



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

**AT NAIROBI**

**CIVIL CASE NO. 1275 OF 2001**

**PAUL MBINDA & 6 OTHERS.....PLAINTIFF**

**VERSUS**

**DICKSON K. NDOLO & 8 OTHERS.....DEFENDANT**

**RULING**

In this application dated 28th March, 2001 and filed almost a year later on 20th March, 2002, the plaintiffs pray that the defendants be restrained from interfering with the affairs of a Company known as Kyeni Kya Kangundo Ltd as their election as directors for the said company was illegal. The defendant/Respondents however contend to the contrary.

On the pleadings and affidavit evidence, the plaintiffs/applicants and the defendants are all members and /or shareholders of Kyeni Kya Kangundo Ltd hereafter called “the Company” a limited liability company with powers to sue or to be sued. According to a plaint filed on 30th July, 2001, the applicants contended that they were bona fide directors of the company which is not a party to the suit, and that through an illegal special general meeting held on 21st July, 2001 the respondent purported to have had themselves elected as the directors of the company and was interfering with the properties of the copy by selling them off. In tender therewith the applicants also filed an application for similar orders pending the determine suit. On being served with the application, the respondents contended that the meeting was lawful and that they were the lawful officials of the company as the applicants term of office had long expired. As applicants did not wish to proceed with the application they withdrew it on 21.1.2002 but filed a similar one on 30th March, 2002 supported by the same affidavits the evidence application.

Counsel for the applicant Mr. Ngala submitted that the purported meeting convened by the respondents was illegal and any elections held then were similarly illegal as it was convened by an administrative who had no right to convene it. He also submitted that the members of the company had not been notified of same as provided by the company’s articles and memorandum of association and the respondents should therefore be restrained from holding out themselves as the directors of the company. On her part Mrs Odero, the learned Counsel for the respondent’s contended that the applicants were no longer in office as their term had expired and that the elections were properly held and the respondents had been office as from July 2001 and yet the application had not been filed until this year.

At this stay of the proceedings, the court is not seriously come with the merit or demerit of the main case. It is mainly concerned with whether or not the case as presented by applicants and respond to by the respondents it would just or unjust to grant or refuse the orders prayed for by the applicants. In doing this, this court has long been guided by Judicial principles. These principles were firmly stated by Spay V.P. in Giella versus Cassman Brown and co. Ltd (1973) EA 358 at page 360. They are

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer impromptu injury, which would not adequately be compensated by an award of damages.

Thirdly if the court is in doubt, it will decide on application on the balance of the convenience.”

As already intimated, the company whose leadership is at issue is not a party to the application. The applicants and one or two of the respondents are said to be the directors of the company as per the returns relating to the year 2000 and , presumably, therefore are still directors thereof to date. It is also contended by the applicants that the respondent had held an illegal meeting in July 2001 at which the had been allegedly elected as the new directors and should be restrained from assuming office. On the other hand, respondents contend that they had lawfully requisitioned and convened a special general meeting at which the applicants had been suspended for mismanaging the company’s assets by ..... sale of its prime property in Trans Nzoia district by agreement made on 19 June 2001 As it is not clear whether the suit is for protection of the applicants offices or the company’s assets. I am may to say that prima facie case has been made out by the applicants with a probability of success. I say so because of the case is for protection of company’s properties, the proper plaintiffs should be the company itself. If however it is for protection of the applicants offices, then it is observed that it is already over one year since they should have had their offices removed at the company’s annual meeting. As there is no evidence that this has been done, their offices may or may not have lapsed, a matter which can best be determined at the hearing of the suit. At this stage and on the contradictory evidence, all this can say is that the plaintiffs suit may or may not be well founded.

As regards to the losses which the applicants or the company may suffer or the balance of convenience, it is observed that the elections complained of through a special general meeting and said they have been held way back in July 2001. Although the meeting may have been illegal, as the respondents have been in office as from then and yet this application was made early this year after withdrawal of an earlier one which had been made in August, 2001. The respondents therefore now appear to be in control of the company and the injunction would have the effect of injuring the applicants on the membership of the company as appear to be numerous. In the event it is found that they were wrongly excluded they could only in my view be compensated by payment of the directors fees. If the company suffers loss then it would be at liberty to recover same from the respondents. On the other hand, if an injunction is wrongly granted, the company’s activities could be disrupted. The balance of convenience does not therefore favour a grant of the then order sought herein.

In view of the above and for the aforesaid reasons, I dismiss this application with costs.

Orders accordingly.

Delivered at Nairobi this 10th day of December, 2002

G. P. Mbitio

Judge