esmail be examined on this sole question only, of his and his mother's entitlement as directors of the 3rd Defendant.

Orders accordingly.

Dated and Delivered at Nairobi on 3rd October, 2005.

P. J. RANSLEY

JUDGE