



**Wendano Matuu Co Ltd & 2 others v Kioki & 6 others; Muli (Interested Party)
(Civil Suit 2 of 2014) [2025] KEHC 11145 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11145 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL SUIT 2 OF 2014
MW MUIGAI, J
JULY 14, 2025**

BETWEEN

**WENDANO MATUU CO LTD 1ST PLAINTIFF
STEPHEN NDAMBUKI MULI 2ND PLAINTIFF
ONESMUS MUISYO KAMATU 3RD PLAINTIFF**

AND

**JOSHUA KIMEU KIOKI 1ST DEFENDANT
JAMES KIOKO KIVUVO 2ND DEFENDANT
JOHNBOSCO NDINGA 3RD DEFENDANT
JUVENALIS MUSYOKI KAVITA 4TH DEFENDANT
SAMUEL MWANZA NZIOKA 5TH DEFENDANT
MANGU NGOLO 6TH DEFENDANT
ROSE NDANU MUTUA 7TH DEFENDANT**

AND

PHILIP MUNYAKA MULI INTERESTED PARTY

JUDGMENT

Background

1. This Court on 13/12/2023 delivered Ruling and granted following orders;
 - 1) All parties are entitled to fair hearing- fairness across the board in access to a court, the right to be heard and the right to adduce and challenge evidence go hand in hand; inasmuch as the



Defendants want the Court to allow evidence from ongoing criminal investigations after the Plaintiff closed its case, this Court ought to also protect the Plaintiff's right to challenge such new evidence introduced at the eleventh hour, they will be prejudiced.

- 2) In the absence of any explanation why for 9-10 years Pre-Trial /Case management was not done and when done why Witness Statements from criminal investigations are introduced in Civil trial, this Court cannot grant application of additional evidence and witnesses except the evidence of Registrar of Companies.

The Suit

The Amended Plaintiff

2. Vide amended plaintiff dated 24th June,2020 and filed in court on 7th December,2021, wherein the Plaintiff averred that at all material times leading to this suit, the 2nd and 3rd Plaintiffs were and are the Directors of the 1st Plaintiff while the Defendants are purporting and masquerading as Directors and officials of the 1st Plaintiff.
3. It was opined that on 4th day of September,2013 the Plaintiff wrote to the office of the Registrar General at the Attorney General Offices indicating several issues pertaining the running of the Plaintiff and the intended date of the annual General meeting of the 1st Plaintiff.
4. Contending that on 11th day of November,2013 the Plaintiff wrote to the Registrar of Companies informing them of the date of the annual general meeting which was scheduled to be held on the 5th day of December,2013 and sent Notices for the Annual General Meeting of the Company to all the members.
5. Further on 11th November,2013 the Plaintiffs cancelled the initial suggested date of the Annual General Meeting of the 1st Plaintiff from 28th November,2013 to 5th December,2013 and at no time did the Plaintiffs issue their members with a Notice for an Annual General Meeting for the 28th day of November,2013 which was the date the Defendants illegally took advantage of and convened a meeting to elect themselves as the officials as the Officials of the 1st Plaintiff a fact they even discussed in the meeting as per their Minutes.
6. It was averred that on realizing the intentions of the Defendants the Plaintiffs Immediately notified the Registrar of the Companies but were later informed that by time the letter was filed in their specific file the Defendants had through their cruel means and intentions obtained the file and filed their returns.
7. Contending that on or about the 28th day of November,2013 the Defendants purportedly called and misled a few members of the 1st Plaintiff and without notice to the duly elected Directors and in their absence purportedly called for a meeting where they held elections illegally and contrary to the law and the 1st Plaintiffs rules and procedures where they purport to have been elected as directors.
8. Averring that the 2nd and 3rd Plaintiffs are still the duly elected Directors of the 1st Plaintiff and still running the affairs of the Company save for the fact that the Defendants have now blocked the operations of Plaintiffs accounts purporting to be the genuine officials of the 1st Plaintiff.
9. Opining that the Purported Annual Returns of the 1st Plaintiff of 29th November,2013 purportedly filed by Rikan Registrars are a forgery as foremost Rikan Registrars have never been appointed as Company Secretary of the 1st Plaintiff and further the said Rikan Registrars have never duly prepared, submitted and/or filed the impugned annual returns dated 29th November,2013 at the company's registry on behalf of the 1st Plaintiff Company.



10. Averring that the Defendants proceeded to file forged and fraudulent annual returns dated 29th November,2013 at the company's registry where they illegally misled the Registrar of the Companies to list them as the Directors of the 1st Plaintiff.
11. The Plaintiffs highlighted particulars of fraud to include illegal convening a meeting, purporting to be duly elected Directors of the 1st Plaintiff, conducting a meeting without the authority of the 1st Plaintiff, Misleading the registrar of the Companies to issue and recognize them as the Directors of the 1st Plaintiff, carrying out the affairs of the 1st Plaintiff purporting to be the duly elected Directors, misleading the members of the 1st Plaintiff and submitting and filing forged and fraudulent annual returns dated 29th November,2013 at the Companies.
12. Averring that despite notice and intention to sue the Defendants have refused to desist from acting and masquerading as directors and officials of the 1st Plaintiff.
13. The Plaintiffs prayed for judgment against the Defendant for:
 - i. A perpetual and permanent injunction restraining the Defendants, their agents Servants employees and or assignees from further acting, purporting to act operating and or dealing with the 1st Plaintiff's affairs and activities and or acting as directors or officials of the 1st Plaintiff in any manner.
 - ii. A declaration that the current Directors of the 1st Plaintiff including the 2nd and 3rd Plaintiff, as at the 28th day of November,2013 are still the legal and genuine directors and officials entitled to operate the company affairs.
 - iii. The Inspector General of Police and/or the OCS or any other duly authorized police officer commanding the Donyo Sabuk Police Station be and is hereby directed to enforce the Decree from the Judgment hereof.
 - iv. Costs of the suit.
 - v. Such other or further orders the Court may deem fit to grant.

