REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 77 OF 2000

KAMBAA TEA FACTORY COMPANY LTD & 7 OTHERS…..……PLAINTIFF

-VERSUS

NGATIA NDONYE & 2 OTHERS……..…….DEFENDANT

RULING

Background

The applicants by a Chamber Summons filed on 21.1.2000 and brought to Court under Certificate of Urgency asked the Court to grant a restraining injunction against the Defendants, stopping the Defendants from acting on the resolutions passed at the Extra Ordinary General meeting of KIAMBAA TEA FACTORY COMPANY LIMITED On 21.1.2000. The events leading to this application are that the defendants calling themselves the "Consultative Committee" called for an Extra Ordinary Meeting of the Plaintiff Company (Company) for the 21.1.2000. The purpose of requisitioning the meeting was to discuss certain matters relating to the Board of the Company among which was an item in the agenda No.3. Renewal of the Board of Directors under Section 185 and 186 of the Companies Act. The plaintiff filed a suit against the defendants in which they asked for prayers as contained in paragraph (12) (a) to (e) of the plaint.

Evidence

The Applicants who are the plaintiffs in the suit (hereafter referred to as "the Applicants") are the Company and seven other individuals while the Respondents (here to be referred as "the Respondents" are the individuals who are the defendants in the main suit. To support their application the Applicants through the affidavit of Mr. Mbogo Mararo relate that the Company and the other Applicants did not receive the requisition notice of 23.10.99 asking the company to call the Extra Oridnary Meeting. The notice was not served on the plaintiff as required by the provision of Section 132 of the Companies Act. In particular notice did not show that.

1) The requisitionists held 1/10 or more of the total value rights of the company.

2) The notice was signed by the requisitionist's show whether the notices were personally served on all the members or served upon the members as required by law.

3) The Respondents and their "Consultative Committee" was an organ of the Company.

In addition the plaintiffs and other shareholders did not receive a valid special notice in accordance with the provisions of sections 185, and 142 of the companies Act. It is further the contention of the applicants that the Company held its Company for the Year 1998 were discussed and the Respondents who were present did not raise any objection to them. In their rebutting evidence contained in the Replying Affidavit by Mbogo Mararo contended that:

a) The 1st plaintiff had no authority to swear the affidavit from the other applicants.

b) The 6th Defendant has resigned from the Company.

c) The 7th Plaintiff is over 75 years old and therefore not eligible to be a Director of the Company.

d) The 8th Plaintiff did not consent to being a party to these proceedings and had resigned from the Board on 10.11.99.

e) Besides the advertisements in the papers notices to Shareholders were sent through the Tea Buying Centre and the Radio. The notice was also sent to the 2nd plaintiff who was requested to make arrangements for the meeting.

f) The success of the notice was proper in that.

(i) It was served on 1st plaintiffs registered office to its secretaries on 25.10.99

(ii) It was signed by two persons and served to all shareholders.

g) The accounts of the Company were never discussed in the Annual General Meeting of the Company.

FINDINGS

A notice calling for a meeting of the Company Shareholders appeared in the daily newspaper the 'people' of the 5.1.2000. (A copy is annex 1). The meeting was called by KIAMBAA FACTORY CONSULTATIVE Committee with the following as part of its agenda:

3. Review the Board of Directors under Section 185 of the Companies Act.

4. To give the renewed Board mandate to investigate the loss of 42.8 million and report back to the shareholders within a month.

An announcement dated 18.1.2000 confirms this advertisement. The meeting was being requisitioned by the members who wrote to the Managing Director KTDA on 9-10-99 and acknowledged by the letter of 10.11.99. Both letters do not show who are their writers. Looking at the notice and the agenda it contains, it is quite clear that this meeting was being called for the purposes of replacing the Directors. This is so despite the manner in which the agenda is couched in a language to sound like what was intended was not removal of the Directors. The first issue, which arises, is whether in the subsequent meeting, which took place the Directors, were legally removed. Section 185 (2) of the Companies Act requires a special notice to be given of a Resolution to remove a Director or to appoint another Director in his place. Section 132 of the Companies Act provides that despite anything in the Articles the Directors must convene an Extra Ordinary General Meeting on the requisition by members holding not less than 1/10 of the paid up capital carrying the right to Vote. The requisition must be signed by the requsitionists and must state the objects of the meeting and it is then deposited in the registered office of the Company. The Director's must call the meeting within 21 days from the date the request is made. The special notice to be given under Section 185 for the removal of a Director must under Section 142 be of not less than 28 days although the meeting can be held valid if it is held in less than the 28 days but after the notice had been given.

