



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

MISC. APPLICATION NO.70 OF 2003

GITITU COFFEE GROWERS CO-OPERATIVE SOCIETY LTD.....APPLICANT

VERSUS

ATTORNEY GENERAL & 15 OTHERS RESPONDENTS

RULING

By their Chamber summons of the 19/1/2004 the Applicants who were not parties to this suit sought orders that they be joined as interested parties and that I set aside and or vacate the orders made by me on the 14th January 2004.

The Application to join the Applicants was not opposed and has been granted.

The order made by me on the 14/1/2004 sought the following orders.

- 1. That the applicant do have leave of this Honourable Court to apply for an order that the 2nd, 3rd, 4th and 18th, 20th to 25th Respondents herein, Peter Njoroge Ngugi and John Kihara Kamau be committed to civil jail for six months each for contempt.**
- 2. A declaration that the purported election of Stephen Mwangi Kariuki, John Ndung'u Njau, Jeremiah Gitau Mbugua, Joseph Kariru Njenga, Peter Muchiri Karubu, Peter Mwaura Waweru, Peter Mburu Kamunyo, David Njau Kinyanjui, Ayub Wathiari Gichara as members of the management committee of the applicant on 3rd January, 2004 in disobedience/contempt of the order made herein on 24th December, 2003 is null and void.**
- 3. An order that the said Stephen Mwangi kariuki John Ndung'u Njau, Jeremiah Gitau Mbugua, Joseph Kariru Njenga, Peter Muchiri Karubu, Peter Mwaura Waweru, Peter Mburu kamunyo, David Njau Kinyanjui, Ayub Wathiari Gichara their servants or agents be restrained from interfering with the applicant's management of its affairs."**

In this application I am only concerned with the efficacy of my order and whether I should set it aside or not.

It was unusual in that it made serious ex-parte orders in the absence of the Respondents and also those who are now interested parties. Orders, which affect the rights of the interested parties and allowed contempt proceedings against the 1st to 4th Respondent and Peter Njoroge Ngugi and John Kihara Kamau, the latter being an Officer of the Ministry of Cooperatives.

The orders granted by me were made pursuant to an order of Mr. Justice Ojwang ex-parte on the 24/12/2004 in which inter-alia he restrained the 18th and 19th Respondents from convening participating in, being or holding on January 3, 2004 or any other day thereafter a meeting to elect the Applicants

purported management committee (i.e the Gititu Coffee Growers Co-operation Society Ltd)(The Company).

Mr. Goi submitted for the Applicant that I should set aside my orders as the same were ex-parte and further that the now joined interested parties to the suit, not having been served with my order ,could not be affected it.

A court is always slow to make ex-parte orders, which affect the rights of persons not before it. In my ruling I relied on the case of Clarhe v Chadburu & others , where the ratio decidendi was that in exceptional circumstances an ex-parte order can issue where the mischief to be addressed requires an instant order. I found that as there was a breach of an order of this court which amounted to contempt of it, it was a case for such an ex-parte order.

I do not see any reason to set aside my order. So far however, as the issue of those being affected by it not having notice of Mr. Justice Ojwang' order, Miss Ndegwa referred to the affidavit of James Njoroge Njguna sworn on the 6/1/2004 in support of an application filed by the Company on the 6/1/2004, which depones to the methods by which the management Committee made known the contents of Mr. Justice Ojwang's Orders.

I am satisfied that those affected by the order were well aware of it.

However Mrs. Awino for the 1 to 4th Respondents informs me that she has advised her clients to conform to that order and I take that as a compliance with the order unless evidence to the contrary is produced.

So far as those others named are concerned including the interested parties I make this further order that they are to comply with the order of Mr. Justice Ojwang. As a result the appointment of the interested parties to the management Committee which took place on the 3/1/2004 is null and void.

The position will revert back to that which pertained prior to the 19th December, 2004. So far as the Management Committee is concerned. I further order that those named in Mr. Justice Ojwang's order, including the interested party do within 10 days from today file affidavits confirming that they understand the Judgment of Mr. Justice Ojwang and his order as well as my orders of the 14/1/2004 and of today, failing which, I will commit to Civil Jail those in breach without further orders.

One matter remains and that is the Notice of Charge of Advocates dated the 19th January, 2004 in which the Company purported to change its advocates from Kamau Kuria and Kiraitu this been challenged by Miss Ndegwa on the grounds that it was filed by the Company at the instance of the interested parties.

In my view this notice is invalid as at the time of the filing the former officers of the company were not in charge of its business. I therefore declare the notice as of no effect and order that until further orders the firm of Kamau Kuria and Kiraitu will represent the Company.

Lastly I am not in view of the orders herein going to deal with the various application for contempt which have been filed, but if my orders herein are disobeyed warrants of committal will issue immediately to those in breach.

Costs are reserved until the matters in dispute are made more clear.

Dated and delivered at Nairobi this 10th day of February 2004

P.J. RANSLEY

JUDGE