Amended Defence And Counterclaim

14. The Defendants in their amended Defence and Counterclaim filed in court on 6th May,2022 wherein the Defendants opined that the Company procedurally held an Annual General Meeting on the 28th day of November,2013 during which they were democratically elected as the Directors of the Company and subsequently they were registered by the Registrar of Companies on the 29th day of November,2013 upon being satisfied with the calling, convention and conduct of the meeting and they hold the same capacity in the Company up to date.
15. It was contended that all along they have been complaining to the Registrar of Companies that from the year 2007 when the 2nd and 3rd Plaintiffs and others who have since resigned took over the management of the Company, they have never held any General Meeting of the Company up to date and have therefore kept the members in darkness for a very long time in as far as the affairs of the Company are concerned.
16. It was the contended that the 2nd and 3rd Plaintiffs in their official communication to the Registrar of Companies dated 4th September,2013 categorically and in very unambiguous terms informed the Registrar of Companies that the Annual General Meeting of the Company will be held on the 28th day of November,2013 and went ahead to circulate copies of the same letter duly stamped as received



by the office of Registrar General to the members and further averred that the alleged notice of the Annual General Meeting of 5th December, 2013 purportedly issued by the 2nd and 3rd Plaintiffs is an afterthought and that no such document was either ever forwarded to the Registrar of Companies or circulated to the members through any mode of communication and put the 2nd and 3rd Plaintiffs to strict proof thereof.

17. It was opined that the members were issued with a Notice of the meeting vide a notice drafted and by John Bosco Ndinga who was a member of the Company which was widely circulated to all the members and the members who attended the meeting whose attendance lists was provided to the Registrar of Companies elected the Defendants contrary to the 2nd and 3rd Plaintiffs unfounded, malicious, callous and unsubstantiated allegations that the Defendants elected themselves.
18. Contending that all along the 2nd and 3rd Plaintiffs were aware of the meeting before its convention and even the proceedings of the meeting and the results of the elections of Directors which were widely broadcasted to the public and further hence procedural and regular.
19. Averring that the meeting of 28th November, 2013 was not attended by a few members; the numbers of those that attended was as per the minutes forwarded to the Registrar of Companies to which the names and signatures were annexed.
20. The Defendants denied the contents of paragraph ten of the Plaint and while putting the 2nd and 3rd Plaintiffs to strict proof thereof and averred that having duly been registered by the Registrar of Companies, they are in total control of the management, the running and general operations of the Company and that if the 2nd and 3rd Plaintiffs are conducting any affairs and or transactions on behalf of the Company allege, then they are so doing illegally and the general public has been sufficiently warned through the press to that effect.
21. That the 2nd and 3rd Plaintiffs have no capacity in law whatsoever to purport to lodge any suit on behalf of the 1st Plaintiff and that the 1st Plaintiff cannot sue them being its duly elected Directors.
22. The Defendants averred that the Plaintiffs suit is frivolous, vexatious and an abuse of the due process of this Court.
23. Opining that for so long as they are the duly registered Directors of the 1st Plaintiff, they are the ones seized with legal capacity to sue on behalf of the Company and thus the entire suit is fatally and or incurably defective for want of compliance with law and the basic legal procedures governing institution of proceedings under the Companies Act Chapter 486 Laws of Kenya.
24. The Defendants prayed that the Plaintiffs suit be dismissed with costs to the Defendants.

Defendants' Counterclaim

25. In the counterclaim the Defendants averred that the Company procedurally held an Annual General Meeting on the 28th day of November, 2013 during which they were democratically elected as the Directors of the Company and subsequently they were registered by the Registrar of Companies on the 29th day of November, 2013 upon being satisfied with the calling, convention and conduct of the meeting and they hold the same capacity in the Company up to date.
26. Contending that they had made complaints to the Registrar of Companies concerning the management of the Company led by the 2nd and 3rd Plaintiffs and others who have since resigned from the year 2007. Thereafter, no General Meeting of the Company that has been held up to date in contravention of the Law and have therefore kept the members in darkness for a very long time in as far as the affairs of the Company are concerned.



27. Contending that the meeting held on 28th November,2013 was attended by bonafide shareholders as per the minutes forwarded to the Registrar of Companies to which the names and signatures were annexed.
28. The defendants averred that they were duly registered by the Registrar of Companies as the directors of the 1st Plaintiff. If the 2nd and 3rd Plaintiffs claim to be the Directors of the 1st Plaintiff and in control of the management, running and general operations of the Company which they are not, any affairs or transactions purportedly to have been done by the 2nd and 3rd Plaintiffs, they are so doing illegally.
29. Contending that the proceedings before this honorable court are fatally defective as they cannot quash the CR 12 issued by the Registrar of Companies issued on 29th November,2013.
30. The Defendants prayed that the Plaintiffs' suit against them be dismissed with costs and further by way of counterclaim prayed that judgment be entered for the Defendants against the Plaintiffs as follows:
 - a. A perpetual and permanent injunction restraining the 2nd and 3rd Plaintiffs, their agents, Servants employees and or assignees from further acting, purporting to act, operating and or dealing with the 1st Plaintiff's affairs and activities and or acting as directors or officials of the 1st Plaintiff in any manner.
 - b. A declaration that the current Directors including the Defendants, as at the 28th day of November,2013 are still the legal Directors and officials entitled to manage and operate the affairs of the Company.
 - c. The 2nd and 3rd Plaintiffs be compelled by an order of this court to surrender all Company properties including books to the current directors.
 - d. Costs of the suits.
 - e. Such other or further orders the court may deem fit to grant.

