



REPUBLIC OF KENYA



KENYA LAW

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**Mogusii Farmers Group Company Limited & another v Mose & 27
others; Momanyi & 2 others (Interested Parties) (Civil Case 5 & 4 of 2021
(Consolidated)) [2025] KEHC 10337 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10337 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL CASE 5 & 4 OF 2021 (CONSOLIDATED)**

WA OKWANY, J

JULY 17, 2025

BETWEEN

MOGUSII FARMERS GROUP COMPANY LIMITED 1ST PLAINTIFF

MOGUSII TEA COMPANY LIMITED 2ND PLAINTIFF

AND

HUDSON MOSE 1ST DEFENDANT

CHARLES ONDARI ACHOKI 2ND DEFENDANT

SAMWEL MOGENI MAROKO 3RD DEFENDANT

ISAAC MANONO ACHOKI 4TH DEFENDANT

MILKA MOTITO 5TH DEFENDANT

BILLIAH ONGERA 6TH DEFENDANT

PASTOR ISALIAH AGWATA OKEMWA 7TH DEFENDANT

WILLIAN BIRAI 8TH DEFENDANT

YOBESH OPENDA MOKAYA 9TH DEFENDANT

STEVE KAKA KIMORI 10TH DEFENDANT

DANCAN OMENGE ONDARI 11TH DEFENDANT

PETER OKERIO 12TH DEFENDANT

JUSTUS OBINO 13TH DEFENDANT

ELIZAPHAN NYAKUNDI NYATUKA 14TH DEFENDANT

CHARLES BARONGO 15TH DEFENDANT



STEPHEN MBOGA	16 TH DEFENDANT
MESHACK OCHENGO MOKUA	17 TH DEFENDANT
ATOMIC NYASINGA NYAKUNDI	18 TH DEFENDANT
RICHARD AYIERA OGETO	19 TH DEFENDANT
DANIEL MOKAYA	20 TH DEFENDANT
JOHNSTONE SAGWE	21 ST DEFENDANT
FREDRICK GOCHI	22 ND DEFENDANT
ALFRED ONSOMU	23 RD DEFENDANT
JAMES MOKUA	24 TH DEFENDANT
STANLEY MISATI	25 TH DEFENDANT
IRENE NYAKUNDI	26 TH DEFENDANT
DANCAN ABUGA	27 TH DEFENDANT
STEVE ORINA	28 TH DEFENDANT

AND

HON BEN ORORA MOMANYI	INTERESTED PARTY
THE COUNTY COMMISSIONER NYAMIRA COUNTY .	INTERESTED PARTY
THE DEPUTY COUNTY COMMISSIONER BORABU SUB-COUNTY	INTERESTED PARTY

RULING

1. This ruling relates to two applications, namely; the Application dated 3rd August 2024 (the 1st Application) wherein some of the Defendants/Applicants seek, inter alia, interim injunctive and conservatory orders over the implementation of resolutions passed at an AGM held on 24th July 2024; and the Application dated 30th October 2024 (the 2nd Application) wherein the Plaintiffs/ Respondents seek to cite some of the Defendants for contempt of court.
2. The ruling will also deal with the Notice of Preliminary Objection (PO) dated 22nd August 2024 challenging the standing (locus standi) of the Applicants in the 1st Application.

The 1st Application.

3. In this application, the 1st - 13th Defendants/Applicants and 26th - 28th Defendants/Applicants, seek the following reliefs: -
 - a. SPENT
 - b. THAT pending the hearing and determination of the instant Notice of Motion, the Honourable Court be pleased to grant an interim order of stay, staying the implementation of the Resolutions arising from the proceedings of the Annual General Meeting held on 24th July 2024.



