



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1287 OF 1999**

S. M. W. NJUGUNA & 3 OTHERS..... PLAINTIFF

VERSUS

MATAARA TEA FACTORY CO. LTD & 8 OTHERS..... DEFENDANT

CONSOLIDATED WITH

HIGH COURT CIVIL CASE NO.1288 OF 1999

JOSEPH KARIUKI AND 3 OTHERS.....PLAINTIFF

VERSUS

THETA TEA FACTORY CO LTD AND 8 OTHERS.....DEFENDANT

JUDGMENT

The two suits were filed on 28.6.99.

They deal with the elections of directors of Mataara and Theta tea factory Co., Ltd held on 17.6.97.

The only variable is the names of directors named as defendants same reliefs are sought in each plaint. Plaintiffs in each suit are represented by the same firm of Advocates Defendants in each such are represented by the same firm of advocates Defences in the two suits are same.

As application was filed in each suit on the same day.

The contents of the supporting affidavit is the same. The contents of the replying affidavit is the same.

On 12.7.99 Mulwa J. ordered that case No. 1288/99 be heard together with case no. 1287/99 as they are similar.

The application in 1287/99 came for hearing on 2.3.2000. It was by consent agreed that the applications in the suits be heard separately but a consolidated Ruling be given. In the Course of hearing of the application in 1287/99, it was realised that the application and the suit deal with same issue the construction of the Articles of Association of Mataara Tea Factory Co. Ltd in relation to elections of directors. It was then agreed and ordered that the hearing of the applications be treated as the hearing of the suit and that the suit be determined on the basis of pleadings affidavit evidence documents already filed and counsels submissions.

The basis of the claim of each set of plaintiffs set out clearly set out in para 6,7,8,9,10 of the respective plaints. It is averred inter alia that:

(i) Directors of first defendant in each case are supposed to be elected by shareholders in a general meeting duly convened under the provisions of the each companies Articles and also in accordance with the companies Act.

(ii) In the case of election of 2nd - 8th defendants in each suit no general meeting of each company was convened and the elections were carried out by delegates elected or appointed in a manner not provided in the Articles or the Companies Act.

(iii) The elections were therefore defective and the directors illegally took office.

(iv) By the defective and illegal elections each set of plaintiffs shareholders of the respective company were wrongly denied their legal right to vote.

The reliefs sought in each plaint are:-

(a) Declaration that election of 2nd - 8th respective defendants was defective and illegal and occupation of offices of directors is illegal and contrary to law.

(b) An order that the respective 2nd - 8th defendants vacate the offices of the respective companies.

(c) An order that General meeting of each company be duly convened in accordance with Articles of Association and companies Act. (d) An interim committee to oversee the affairs of each respective company organise the meeting and supervise the election be appointed.

(e) An order that 2nd - 9th defendant in each suit account to respective plaintiffs and to shareholders for the illegal management of the respective company during the illegal tenure.

Prayer (b) of the interlocutory application in each suit sought an order of injunction to restrain the 2nd - 9th defendants in each but from running, managing controlling affairs of each respective company and from holding themselves as director of the company. Prayer no (C) in the application in each suit sought an order for appointment of interim committee to run and oversee the affairs of each company until the determination of the suit.

Mr. Julius Shigoli - Corporation Secretary KTDA 9th defendant in each suit filed a long replying affidavit in which he explains the interrelationship of the KTDA and the fourty five Tea factory companies including the Mataara and Theta. He deposes that KTDA as company Secretary of each of the two defendant companies organised the elections of directors of each of the two companies including the election of the rest of the Tea factory companies. Tea buying centre committees Tea Base committees Zonal tea Committees and KTDA Board members. He deposes further that the election were held in accordance with the articles of each company and in consultation with and authority of Board of Each Company under the KTDA order and that all shareholders were given full opportunity to participate.

Mr. Kagiri for plaintiffs in each suit and Mr. Sichangi for defendants in each suit addressed the court several days and in particular on 11.5.2000 and 12.5.2000. The hearing was concluded on 12.5.2000 It is clear from the plaint in each suit and from application supporting affidavit and Mr. Kagiri's very able submissions that the purpose of the suits to get the directors who allegedly were irregularly and illegally elected removed and fresh elections held in accordance with Articles of Association of each company and the Companies Act. Unknown to the court and the respective counsels when the court was proceeding with the suit on 11.5.2000 the Minister of Agriculture on 11.5.2000 made the Tea (Elections) Regulations 2000 under the Tea Act (Cap 343). They were published on 12.5.2000 in the special issue of Kenya Gazette supplement no. 32 - legislative supplement no. 19 as L.N. 43 part iv of the Election regulations deal with election to the small holder Tea Factory companies and clause 14(1) of the Regulations provides:

“The Board of Director of a company shall be elected in accordance with the articles of association of the company and all directors shall be registered tea growers in that company”

The Tea (elections) Regulations 2000 is a subsidiary legislation while by virtue of s. 27 of the Interpretation and General Clauses Act come in operation on the day of publication - that is 12.5.2000. By s. 60(1) (a) of the Evidence Act the court can take Judicial notice of that law. It is a matter of local notoriety that the elections are scheduled from 19.6.2000 and court can take judicial notice of that fact by virtue of section 60(1)(0) of the evidence Act.

As the Tea (Elections) Regulations 2000 has given the plaintiffs the remedy they seek in the two consolidated suits it would be futile for this court to decide whether or not the 1997 elections of directors were contrary to Articles of Associations of Mataara and Theta Tea factory Companies. Courts of law do not engage in academic pursuits They engage in resolution of practical disputes with a view to giving an effective remedy. The plaintiffs through the subsidiary legislation now have a remedy which they sought from the court. The suits would only be alive if the proposed elections are to be held under the direction of KTDA - the 9th defendant. If so, the plaintiffs could need a pronouncement from the court whether or not KTDA has power to direct and supervise the elections. But under the new law KTDA is to be dissolved and replaced by Kenya Tea Development Agency Ltd. The elections will not be held under the directions and supervision of KTDA but under the direction and supervision of the Minister of Agriculture under powers given to him by the Tea Act.

It is thus clear that the issues raised in the two consolidated suits are no longer alive and the suits are thus spent.

Consequently I rule that the suits be closed as being spent and that each party do pay its own costs.

E. M. Githinji

Judge

7.6.2000

Mr. Kagiri present

Mr. Sichangi present