Reply To Amended Defence And Defence To Counterclaim

31. Vide reply to the amended defence and defence to counterclaim dated 6th June,2022, The Plaintiffs asserted that it is the Defendants that orchestrated a coup on the duly elected Directors of the 1st Plaintiff and on the strength of the fraudulent returns filed pursuantly, the Defendants have kept the affairs of the 1st Plaintiff away from the view of its members and the 1st Plaintiff's affairs are now shrouded in mystery.
32. The Plaintiffs further reiterate the contents of Paragraphs 6 and 7 of the Amended Plaintiff and contended that at no time was a notice circulated to members calling for an Annual General Meeting on 28th November,2013.
33. Further in response to paragraphs 5 and 6 of the Amended Defence, the Plaintiffs averred that the 3rd Defendant, John Bosco Ndinga, had no authority to call and/or convene the Annual General Meeting on 28th November,2013 and therefore the notice circulated to members calling for such meeting was of no legal effect.
34. Averring that the returns filed with the Registrar of Companies arising from the illegally convened Annual General Meeting of 28th November,2013 are fraudulent and have been disowned by Rikan Registrar who confirmed that they were not appointed as Company Secretary of the 1st Plaintiff they never prepared or submitted the impugned annual returns dated 29th November,2013 as purported by the Defendants.



35. The Plaintiffs contended that the purported Preliminary Objection was withdrawn to pave way for hearing of the matter. In any case, the suit herein is bonafides having been instituted by the duly elected Directors of the 1st Plaintiff properly authorized.
36. The plaintiff prayed for judgment to be entered against the Defendants as prayed in the Plaint.

Defence To Counterclaim

37. The Plaintiffs denied paragraph 16 of the Counterclaim that the Annual General Meeting of 28th November,2013 was procedurally convened.
38. Paragraph 17 counterclaim was denied, Plaintiffs reiterate that it is the Defendants that orchestrated a coup on the duly elected Directors of the 1st Plaintiff and on the strength of the fraudulent returns filed. The Plaintiffs denied that they kept the affairs of the 1st Plaintiff away from its members and the 1st Plaintiff's affairs are now shrouded in mystery.
39. The Plaintiffs averred that the Defendants are not entitled to the reliefs sought in the counterclaim.

Hearing

40. On 6/12/2021 after the Court perused Court file, the Parties through Counsel agreed to abandon various Applications and Preliminary Objection and consented to Amended Plaint being filed and served and corresponding leave to defendants to file Amended Defense(s). Case Management to be conducted before Deputy Registrar Machakos High Court up to close of pleadings.
41. The Certificate of Urgency application was filed on the same date and parties were served and directions were to proceed with the hearing.
42. On 18/10/2022 PW1 Stephen Ndambuki Mulli produced Plaintiff's List of Documents filed on 31/1/2022;17/1/2014 & 31/1/2022 and relied on his Witness Statement. In cross examination he produced Minutes of Meeting held on 28/10/2006 and elections were held and they were elected into office. They filed the said documents in October 2006 and were provided with CR-12 on 4/12/2019.
43. PW1 stated that a Notice was issued for meeting in 2006 but it was not produced. He stated he was elected by shareholders/ members and they are 792 members but he did not have the List of members/shareholders who attended the meeting. There was no 21day Notice presented. PW2 stated that subsequent years 2007 an AGM was held but no Minutes were presented in Court. AGM of 2008 no Notice and/or Minutes were presented in Court or to Registrar General. In 2013 PW2 attended Meeting at the Registrar-General's office and there after issued Notice of AGM of 5/12/2013. Instead, meeting was held on 28/11/2013
44. He stated that the CR-12 dated 27/11/2013 was a forgery. PW1 reiterated that letter of 30/10/2020 from Business Registration Service at Paragraph 6 contains 4 Annual Returns of Years 2010, 2011, 2012 & 2013. In 2014 no AGM was held as this suit was filed in Court. AGM was held in 2016 & 2019 and 21-day Notice was issued Minutes of AGM and List of members. He stated that they are still the Directors of Wendano Matuu as follows; Thomas Makau, Peter Matheka, Raphael Kilili and PW1 and they have not sold any property for so long.
45. PW2 Brayan Joseph Muli Koli Member number 964 in Institute of Public secretaries and recorded his Statement on 31/1/2022 over meeting that he presided over on 28/11/2023 following request from Mangu Ngolo & James Muema who agitated for a meeting. He relied on his Statement as his evidence.



