



Wambugu & 2 others (Suing as Members/Former Members and Officials of United Social Club) v Gichuki & 3 others (Environment & Land Case 257 of 2016) [2024] KEELC 6393 (KLR) (3 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6393 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 257 OF 2016
JO OLOLA, J
OCTOBER 3, 2024**

BETWEEN

**GERALD KIBOCHA WAMBUGU 1ST PLAINTIFF
DANIEL GATUGUTA KING'ORI 2ND PLAINTIFF
BENSON NDUNG'U KING'ORI 3RD PLAINTIFF
SUING AS MEMBERS/FORMER MEMBERS AND OFFICIALS OF UNITED
SOCIAL CLUB**

AND

**ERASTUS KIAMA GICHUKI 1ST DEFENDANT
NANCY KEZIAH MUGURE 2ND DEFENDANT
FLORENCE WANJIRU MARINE 3RD DEFENDANT
UMPLOSH COMPANY LIMITED 4TH DEFENDANT**

RULING

1. By the Notice of Motion dated 14th March 2023, Florence Wanjiru Marine (the 3rd Defendant) prays for an order that the entire suit against herself be struck out and that she be awarded the costs of the suit.
2. The application is supported by an affidavit sworn by the 3rd Defendant in which she deposes at the relevant Paragraphs 2 to 10 as follows:
 - “ 2). That I have been resident in the United States of America since 2006;
 - 3). That I was not consulted and have never consented to being a director of Umplosh Company Limited the 4th Defendant herein;



- 4). That I do not know and have not been a party to the actions of the 4th Defendant at all;
 - 5). That I do not have any interest in Umplosh Company Limited or any assets owned by the said company;
 - 6). That I do not have knowledge of the subject matter of this suit;
 - 7). That it is only, proper that my name be removed from this suit;
 - 8). That I have written to the Registrar of Companies to have my name removed from the 4th Defendant as I was not consulted when I was put (sic) as a director;
 - 9). That in the circumstances, it is in the interest of justice that the suit against me be struck out with costs;
 - 10). That I am therefore improperly enjoined in this suit.
3. The Plaintiffs are opposed to the application. In a Replying Affidavit sworn on their behalf by Gerald Kibocha Wambugu (the 1st Plaintiff), they aver that it is weird for the 3rd Defendant to purport that she is not a director and that she does not know, how, when and who made her a director of the 4th Defendant.
 4. The Plaintiffs assert that the records from the Registrar of Companies filed in court do confirm that the 3rd Defendant is a director of the 4th Defendant.
 5. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties herein.
 6. By this application, the 3rd Defendant urges the court to have the entire suit against herself to be struck out on account of the fact that she is not a director or official of the 4th Defendant. It is the 3rd Defendant's case that she has since the year 2006 been a resident of the United States of America and that she was not consulted when her name was included as a director of the 4th Defendant.
 7. From a perusal of the pleadings herein, it is apparent that the 3rd Defendant was enjoined in this suit on account of the fact that she is a director of Umplosh Company Limited (the 4th Defendant herein). The basis for the Plaintiff's action can be discerned from the documents filed herein by the Plaintiffs.
 8. Those documents reveal that the 4th Defendant was incorporated on 23rd March 2015. From a search conducted at the Registrar of Companies dated 13th October 2016, Florence Wanjiru Marine (the 3rd Defendant) is listed as one of the six (6) directors of the 4th Defendant.
 9. That fact is known to the 3rd Defendant and hence her averment at Paragraph 8 of her Supporting Affidavit to the application that she has written to the Registrar of Companies to have her name removed from the List of Directors of the 4th Defendant.
 10. As it were, the 3rd Defendant has not produced anything to demonstrate that the Registrar of Companies has since acceded to her request. The records held at the office of the Registrar of Companies are the only official records on which one can rely to identify the officials of a company. Those records place the 3rd Defendant as one of the officials of the 4th Defendant and there is no evidence to demonstrate that the 3rd Defendant has embarked on a legal process either to resign from being such a director or to have her name removed from the List of Directors.



11. In the result, the 3rd Defendant is a proper party in these proceedings and the application to have her name struck out from these proceedings is totally misconceived and without any basis.
12. Accordingly, the Motion dated 14th March 2023 is hereby dismissed with costs to the Plaintiffs.

DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 3RD DAY OF OCTOBER, 2024.

In the presence of:

No appearance for the Plaintiffs.

No appearance for the Defendants.

Mr. Muchiri wa Gathoni for the Interested Parties.

Court Assistant: Kendi

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J. O. OLOLA

JUDGE

