



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL SUIT NO. 592 OF 2003

**HURUMA KUUGA NA GWIKA CO. LTD. ....PLAINTIFF**

**VERSUS**

**PETER KIMANI KIBE & 8 OTHERS ..... RESPONDENT**

**R U L I N G**

1. The Application dated 17th October 2003 is brought by way of Chamber Summons under Order XXXIX Rule 1, 2, 3 and 7 of the Civil Procedure Rules, Sections 131, 201 and 403 of the Companies Act, Cap 486 Laws of Kenya.

2. The Applicant Company, Huruma Kuuga na Gwika Co. Ltd. seeks orders as follows: -

1. That service of notice of this Application upon the Defendant/Respondents be dispensed with the first instance.

2. That an interlocutory injunction be and is hereby issued restraining the Defendants by themselves in singular or plural, by agents, employees or any one of them or such other person converting the Plaintiff Company's properties and/or instruments to wit:

a) Membership/shareholders Registers;

b) The documents of plan and survey records;

c) Bank Account, Bank statement and financial statements and other records;

d) Company seal; to their own use and benefit thereof while rendering the operative and ineffective the Plaintiff and its new elected Board of Directors and thus suffering loss and damage.

3. An interlocutory injunction be and is hereby issued directing and/or ordering the Defendants by themselves, agents, and/or employees to deliver and/or to make available to the Plaintiff all the Plaintiff's properties, documents and instruments which include memberships/shareholders Registers. The documents, plans and survey records, Bank accounts records, statement and financial records and company seal.

4. The Defendants do pay to the Plaintiff costs of this Application.

3. In the Supporting Affidavit sworn by Mburu Muriama on 17th October 2003, it is deponed that the Applicant Company was incorporated in 1981 with its main objective being to be a land buying company. As has now become common in Kenya with Companies set up for land buying purposes, members/shareholders and Directors started wrangling over finances. The Registrar- General intervened

and on 26th October 2002, an Annual General Meeting was held and new Directors were elected. A letter dated 7th November 2002 from the Registrar-General confirms this fact and form 203 A filed with the Registrar of Companies indicates as much.

4. The Defendants, it is claimed, were the former Directors and have refused to hand over and/or deliver any of the Plaintiff Company's records to the new Directors. These include Registers, Title documents, Plans and survey records, bank statements and accounts and the Company's seal.

5. The injunctive reliefs sought are for purposes of ensuring that there is a proper handing over process and the new Directors have the opportunity to manage the affairs of the Company.

6. The Defendants deny all that the Applicants have stated. Their case is fairly straightforward and it is to the effect that the meeting held on 26th October 2002 was illegal as the real Annual General Meeting of the Company was actually held on 19th October 2002 and the Defendants were re-elected as Directors. They however also want another meeting to be properly convened so that fresh faces can join the Company's Board of Directors.

7. The Replying Affidavit of Gichiriri Muriama sworn on 6th November 2003 says all these things and more.

8. I note that the issue here is; who are the bona fide Directors of the Company? I also note that the last Annual General Meeting was held either on 19th October 2002 or 26th October 2002. It does not matter which was the correct date and who were legally elected. The point is that both factions have been in office for more than a year and there ought to have been Annual General Meeting in October 2003.

9. At that Annual General Meeting, there would have been elections. As I see it therefore, the way out of the mess in the Company is not to injunct one faction against another but to regularize the Directorships by sending the parties back to the shareholders who should determine the genuine Directors.

10. Accordingly and invoking powers under Section 135 of the Companies Act, I shall order a meeting of the Company. In doing this, I am certain that none of the Directors in whichever faction can practically call such a meeting without the wrangling being perpetrated.

11. The meeting that shall be called will be called by the Registrar of Companies within 45 days of this order being served on him/her and on a date to be notified publicly and by private notices to all shareholders.

12. The sole Agenda for the meeting so called is to have elections of Directors. The Returning Officer shall be the Registrar of Companies or a nominee thereof.

13. The Returning Officer shall file a Report to this court regarding the outcome of the meeting within 14 days of the days of the meeting.

14. Parties shall thereafter be at liberty to seek further directions from this court.

Orders accordingly.

**Dated and delivered at Nairobi this 2nd day of February 2004.**

**I. LENAOLA**

**Ag. JUDGE**