46. In cross examination he confirmed that the AGM was through requisition of members but he did not see the Notice. There was no Register of members in that AGM mtg and he did not vet the members who attended the said meeting. He confirmed that the Bundle of Documents produced by 1st Defendant as to the meeting, he prepared Minutes of Wendano Matuu Company GM meeting and the Chairman DW1 & Secretary signed. He listed 270 members but he did not confirm them from the List/Register of Members/Shareholders. He gave the Reports to Joshua Kimeu Kioko Chairman & John Bosco Walinga-Secretary. The complaint arose from the Report at Pg 37 of 1st Defendant's bundle that they were forgeries in Returns to the Registrar of Companies with regard to the AGM of 28/11/2013.
47. PW2 told this Court that the AGM held on 28/11/2023 was not as prescribed by law, the members became unruly and shouted at him. The Report he prepared and signed he handed to Chairman & Secretary who also signed. He clarified that although the Report shows he told members how to conduct elections he did not verify those members that were eligible to nominated or elected, they each had to present certificate and be vetted through the Register. He confirmed later that under Section 132 (3) of *Companies Act*, he ought to have had 1/3 of the members as quorum. He did not have the Memarts (Memorandum & Articles of Association of the Company) to confirm the prescribed process.
48. In cross examination by Defendants Advocate Mr Nyamweya, he stated he was not given the Notice or requisition by members of the meeting held on 28/11/2013. He guided the members and they said the meeting to go on and elections were conducted. The members of Wendano Matuu were from all over the country and included Kangundo Yatta & Machakos and some were members of the other Company Chanzavi farmers Ltd and he worked for the Companies.
49. PW2 relied on his Affidavit dated 24/7/2019 and letter he wrote to Registrar of Companies of 23/7/2019 in the Plaintiff's bundle.
50. PW3 Naftali Mutethia from the Business Registration Bureau (Companies Registry)who stated as per the records Wendano Matuu Public Company as per CR-12 of 4/12/2009- MFI -18 the Directors were Stephen Mulli (PW1) Thomas Makau; Raphael Kilili; Peter Matheka & Onesmas Kimatu. From 2009-2013 there was no change in the Company and the Registrar of Companies addressed letter to Wendano-Matuu requesting meeting on 4/9/2013-MFI-19 on alleged failure of holding AGM and mismanagement of Company.
51. Wendano Matuu held meeting on the Estate Farm on 28/11/2013, the Notice was presented dated 5/9/2013-MFI-20 Minutes of elections of Officials -MFI-21. Notification of Change of Directors & Particulars was presented by Rikan Registrars- MFI-22 and read the new Directors are Joshua Kimeu Kioko, James Kioko Kivuvu, John Bosco Ndinga; Samuel Mwanza; Nzioka Juvenalis; Musyoki Kavita & Mangu Ngulo; Rose Ndumu Mutia.
52. On 29/11/2013 as a result of Documents filed indicating new Directors and Returns of 2010, 2011,2012, 2013, the State Counsel Registrar of Companies approved issuance of the CR-12 of 29/11/2013 with new Directors of Wendano Matuu.On 4/12/2013, Advocates Laichana Mugambi & Co Advocates wrote to the Registrar of Companies that the AGM of 28/11/2013 was illegal and the matter was to be determined in Court.
53. There was letter of 27/5/2019 from Wendano Matuu addressed to Registrar of Companies notifying the Registrar of Companies that PW2 Chairperson then Stephen Ndambuki was said to have run down the Company and chased staff with goons and purported to hold an illegal AGM and file Returns as new Directors of the Company. The said meeting was withheld by the Court in this matter in 2019



- pending hearing and determination of the matter. The Final Returns were also indicated as filed by Rikan Registrars-MFI-23.
54. On 9/9/2019, Rikan Registrars wrote letter to Registrar of Companies that Wendano Matuu Returns filed for 2010,2011,2012, & 2013 were not filed by Rikan Registrars- Letter -MFI-29
 55. The Registrar of Companies received numerous correspondence from DCI vide letter of 27/2/2020-MFI-30 seeking information from the Registrar of Companies on the Filing of Returns by Wendano Matuu Company and who filed what and their history. Later, Letter was received from ODPP (Office of Public Prosecution) dated 14/10/2020 that recording of statements for a case of forgery and making documents was required from Registrar of Companies. PW3 recorded the statement at Capital Hill Police Station. Later, Criminal Case Misc E 04117 of 2021 was preferred. He produced all documents and Memarts of Wendani Matuu Company; Exhibit 18-33.
 56. In cross examination PW4 stated that there were 2 sets of documents received at the Registrar of Companies, I set of documents had the Registrar of Companies Stamp and the other set did not have the official stamp. It was not clear who received each set but a public Company could not have 2 sets of Directors of the Company at the same time.
 57. PW3 confirmed that elections of Public Companies the Registrar of Companies is represented or attends and after elections swears in new directors. The AGM for elections proceeds after confirming the requisite Notice is issued, in this case Notice was by shareholder John Bosco Ndinga. The previous Directors were not indicated as resigned/retired/withdrawn and elections were held. Rikan Registrars did not conduct the elections and therefore they could not lodge the documents of new Directors.
 58. DW1 Joshua Kioko Chairman of Wendano Matuu Company relied on Witness Statement of 31/1/2022-DMFI-1Defense Further Witness Statement DMFI-2 & Final Witness Statement MFI-3.
 59. The witness was stood down and the Court proceeded with DW2 Rhoda Syongati; a lady advanced in age and (unable to move freely had to be carried to Court) she told the Court she is a member of Wendano Matuu Co with 1000 shares at the time she had not received her share of the land and pleaded that the matter is expedited to have members get what they are entitled to.She was sick, her son took over and the Company has not held a meeting to resolve the issue.
 60. DWI Joshua Kioko resumed on a later date and testified that as per List of Documents filed on 31/1/2022 DMFI-1-9. He stated he was member and now Chairman of the Wendano Matuu Co. He joined the Company in 1998; 25 years ago, the Chairman was Cyrus Kilonzo Kitana from 1994-2000. The Company was formed in 1974 and was bought from Europeans to have livestock and grow coffee.
 61. On 28/11/2013, he was elected Chairman of the Company. The events that led to the AGM was that members went to the Registrar of Companies and were called for a meeting where they complained of not holding of AGM and dissipating Company assets.
 62. The meeting of 28/11/2013, Registrar of Companies gave 21 days' Notice and it was held at Wendano Matuu Farm he was there at 9 am and they started checking members through Share Certificates and Proxies through letters of authority and ID cards. Joseph Muli Koli was appointed that day as Certified Public Secretary; Mr Kalinga and Secretary; Karen Ndunge to take Notes.
 63. 1st agenda was elections overseen by OCS Oldonyo Sabuk to maintain peace as PW1 Stephen Ndambuki Mulli brought a gang who tried to stop the meeting and ran away. He stood there and people stood behind him and others behind their proposed candidate. The Secretary Karen Ndunge counted and Brian Joseph Muli (PW2) announced the new Directors elected as ; Joshua Kimeu Kioko Chairman; Mangu Ngolo Juvenalis Musyoki Kavita Sammy Mwanza Nzioka , Rose Ndemo Mutua



John Bosco Ndinga & James Kioko Kivumo. They were told to elect their Chairman by PW3 and he was elected by the new Team/Group. 64. DW1 spoke to the members and they were given 4 months to find out what went wrong with the farm and damage occasioned and report. The new team called a meeting in May 2014 as shown by documents in Defendants Bundle Pg 37 and disclosed and discussed the land sold and proceeds spent by Plaintiffs and loans taken of Ksh 10 million and sought consent from members to pursue the matter through DCI. Thereafter the Plaintiffs had them held for Contempt of Court orders. There is no other meeting that has been held since.

