



REPUBLIC OF KENYA



KENYA LAW
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**Baiya v Mathenge & 4 others (Environment & Land Case
E221 of 2023) [2024] KEELC 6595 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6595 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E221 OF 2023**

LN MBUGUA, J

OCTOBER 9, 2024

BETWEEN

EVANSON GATHURA BAIYA PLAINTIFF

AND

PATRICK MATHENGE 1ST DEFENDANT

ROBERT FRANK OMOLO 2ND DEFENDANT

PAUL OPONDO 3RD DEFENDANT

HASSAN JUMA 4TH DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED 5TH DEFENDANT

RULING

1. There are two firms of advocates namely Macharia Gakuo & Co, Advocates and Nduta Kabiria & Co Advocates, each of them purporting to be representing the 5th defendant in this matter. Macharia Gakuo & Co. Advocates have filed an application dated 8.5.2024 seeking orders that the firm of Nduta Kabira Advocates is not properly on record and that they should not be given audience by this court.
2. The application is premised on grounds on the face of the application and on the supporting affidavit of Godfrey Muhuri Muchiri, a director of the 5th defendant. He contends that vide their companies resolution dated 14.4.2024, they appointed Macharia Gakuo Advocates to represent them in this matter. However, it has come to their knowledge that the firm of Nduta Kabiria Advocates have also come on record on their behalf and have even filed a defence, yet the company did not give any instructions to that effect. He prays that any documents filed by the said firm be expunged from the records.
3. In their submissions dated 22.8.2024, the applicants aver that there is a dispute relating to the directorship of the plaintiff, of which the High Court in the case E096 of 2019 has delivered several



rulings. Thus the affidavit by Mr. Godfrey Muhuri Muchiri proceeds from the orders/rulings given in the aforementioned high court matter on 31.7.2019, 28.7.2023 and 26.6.2024, in terms that the former directors of the 5th defendant who were still in office would continue holding office, while the newly elected directors whose names are in the Company's CR-12 were precluded from assuming any office duties, including appointment of Advocates on behalf of the Company until the dispute therein is heard and determined.

4. In support of their arguments, the applicants rely on the case of *George Pariken Ole Narok & Another v Cabinet Secretary, Ministry of Industry, Trade & Co-operatives & Another; Kenya Farmers Association Ltd (Interested Party)* [2021] eKLR.
5. The application is opposed by Nduta Gitonga advocate vide her replying affidavit dated 20.6.2024 stating that her firm is the one properly on record vide instructions given on 14.6.2023 following the resolution given on 20.8.2021 by the 5th defendant.
6. In their submissions dated 4.10.2024, the respondents contend that the directors contained in the 5th defendants CR 12 form at the Registrar of Companies are presumed to be the ones in power unless the board is dissolved. The court has been urged to be guided by the law as set out under Section 34 of the *companies Act* 2015.
7. I have considered the arguments raised herein. I discern that there is a dispute regarding directorship of the 5th defendant, which dispute is yet to be resolved. The ruling availed by the applicant delivered by Judge Njoki Mwangi in the case HCCOMM No. E096 of 2019 dated 28.7.2023 reads as follows;

“As correctly submitted by Mr. Kithi, the orders that would regulate the issue of the plaintiff's representation are those issued by Hon. Judge Nzioka on 31.7.2019. In interpretation of the said orders, Hon. Judge Chepkwony held that by virtue of the Court orders issued on 31.7.2019, the former directors who were still in office continue holding office, hence the newly elected directors whose names are in the company's CR-12 are precluded from assuming any office duties, including appointment of Advocates on behalf of the plaintiff company, until the dispute herein is heard and determined. Emphasize added.

Based on the foregoing and the fact that the aforementioned directions/orders were issued by a court of competent and concurrent jurisdiction, and they have not been set aside by way of appeal and/or review, it is my finding that the plaintiff's directors whose names appear on the CR-12 dated 12.9.2022 do not have the legal capacity to appoint another Advocate to represent the plaintiff in place of the Advocate currently representing it.”

8. The above ruling was given by a court of competent jurisdiction. The instructions given to the firm of Nduta Kabiria emanate from the directors whose names apparently appear on the CR 12 Forms. Going by the rulings given in the aforementioned matter in the high court, these directors have no mandate to give instructions in respect of legal representation for the plaintiff.
9. This far I make reference to the case of *Alvin Mbae & 2 Others v Kinyua Mukatha & 2 Others* [2018] eKLR where the court in declining to decide an issue which had been decided by another court stated thus,

“A studios by stander watching the court doing so would surmise that he is beholding veritable judicial phantasmagoria. A decision made by a Judge zeized of concurrent and/or horizontal jurisdiction with another having his decision juxtaposed against that of another



judge of similar status! He would think that the judiciary is a house of babel. I think that this would spawn judicial anarchy and chaos....”

10. Thus the application dated May 8, 2024 is found to be merited, the same is allowed as drawn. For avoidance of doubts, any documents filed by the firm of Nduta Kabiria Advocates are hereby expunged from the records.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ngare for the Plaintiff

Mutua holding brief for Macharia Gakuo for 5th Defendant

Court Assistant: Joan