- c. THAT pending the hearing and determination of the instant Notice of Motion, the Honourable Court be pleased to grant an interim order of injunction restraining persons purportedly elected on the 24th July 2024, the same being Johnstone Sagwe Nchaga, Fredrick Gochi Obiero, Daniel Mokaya, Elizaphan Nyakundi Nyatuga, Hudson Mobe Bogonko, Johnstone Mitema Nyang'au and Gerald Orina Nyangwara from assuming office, taking oath, and/or in any way taking over the management of the 1st and 2nd Plaintiffs herein as Directors.
 - d. THAT pending the hearing and determination of the suit filed by the Plaintiffs herein, the Honourable Court be pleased to grant an interim order of stay, staying the implementation of the resolutions arising from the proceedings of the annual General Meeting held on the 24th July 2024.
 - e. THAT pending the hearing and determination of the suit filed by the Plaintiffs herein, the Honourable Court be pleased to issue an interim order of injunction restraining persons purportedly elected on the 24th July 2024 the same being Johnstone Sagwe Nchaga, Fredrick Gochi Obiero, Daniel Mokaya, Elizaphan Nyakundi Nyatuga, Hudson Mobe Bogonko, Johnstone Mitema Nyang'au and Gerald Orina Nyangwara from assuming office, taking oath, and/or in any way taking over the management of the 1st and 2nd Plaintiffs herein as directors.
 - f. THAT in the alternative to the prayers sought herein above, the Honourable Court be pleased to issue interim conservatory orders conserving the status quo existing as at the 24th July 2024, particularly to preserve the 1st, 2nd, 3rd, 4th, 5th, 6th and 9th Defendants/Applicants herein as the directors of the 1st and 2nd Plaintiff companies.
4. The Application is supported by the affidavit of the 2nd Applicant/Defendant Mr. Charles Ondari who avers that he is the Plaintiffs' Chairman a shareholder of the 1st and 2nd Plaintiffs. He states that Faraday Atuti Nyangoro and Johnson Mitema Nyang'au scheduled an AGM on 24th July 2024 at an unknown venue and without service of notice to the shareholders. He avers that at the said AGM sham elections were conducted. He further states that the Plaintiffs have had perennial leadership wrangles that have resulted in the loss of the companies' properties through mismanagement. He claims the AGM was unlawfully convened without proper notice, was chaired by unauthorized persons, and included participation from deceased shareholders.
 5. The Plaintiffs/Respondents, opposed the Application through the Replying Affidavit sworn by Erastus Nyamwaya, who asserts that Charles Ondari is not a shareholder in the companies and therefore lacks the authority to swear the affidavit. They contend that the AGM was lawfully conducted under court supervision and that the elections were free and fair. He further states that Faraday Nyangoro, a certified company secretary, issued proper notices and oversaw the elections, and that the newly elected board duly assumed office. He also claims that the conflict was largely fuelled by Ondari's faction thereby leading to disorder and even physical harm.
 6. The 14th to 25th Defendants also opposed the Application through an affidavit sworn by Elizaphan Nyakundi who states that the Applicants lack standing to file the application and did not enjoin necessary parties, to the suit. He further faults the Applicants for seeking injunctive orders without a substantive suit. He emphasized that the AGM followed court orders and consent by all parties, and that the Applicants are therefore estopped from challenging the process. He described the Application as an afterthought that is intended to derail the final resolution.
 7. Concurrently with the Replying Affidavit, the Respondents/Plaintiffs filed a Notice of Preliminary Objection dated 22nd August 2024 seeking the striking out of the 1st Application on the basis that



the deponent of the Affidavit in its support thereof, Charles Ondari Achoki, and the Applicants lack the locus standi to represent the companies or swear affidavits on their behalf without a resolution or official capacity.

8. In a rejoinder, the Applicants filed a further affidavit by Charles Ondari, who reasserts his authority as the legal representative of a deceased shareholder. He maintains the AGM was invalid due to procedural irregularities, unverified attendance, and forum shopping. He contests Faraday Nyangoro's continued role beyond an earlier Extraordinary General Meeting (EGM) and criticizes the suitability of elected officials, particularly due to alleged advanced age and non-compliance with the *Companies Act*.

The 2nd Application.

9. In the second Application dated 30th October 2024, the Plaintiffs/Respondents seek the following orders: -
 - a. That the Defendants/Respondents be summoned to appear in court to show cause why they should not be punished for disobedience of a court order issued by this honourable Court on the 18th day of September 2024.
 - b. That the Honourable Court be pleased to punish the Defendant/Respondent for a period not more than 6 months for wilful violation and/or disregarding a court order issued by the Honourable Court.
 - c. Costs of the Application be granted.
10. The Application is supported by the affidavit of Erastus Nyamwaya.
11. The 1st-13th and 26th - 28th Defendants opposed the Application through the Replying Affidavit of Charles Ondari who avers that that no such order was issued or served upon them and that the burden of proof in contempt matters is high and was unmet in this case. He terms the Application defective, lacking in both evidence and legal merit.
12. The Applications were canvassed by way of written submissions which I have considered.

Issues for Determination.

13. The issues for my determination are as follows: -
 - i. Whether the Preliminary Objection dated 22nd August 2024 is merited.
 - ii. Whether the contempt Application dated 30th October 2024 is merited.
 - iii. Whether the prayers sought in the Application dated 3rd August 2024 are merited.

Preliminary Objection.