66. About filing of Returns and outcome of meeting of 28/11/2013, they met with PW3 on 29/11/2013 who gave them the report to read and sign and left them outside and PW3 proceeded to Registrar of Companies and he had a stamp Rikan Registrars and stamped and went in and filed the Report and documents. PW3 later brought them the CR-12 with new Directors names.
67. The Chairman DW1 stated that the Plaintiff Stephen Ndambuki Mulli had no right to sue on behalf of Plaintiff Company he was not elected as Director, the Plaintiffs used money to chase them from the farm in May 2014 and coffee worth Ksh 18m and the factory were dismantled and the farm was sold. DW1 & PW2 were arraigned in Court on criminal charges.
68. DW2 Cpl Albanus Munguti of DCIO Machakos County confirmed criminal investigations into the matter relating to the Wendano Matuu Company and the investigations were conducted after a report was made to County Commissioner. The Report was forwarded to Head Quarters and ODP.
69. DW3 Jukius Masala Mathu, Chief of Matuu Location. He confirmed attending Meeting on 28/11/2013 and OCS Sifuna was present maintaining calm and Brian Mulli PW3 read the Standing orders of the elections and the same proceeded and candidates who were successful are the Directors today including DW1 and it was peaceful there was no violence. The Court asked the Chief the acreage of land belonging to Wendano Matuu Company. He said it was 580 acres and now remaining at 380 acres and there is no one running the Company after the Court granted orders to maintain status quo.
69. Upon request by Defendants, the Court called witness from Registrar of Companies again to testify on 2013 to date information regarding Wendano Matuu Company.
70. DW4 Mr Zachariah Mwangi Assistant Registrar of Companies testified online that he was unable to procure and avail in Court the original file of Wendano Matuu Company for perusal. He instead provided a Report dated 27/10/2023 and annexures. He also provided his statement and relied on it as his evidence. In cross examination, he admitted that in the file he found several lists and he could not confirm the members /Shareholders of Wendano Matuu Company, some lists of members are undated.
71. For the meeting held on 28/11/2013, he found 2 lists of members/shareholders one photocopied list of 365 members and another list of 87 members. The election held on 28 /10/2006 documents show that meeting was held and Directors appointed but no List of names of members as at Pg 14. No list of members even in the meeting of 1989 in attendance was Mr Ndisya Registrar of Companies but he did not sign anywhere. The elections of 2006 and 2013 there was no representative of Registrar of Companies
72. There is letter of 14/8/2013 by Registrar of Companies calling for a meeting on 4/9/2013 and who attended the Minutes show and AGM was scheduled on 28/11/2013. Phillip Mulli complained the huge debt the Company has and Section 132 of *Companies Act* was not complied with. The letter was not the Notice required. In 2006, there is Notice dated 3/10/2006 agenda is election of Directors signed by Thomas Makau Secretary. From 2006, no Minutes of AGM until 2008 and thereafter upto 2013 no Minutes of AGM.



73. From 1996-2013 Form 203 A missing on appointment of Company Secretary. There is certificate of Registration of Mortgage dated 31/12/1992 created by Wendano Matuu Company of 35 million and LR 1530 LR 1846/1 & LR 5846/1 charged to Standard Chartered Bank.

Submissions

The Plaintiff's Written Submissions

74. The Plaintiffs vide their submissions dated 18th November, 2024 and filed in court on 19th December, 2024 wherein counsel for the Plaintiffs raised the following issues for determination:
- i. Whether the Defendants were validly elected as directors of the 1st Plaintiff
 - ii. Whether the Plaintiffs are entitled to the orders sought.
75. As to whether the Defendants were validly elected as directors of the 1st Plaintiff, counsel opined that the Defendants were not validly elected as directors of the 1st Plaintiff. That the 2nd and 3rd Plaintiffs are among the valid and duly elected directors of the 1st Plaintiff elected in a meeting of the company held on October 28th, 2006. Counsel submitted that the 1st Plaintiff was incorporated as a private Company Limited by shares and later converted into a Public Limited Company under the provisions of the Companies Act (now repealed) as such the law governing its convening of meetings and election of directors was as set out under the Act as well as under its Articles and Memorandum of Association.
76. Counsel for the Plaintiffs adverted that the genesis for the convening of the impugned meeting was a letter dated July 30th, 2013 issued under the hand of one Philip Muli Munyaka, allegedly member no. 1381 and others to the Registrar of Companies questioning the directors of the Company to convene an Annual General Meeting within 21 days in default of which the Applicants would move to court to seek the necessary orders in that regard. It is contended that acting on this letter of questioning, the Registrar informed the directors of the complaint and invited the directors to a meeting at the Registrar's offices on September 4, 2013, the key agenda being the failure to convene an AGM and mismanagement of the Company.
77. It is submitted by the Plaintiffs' Counsel that the meeting convened by the Registrar and attended by the 2nd and 3rd plaintiffs was held at the Registrar's office on the said date to which it was established that:
- a. The complainant Philip Muli Munyaka was not a member of the 1st Plaintiff and was therefore asked to excuse himself from the meeting
 - b. The meeting went on with Mangu Ngolo in attendance, although he was not a complainant.
 - c. That only two of the listed complainants were members of the 1st Plaintiff and the other listed members had since passed on and their signatures had been forged.
 - d. That from (c) above, the condition to convene an extraordinary general meeting on requisition by members pursuant to provisions of Section 132 of the Act had not been satisfied.
 - e. That the directors of the company in issue presented to the Registrar that due to financial challenges facing the company, they were unable to hold the AGMs in 2011 and 2012.
 - f. That the directors of the company informed the Registrar that the Board of Directors had reached a resolution to hold the AGM on November 28, 2013 in order to allow the auditors to finalize the auditing of financial records.



