

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1555 OF 2001

JOSEPH NJUGUNA WANYOIKE & FOUR (4) OTHERS.....
PLAINTIFFS

VERSUS

GITHUNGURI CONSTITUENCY RANCHING CO. LIMITED & 8(EIGHT) OTHERS.....
..... DEFENDANTS

R U L I N G

By a Chamber Summons of the 6.9.2001 the plaintiff apply for an injunction to restrain the defendants from disposing, selling, allocating, subdividing and re-surveying or otherwise dealing with the 1st defendant's property known as RUIRU EAST/BLOCK 1. Or any of the company assets.

It further asks that the court convene an Annual General Meeting of the company.

The application is supported by the affidavit of the 1st defendant who states in para 4 thereof that the 3rd to 9th defendants have never called an Annual General Meeting of the 1st defendant (the company) contrary to Article 51 of the Companies Articles.

Dealing firstly with the suit against the Directors. Although the plaintiffs claim in para 5 of the plaint no confirmation of this is contained in the affidavit in support nor are the relevant share certificates annexed. Individual shareholders have certain rights to bring suits and can sue the directors in certain circumstances. This was the ratio in the case of Foss v Harbolte (1843) 2 Hare 461 in which a minority of shareholders sued directors alleging fraud but the court dismissed the suit as it held that the acts of the directors were capable of confirmation by the majority of members and the court should not interfere.

In order to attain an injunction the applicants must show that they have a good case with a probability of success and the damages are not an adequate remedy.

Leaving aside the fact that they are shareholders in the Company they have not proved their right to any relief and (the 1st defendant) they do not demonstrate that they are a majority of the shareholders entitled to relief against the directors. I will not even go into whether or not they could even if they were a majority shareholders complain of the actions of the directors in a suit in court. In this respect the plaintiff do not have a good cause with a probability of success and no injunction will issue against the directors as sought for in prayer 2 of the Chamber Summons.

With regard to this suit filed against the 2nd defendant the Registrar General as I pointed out under the Government Proceedings Act the proceedings should be brought in the name of the Attorney General. Leaving that aside shareholders do have a right to apply to the Registrar under Section 131 (2) of the Companies Act to call or direct the calling of a meeting of the company and make such other directions as are referred to therein. In this case the plaintiffs purported to issue a Notice calling an Annual General Meeting of the company dated The 15th March, 2001, which does not appear to have taken place.

However, in order to call an Annual General Meeting the same must be called by the Directors and the shareholders only remedy is that to which I have referred. In a letter to the plaintiff of the 27th August, 2001 the Registrar General referred to meetings with the plaintiff and advised them to seek a remedy in a court of law. It appears that the plaintiff have not exhausted that remedy under Section 131 of the Companies Act and as such the court cannot make the order sought in prayer 3 of the Chamber Summons.

In this result the plaintiff's fail in their application which is dismissed with costs to the defendants.

Dated this 11th day of October, 2001.

P.J. RANSLEY

COMMISSIONER OF ASSIZE