14. What constitutes a Preliminary Objection was explained in the locus classicus case of Mukhisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd (1969) EA, 696 thus: -

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts



pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

15. In this case, the Preliminary Objection is based on the claim that Respondents/Plaintiffs deponent, Charles Ondari, lacks the locus standi to file the Application.

16. In Alfred Njau and Others vs. City Council of Nairobi [1982] KAR 229, the court discussed the meaning of the term locus standi and held thus:-

“ the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings.”

(See also Law Society of Kenya vs. Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000).

17. The import of the above is that a party bringing a suit before the court must have sufficient interest in a matter to grant him or her the right to be heard before a court of law.

18. In this case, the court record shows that on 16th October 2024, Mr. Kerosi Advocate cross-examined Mr. Charles Ondari who testified that he was a shareholder in the 1st Plaintiff by virtue of being the personal representative and administrator of the Estate of his late father. He produced a Share Certificate No. 20408 dated 9th April 1991 in the name of Samuel Achoki in respect of 798 shares. I also note that in a Gazette Notice No. 10602 dated 26th July 2013, the said Charles was appointed as the Administrator of the Estate of Achoki Nyamongo and was to be included in the shareholders register of Mogusii Farmers Group Company Ltd. I therefore find that he is properly before the Court by virtue of the Succession proceedings over his late father’s Estate and has locus standi to pursue his rights as a shareholder alongside other shareholders, whether or not he is a director.

19. My above findings over the claims to act as a legal representative of a deceased shareholder notwithstanding, I find that whether that status confers Mr. Ondari of the requisite standing is a matter for determination during full trial and is not a pure point of law. I find that the Preliminary Objection does not meet the legal threshold established in Mukisa Biscuit Manufacturing Co. Case (supra). Accordingly, the Preliminary Objection is dismissed with no order as to costs.

Whether the contempt of court Application dated 30th October 2024 is merited?

20. The contempt Application rests on alleged disobedience of a court order issued on 18th September 2024. I however note that the Respondents did not clearly demonstrate the existence, content, and service of the alleged order. No certified copy of the order was produced, nor was proof of service presented. Contempt proceedings, being quasi-criminal in nature, require strict compliance with procedural requirements. In Samuel M.N. Mweru & Others vs. National Land Commission & 2 others [2020] eKLR Mativo J. (as he then was) held as follows in this regard: -

“ 40. It is an established principle of law that [45] in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of wilfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities....”



21. In the Paper, “Contempt in Modern New Zealand”, Issue Paper 36/NZLC, IP36 dated May 2014, at chapter 7 on “Proving the Elements of Civil Contempt”, the elements are outlined as follows: -

- “7. 18 There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove, to the criminal standard of beyond reasonable doubt, that:
- a. the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
 - b. the defendant had knowledge of or proper notice of the terms of the order, normally as the result of personal service;
 - c. the defendant has acted in breach of the terms of the order; and
 - d. the defendant’s conduct was deliberate.

22. A perusal of the proceedings of 18th September 2024 reveals that this Court issued the following directions: -

“The Respondents to submit hard copies of its pleadings to Court and to serve the Applicant with the Notice to cross-examination and Preliminary Objection.

Mention on 16th October 2024.

Status quo on the management of the company to be maintained until then.”

23. My finding is that the Applicants have not discharged the burden of proof that is expected in contempt proceedings. I therefore find no sufficient basis to hold the Defendants in contempt, and consequently, the Application dated 30th October 2024 is dismissed with costs to the Defendants.

Application dated 3rd August 2024.

24. The Application dated 3rd August 2024 seeks orders to stop/restrain the alleged newly elected directors from assuming office and to preserve the former directors being the 1st, 2nd, 3rd, 4th, 5th, 6th and 9th Defendants/Applicants in the said role. The Application stems from the contention that the elections allegedly conducted at an Annual General Meeting (AGM) held on 24th July 2024 were irregular as the AGM was convened by an unqualified person among other grounds.

25. The Application is supported by the 2nd Defendant’s Affidavit who avers that elections had already been conducted at the EGM of 28th March 2024 where he was elected as the Chairman and that the July 2024 elections were called to interfere with the outcome of the March 2024 elections. He states that the July 2024 elections should be declared a nullity so that the companies are left to run under the leadership of the existing directors elected in March 2024.

26. I have perused the minutes of the meeting held on 28th March 2024 and note that the Agenda listed therein was as follows:-

1. Approval of previous EGM Minutes
2. Management Committee Clear Report on the status of the Company
3. The Independent/Neutral accountant report.



4. Election of Board Members.

27. Under the fourth agenda, the Minutes record is as follows: -

“No elections were conducted when the agenda was called out by the Company Secretary. The Company Secretary explained to the members that their constitution called for elections at an AGM like this one. Further, the members were advised that there was also need for rotation of directors according to *the constitution*.”