78. Counsel for the Plaintiff contended that vide a letter dated November 11, 2013, the directors informed the Registrar of their inability to convene the AGM on November 28, 2013 and further that the AGM had been rescheduled to December 5, 2013. Subsequently, the directors in exercise of their powers circulated a notice of the AGM to be convened on December 5, 2013 to all members.
79. It is contended that curiously on September 5, 2013, a day after the meeting at the Registrar's offices convened by the Registrar, one John Bosco Nding'a member no. 654 purported to issue a notice of an AGM to be held on November 28, 2013 under Section 132 of Companies Act Cap 46 Laws of Kenya.
80. Submitting that Section 132 of the Act speaks to the convening of an extraordinary general meeting on requisitioning by members.
81. To buttress the above assertions Counsel relied on the case of Agricultural Development Corporation of Kenya Vs Tum & Another [2014] eKLR, and submitted further that to evaluate whether the notice issued on September 5, 2013 convening an AGM conforms to the law under which it was underpinned.
82. It is the Plaintiffs' contention that the notice issued on September 5, 2013 convening a meeting on November 28, 2013 was on account of the notice issued to the Registrar vide a letter dated July 30, 2013 questioning the directors of the company to convene an AGM within 21 days failure to which the Applicants would move court to seek the necessary orders in that regard. Contending that the notices dated July 30, 2013 and September 5, 2013 fell short of the requirements of the law.
83. Counsel for the Plaintiffs submitted that pursuant to Section 132 of the Act and in the ordinary course of business, it is the legal mandate and authority of directors to convene a meeting at the first instance. The right to requisition a meeting by members will arise only when the directors have refused to respond to a special notice by the members by refusing to call such a meeting. Special notice issued to the company must conform to the requirements under Section 132 of the Act failure to which, the right does not arise. Contending that the meeting held on September 4, 2013 on the notice dated July 30, 2013 was null and void for falling short of the requirements of the law. To bolster this assertion, Counsel further relied on the case of Agricultural Development Corporation of Kenya Vs Tum & Another [supra]
84. On the removal of the incumbent directors of the 1st Plaintiff at the illegal meeting convened on November 28, 2013, Counsel opined that the 1st Plaintiff's Articles and Memorandum of Association are silent on the procedure for the removal of its directors. The provisions of the Act are hence instructive and binding on that regard. Contending that the process for the removal of the Directors and subsequent appointment of the Defendants was governed by Section 185 (2) of the Act
85. It is submitted for the Plaintiffs that from the minutes filed at the company's registry on November 29, 2013 it is not in contention that the illegal AGM convened on November 28, 2013 was held with the primary purpose of electing directors despite there being no vacancy in the directorship of the 1st Plaintiff.
86. Opining that in consonance with the provisions of Section 185 (2) of the Act aforementioned, the requisitionists of the said meeting ought to have issued a special notice of a resolution to remove the incumbent directors and appoint others to the company, upon receipt of which, the company would have forwarded a copy of the special notice to the incumbent directors giving them an opportunity to be heard on the resolution at the meeting.
87. It is submitted that at the time of convening the illegal AGM, the 2nd and 3rd Plaintiffs herein were among the five (5) duly and validly elected directors of the 1st Plaintiff in a meeting conducted on October 28, 2006. As per the 1st Plaintiff's Annual Returns for the year 2006, 2007, 2008, 2009, 2010,



2011, and 2012, the (5) elected directors continued to hold the position of directors of the company. The five elected directors were;

- a. Thomas Munyao Makau
 - b. Stephen. N. Muli- 2nd Plaintiff
 - c. Raphael Mwanza Kilili
 - d. Onesmus Muisyo Kimatu- 3rd Plaintiff
 - e. Peter Kyalo Matheka
88. Counsel for the Plaintiffs submitted that the 2nd and 3rd Plaintiffs were not issued with the special notice according them an opportunity to be heard. They were removed from office unheard. To buttress this point counsel relied on the cases of *Msagha vs Chief Justice & 7 others* [2006]2 KLR 553 and *Kiambaa Tea Factory Company Ltd & 7 Others vs R. Ngatia Ndonge & 2 Others* [2000] eKLR.
89. Counsel submitted that the Defendant's Counterclaim on perpetual and permanent injunction against the 2nd and 3rd plaintiffs from acting as directors of the 1st Plaintiff is an equitable remedy not to be issued in favor of a party with tainted hands; he who comes to equity must come with clean hands. Counsel quoted the case of *Caliph Properties Limited vs Barbel Sharma & Another* [2015] eKLR, and submitted that the conduct of the Defendants betrays them and taints their hands with the effect of precluding them from the equitable remedies prayed for in their counterclaim.
90. As to whether the Plaintiffs are entitled to the orders sought, it is submitted that the Plaintiffs have met the requisite conditions for the grant of an order of a Permanent Injunction against the Defendants. Reliance was made on the cases of *Kenleb Cons Ltd vs New Gatitu Service Station Ltd Another*, [1990] eKLR, *Kenya Power & Lighting Co. Limited Vs Sheriff Molana Habib* [2018] eKLR, *Mburu Vs Kibara & 2 Others* [2022]eKLR *Nguruman Limited Vs Jan Bonde Nielsen & 2 Others*, [CA No. 77 of 2012](#); [2014] eKLR, *Kenya Commercial Finance Co. Ltd Vs Afraha Education Society* [2001] Vol. 1 EA 86, *Pius Kipchirchir Kogo Vs Frank Kimeli Tenai* 2018, *Amir Suleiman Vs Amboseli Resort Limited* [2004] eKLR and *Films Rover International Vs Cannon Films Sales Ltd* [1986] 3 ALL ER
91. Counsel submitted that the amended Plaint dated June 24, 2020 is merited and the reliefs sought therein ought to be granted as prayed and the Defendants' Counterclaim be dismissed with costs.