Then Section 132 (4) provides that a requisitioned meeting "shall be convened in the same manner as early as possible", as that in which meetings are to be convened by the Directors. My reading of this section is that if the requisitionists intend to call a meeting in which the Directors would be required to observe the need for a Special Notice or where the resolution to be passed needed certain majority if it had been called by the Directors the requisitionists must likewise observe those requirements. To remove the directors and appoint others there must have been a special notice of 28 days to the company. Then 21 days of the meeting if the directors fail to call the Extra Ordinary General Meeting. Applying the

provisions of these Sections to the present case it will be noted that in the first instance there is no special notice to the Company and what could be the Special Notice in the form of the Letter dated 26th September, 1998 to the Managing Director of KTDA does not amount to a notice and lacks all the ingredients of a valid notice. The Notice for the actual requisitoned meeting does not contain the proposed Resolution for removing the Directors and appointing others. The Requisitioning notice was not signed by all the requisitionists as required by the law.

Since the special notice did not specify what period the directors should call the Special Annual General Meeting the Requisitionists are not able to show that the Company had refused to call the Special Annual General Meeting in which case they had no basis for the requisitioning the meeting. The right to requisition a meeting by the members will arise only when the company refused to respond to a special notice by the members by refusing to call such a meeting. An attempt was made to argue that Sections 185 and 142 of the Companies Act do not apply when the issue in a Special Annual General Meeting is the removing of all the Directors as these sections apply where it is intended to remove one director by one. I doubt whether the counsel for the Respondent believed in what he was saying. These Sections refer to the removal of Directors and replacing them whether through a Special General Meeting called by the Directors or a Special Annual General Meeting requisitioned by the members. Removing of Directors of a Company is a serious matter and in so doing the provisions of the Act and those of the Articles of Association must be observed. Directors can not be removed through what clearly amounts to a self-help exercise by some members of the Company instigated by those who want merely to be directors. Even assuming that the requisitionists have attainable grievance against the incumbent directors they can not simply use the mob justice to remove them as they did in this case. I have carefully read the minutes of the Company's meetings and the correspondence between the defendants and the Company and I note that the Company held its Annual General Meeting on 27.8.99 and this fact had not been denied by the defendants.

After considering the evidence in the affidavits which have been filed in support and against I FIND THAT the Requisitioned meeting was not properly convened in that the proper notices were not given to the members and to the Company. The Respondents in their grounds of opposition and in the replying affidavit of Mr. Njoroge raise the points that some of the Directors who are plaintiffs did not give their consent to be joined as plaintiffs in this suit and that one was above the age of 70 and therefore cannot be a director of the Company. There was no evidence tendered to support these allegations and in any case their inability to be plaintiffs did not invalidate the application because the first plaintiff is the Company itself and its presence is enough to sustain the suit and the application. I find these grounds frivolous meant to justify the mob action of 21-1-2000 by the Defendants. The parties should note that in suits like this one where it affects many members majority of whom are not aware of their rights care should be taken to ensure that the provisions of the law affecting their rights is properly followed and avoid self takeovers encouraged by some members who either want to perpetuate their continuance in office or by groups which will want to take over very little caring about the interests of the shareholders. I do not find any excuse for defendants to think that they could not find redress in the courts in this case.

The Respondents could have followed the law and convene a proper requisitioned special annual general meeting or make an application for the court to order a meeting to take place.

Ruling

Based on these findings I hold that the purported meeting of the 21st January, 2000 arranged by the Respondents was not properly convened in that it was not called in accordance with the provisions of the Articles of Association and the Companies Act. The application is therefore allowed as prayed for in prayers (b) and (c) of the Chamber Summons. The Defendants will immediately vacate the offices of the Company and hand over any books or properties they may have taken back to the plaintiffs. The Defendants shall pay all the costs occasioned by this application.

Delivered and dated this 22nd day of February, 2000.

KASANGA MULWA

JUDGE