



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 609 of 2004

KARIUKI NJOROGE 1ST PLAINTIFF

MUTEGI KAREGA..... 2ND PLAINTIFF

SAMUEL NGUGI NGANGA..... 3RD PLAINTIFF

JOHN KAMAU KANJIGI..... 4TH PLAINTIFF

KIAMBU DANDORA FARMERS CO. LTD..... 5TH PLAINTIFF

VERSUS

STEPHEN MUGO MUTOTHORI 1ST DEFENDANT

RAYMOND MWANGI WAWERU..... 2ND DEFENDANT

PETER KARUMBI KEINGATI..... 3RD DEFENDANT

RULING

The 5th Defendant Company Kiambu Dandora Farmers Co. Ltd. has filed this application seeking an order of the Court to strike its name from these proceedings. It contends that it has been improperly joined in the suit which suit has been instituted without authority, by way of resolution against certain of its directors who happen also to be trustees of the 5th Defendants assets. The 5th Defendant applicant also contends that there would be a conflict of interest if the suit is allowed to continue as filed. The applicant also states that it has no complaint against the Defendants in the management of trust affairs, and has therefore no interest in the suit of the reliefs claimed.

The Respondents on the other side claims that the 5th Defendant is a necessary party in the proceedings and should not be allowed to opt out of the proceedings since its removal would prejudice the interests of the Plaintiff/Respondents. Mr. Muriithi for the Respondents submitted that the Court should determine whether it would be able to adjudicate the matters in dispute without the 5th Defendant appearing as party in the suit.

The issue of authority and capacity to sue goes to jurisdiction. The applicants have submitted, and properly so, that a company can only sue in its own name with the sanction of its Board of Directors or under a resolution in general or special meeting. The Respondents have not shown this Court that they have been authorized to take out these proceedings in the name of the 5th Defendant or at all. it matters not whether or not they have certain legal rights that they would wish to enforce as beneficiaries under the

relevant Trust deed. They must come to Court properly and with authority. I am not convinced either that these proceedings provide the proper means by which to urge the removal and/or replacement of trustees but I find it unnecessary to venture into the issue. I find that the Respondents have no valid grounds upon which to challenge the present application and proceed to allow the same. The Respondents will bear the costs of the application.

Dated and Delivered at Nairobi this 10th day of December 2004.

M.G. Mugo

Judge

In the presence of

Makori h/b for 5th Plaintiff/Applicant

Muriithi for 1-4 Plaintiffs

N/A for Defendants