The 1st, 2nd, 5th And 7th Defendants' Submissions

92. In their submissions dated 4th December, 2024 and filed on 11th December,2024, counsel among other averments raised the following issues for determination:
- i. Whether the 1st Plaintiff held its elections of directors on the 28th November,2013
 - ii. Whether the elections were conducted in accordance to the law and the Defendants were validly elected as directors of the 1st Plaintiff
 - iii. Whether the Plaintiffs have laid down sufficient basis to invalidate the election of the 1st Plaintiff held on 28th November,2013.
 - iv. Whether the Plaintiffs are entitled to the reliefs sought.
93. On Whether the 1st Plaintiff held its elections of directors on the 28th November,2013, Counsel submitted that from the evidence and documents produced, it is evident that the 1st Plaintiff held its elections on the 28th November,2013. Opining that PW1 also confirmed that the meeting with



Registrar of Companies who requested that the 1st Plaintiff to hold an Annual General Meeting in the year 2013.

94. Contending that indeed DW4, who was the Assistant Registrar of Companies produced a letter dated 4th September 2013, signed by the then directors of the 1st Plaintiff, in which the then directors of the 1st Plaintiff resolved to call an Annual General Meeting on 28th November 2013. Notably, the letter is signed by the 2nd Plaintiff being Mr. Stephen Ndambuki as the then chairman and Onesmus M. Kimatu.
95. It is submitted by Counsel that DW4 who was the Assistant Registrar of Companies produced the notice dated 5th December, 2013 convening the meeting, the minutes for the meeting dated 29th November 2013 and the returns for registration of the Defendants as the duly elected directors of the 1st Plaintiff during the annual general meeting held on 28th November,2013.
96. That PW2 being Brian Muli Koli who testified on behalf of the Plaintiffs confirmed that he was in the meeting of 28th November, 2013 and oversaw the election. This testimony was corroborated by DW1Joshua Kioko, DW2 Rhoda Syongati and DW3 Chief of Matuu location where the offices of the 1st Plaintiff are located.
97. Submitting that there is no credible evidence casting aspersion on the credibility of the said notice convening the meeting, minutes and returns. Therefore, the documents show that the election was held remain unimpeached and the testimony from the Plaintiffs and the Defendants confirm that the meeting was held on 28th November, 2013.Counsel urged the court to find that the 1st Plaintiff held its elections of directors on 28th November, 2013.
99. On whether the elections were conducted in accordance to the law and the Defendants were validly elected as directors of the 1st Plaintiff, it is submitted by Counsel that the elections were in accordance to the law and the Defendants validly elected as Directors of the 1st Plaintiff. The Companies Act Cap 486 is the law that governed the convening and holding of annual general meeting of the 1st Plaintiff held on 28th November,2013.Section 131 (1) of the Companies Act Cap 486 provides for annual general meetings as follows:

131.

- (1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next

99. Contending that Section 131 (2) of the Companies Act Cap 486 provides that a member may complain to the Registrar of Companies for the lack of a company to hold an annual general meeting; thereafter the registrar of companies may call or direct the calling of a general meeting of the company. Section 131 (2) provides as follows:

- 2) If default is made in holding a meeting of the company in accordance with subsection (1), the registrar may, on the application of any member of the company, call or direct the calling of a general meeting of the company and give such ancillary or consequential directions as the registrar thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.



100. Counsel averred that vide a letter dated 30th July 2013 addressed to the Registrar of companies, Philip Muli Munyaka (member number 1381) and 25 others complained about the running of the 1st Plaintiff and the failure for the 1st Plaintiff to hold an annual general meeting. That in response to the said letter, the Registrar of companies through Colletta Maweu wrote a letter dated 14th August, 2013 to the directors of the 1st Plaintiff, directing the directors of the 1st Plaintiff to attend a meeting at the registrar of companies concerning the failure to hold annual general meetings and mismanagement of the 1st Plaintiff by the then directors.
101. It is submitted that DW4 being the Assistant Registrar of companies produced a letter dated 4th September 2013 signed by the then directors of the 1st Plaintiff, in which the then directors of the 1st Plaintiff resolved to call an annual general meeting on 28th November, 2013. That the letter is signed by the 2nd Plaintiff being Mr. Stephen Ndambuki as the then chairman and Onesmus M. Kimatu.
102. Section 133 of the *Companies Act* Cap 486 provides for a notice convening meetings of a company as follows:
- (1)
- (a) Any Provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than twenty-one days.
- (b) Every such notice shall be in writing. (2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by subsection (1)) a meeting of the company (other than an adjourned meeting) may be called by twenty-one days notice in writing.
103. Counsel submitted that the elections for directors of the 1st Plaintiff on 28th November, 2013 was done in accordance with the law; further no member complained to either the 1st Plaintiff, the Registrar of Companies or the Court stating that their right to vote was infringed upon. It is contended that the Plaintiff submitted that the provisions of Section 132 of the *Companies Act* Cap 486 on the Directors calling of an extraordinary meeting were not complied with. Submitting that contrary to the Plaintiff's submissions, the provisions of the *Companies Act* Cap 486 do not envisage the Registrar's convening of an extraordinary meeting under Section 132 as this is a preserve of the Company's Directors. The provisions of Section 132 are inapplicable in the instant case as the Registrar issued the notice on 5th September 2013 pursuant to Section 131 (2) of the *companies Act*.
104. Counsel opined that PW2, DW1, DW2 and DW3 gave uncontroverted testimony that the election of directors proceeded through the 'mlolongo system' where the various candidates stood and the members stood in a queue behind their preferred candidate. That Brian Muli Koli PW2 presided over the election assisted by Karen Ndunge and a police man to count the people in favour of each of the candidates. That the results of election were announced by Brian Muli Koli, PW2; the following were elected as directors:
- i. Joshua Kimeu Kioko
- ii. James Kioko Kivuvo
- iii. John Bosco
- iv. Samuel Mwanza Nzioka
- v. Juvenalis Musyoki