28. From the above extract of the minutes, it is crystal clear that no elections were conducted at the said EGM as alleged by the Defendants. I further note that on 15th November 2023, parties were directed to hold an Extra Ordinary General Meeting within 45 days from the date of the Order and that Mr. Faraday Nyangoro was to call for the EGM. Parties however subsequently agreed, by consent, that Mr. Faraday Nyangoro and Mr. Moses Mukamba would jointly act as company secretaries for the purposes of calling for the EGM and presiding over it.

29. The record further shows that the EGM did not take place on 28th December 2023 as was scheduled. It turns out that the EGM took place on 28th March 2024 and that Notices for the said meeting were issued and signed by Mr. Faraday Nyangoro while the name of Mr. Moses Mukamba did not feature anywhere in the said Notices or the meeting contrary to the orders of this Court.

30. From the above narration of the sequence of the events that culminated into the contested meetings, it is apparent that Mr. Faraday Nyangoro, who the Applicants contend was not a qualified company secretary, was appointed by consent of the parties alongside Mr. Moses Mukamba. I have already noted that the meeting held on 28th March 2024 did not finalize on the contentious issue of the appointment of a Board of Directors.

31. The central issue is whether the AGM held on 24th July 2024 complied with the *Companies Act*, the Court’s prior orders, and fair corporate governance standards. From the evidence presented before this court, it is clear that the AGM was convened following a consent order of 21st December 2023. Notices were allegedly issued by Faraday Nyangoro, whose mandate, though contested, was derived from this court’s directions.

32. The objections raised by the Applicants, including claims of unserved notices, invalid participation, and the age of the chairperson, are disputed factual matters which can only be best addressed at the hearing of the main suit. Injunctive relief, being discretionary and equitable in nature, should not be granted where the Applicants have not established a clear right to be protected. The Applicants did not demonstrate that the elections were held contrary to the law or the court’s consent order. No material was placed before this court to show why the other appointed secretary, Mr. Moses Mukambi, kept away from the AGM.

33. I further note that the Application suffers procedural shortcoming, particularly the lack of proper joinder of parties against whom orders are sought, and the absence of a board resolution authorizing the Application. My take is that the balance of convenience lies in maintaining the current board as per the AGM outcome until the matter is determined on its merits. Consequently, the Court finds no basis to grant the injunctive and conservatory orders sought.

34. The above finding notwithstanding, this court is still of the view that the longstanding leadership wrangles between the parties is a matter that can still be resolved through full compliance with the court’s directions on the holding of an EGM.



35. My view on this is that the purpose for which the two secretaries were appointed was to call for an Annual General Meeting, preside over the election of Directors before moving onto the other issues in the Agenda. Failure to do so meant that the two appointed company secretaries did not discharge their functions as ordered by the Court. I find that it may still be necessary for the two secretaries to carry out their mandate to completion in order to resolve this long standing case.
36. I have also considered the assertion, by the Applicants, that the rightful directors were elected and took over office at the EGM of 28th March 2024 and note that I have already found that this claim was not factual as the minutes of the said EGM shows that no elections were conducted. Even assuming, for argument's sake that elections were conducted at the March 2024 EGM, I still find that as at the time of this ruling on 17th July 2025, the elected directors would have already served their one year term. The same position applies for the directors elected in the July 2024 AGM. This means that it would only be proper that fresh elections be conducted for the parties to resolve the existing leadership wrangles.
37. For the reasons that I have stated in this ruling and in the interest of justice, I find that it would only be proper to allow the parties herein to put their house in order. In this regard, I direct the parties to fully comply with the orders issued on 21st December 2023 which I reiterate here, for the avoidance of doubt, as follows: -
- i. That the Company Secretaries Faraday Nyangoro and Moses Mukamba shall within thirty (30) days from the date of this Ruling, jointly call for and preside over an Annual General Meeting and shall ensure that the first order of business is to elect and appoint Directors and a Company Secretary to steer the companies forward.
 - ii. The County Commander Nyamira to provide security so as to ensure peaceful compliance with order no. (i) hereinabove.
38. Final Orders:
- a. The Preliminary Objection dated 22nd August 2024 is dismissed.
 - b. The Contempt Application dated 30th October 2024 is dismissed with costs to the Defendants/Respondents.
 - c. The Application dated 3rd August 2024 is dismissed with costs to the Plaintiffs/Respondents and the 14th to 25th Defendants/Respondents.
39. It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 17TH DAY OF JULY 2025.

W. A. OKWANY

JUDGE