- vi. Mangu Ngolo
- vii. Rose Ndanu
105. It is submitted that whereas the 1st Plaintiff's Articles of Association do not provide for quorum in general meetings, the preliminary part of the Article of Association provides that the Companies Act Cap 486 shall apply to the 1st Plaintiff with necessary modifications. Submitting that that the minutes of the meeting of the 1st Plaintiff held on 13th November, 2013 show that 207 members were present. That for the avoidance of doubt Section 9 of the Companies Act Cap 486 provides for the proceedings at General meetings.
161. It is the submission by counsel that during the course of evidence the 1st Plaintiff never submitted a comprehensive list of members that the annual general meeting held on 28th November 2013 was the only meeting of the 1st Plaintiff whose minutes were supported by a list of the members present during the meeting. Counsel urged the elections were conducted in accordance to the law and the defendants were validly elected as directors of the 1st Plaintiff.
107. On whether the Plaintiffs have laid down sufficient basis to invalidate the election of the 1st plaintiff held on 28th November, 2013, Counsel averred that the Plaintiff have not laid down sufficient basis to invalidate the election of the 1st Plaintiff held on 28th November, 2013. The directors of the 1st Plaintiff resolved to convene the annual general meeting held on 28th November 2013 after the meeting at the Registrar of Companies which was held to address complaints by members concerning the failure by the 1st Plaintiff to hold an annual general meeting
108. There was a notice notifying members of the 1st Plaintiff of the annual general meeting held on 28th November, 2013. The annual general meeting held on 28th November 2013 was attended by 207 members. All eligible members of the 1st Plaintiff were allowed to vote. The defendants were elected as directors of the 1st plaintiff during the annual general meeting held on 28th November, 2013
109. The returns for registration of the Defendants as the duly elected members of the 1st Plaintiff were filed at the registrar of companies. The annual general meeting held on 28th November, 2013 was held in accordance with the companies Act and Articles of the 1st Plaintiff.
110. The Defendants posited that the Plaintiffs have not put forward adequate basis for invalidating the annual general meeting held on 28th November, 2013. To buttress this point reliance was made pm the case of Republic Vs Registrar of Companies Ex-parte Stephen Mwaniki Kabue & 3 Others [2012] eKLR
111. Submitting that while the Plaintiffs plead and submit that the Defendants filed forged and fraudulent annual returns at the Companies Registry no evidence has been adduced to support this claim. Counsel while submitting that he who alleges must prove relied on the case of Christopher Ndaru Kagina Vs Esther Mbandi Kagina & Another [2016] eKLR
112. As to whether the Plaintiffs are entitled to the reliefs sought, counsel opined that they have demonstrated that the Plaintiffs have not adduced credible evidence to invalidate the election of the 1st Plaintiff held on 28th November, 2013, inviting this Honorable Court to decline the prayer by the Plaintiffs to restrain the Defendants from acting as the directors of the 1st Plaintiff. It cementing this position credence was placed on the case of Republic Vs Registrar of Companies Ex-parte Stephen Mwaniki Kabue & 3 Others [2012] eKLR. Counsel urged the court to decline the prayers sought by the Plaintiffs and allow the Defendants counterclaim dated 6th May 2022.



Interested Party's Submissions

113. The Interested Party vide his submissions dated 4th December 2024 and filed on 6th December,2024, wherein he raised the following issues for determination:
- a. Whether the 1st and 2nd Plaintiff on the one hand and the defendants on the other hand were validly elected as directors of the 1st Plaintiff
 - b. What remedies should avail in the circumstances
114. On the first issue, counsel submitted that PW3 Zachary Mwangi a Representative of the Registrar of Companies testified that Registrar of Companies does not have a comprehensive list of members of the 1st Plaintiff company. Without such list, it is impossible to ascertain if the attendees of the meetings held on 28th October, 2006 and 28th November,2013 were members of the 1st plaintiff company. That indeed Mr. Mwangi testified that the Minutes of the meeting held on 28th October, 2006 were not accompanied by a list of members, merely stating the number of attendees. Further PW1, Stephen Ndambuki Muli, on cross examination by Mr. Nyamweya, admitted that the meeting of 28th October,2006 was not preceded by a notice
115. It is contended that the minutes of the meeting of 28th November,2013 were accompanied by a list of members, their identity card numbers and their membership numbers. The absence of a list of members by the registrar made it impossible for the registrar to verify membership. This list was not subjected to any verification at all from the evidence of DW1, Joshua Kioko Kimeu who testified that following the election on 29th November 2013, he and 6 directors; Karen Ndunge and Brain Muli Koli, PW2, went to Agricultural House in Nairobi to plan for their registration as directors at Sheria House. That DW2 stated that he together with other directors went through the minutes then signed them and proceeded to Sheria House. At Sheria House, the 7 directors remained outside and Brain Muli Koli PW2 went in with the signed minutes and a list of members and came out with CR12 form dated 29th November 2013.
116. Clearly the list was not subjected to any scrutiny, besides, on cross-examination, by Mr. Mikwa, Mr. Mwangi admitted that some members on the list shared the same signature and identity card number.It is submitted that the meetings of 28th October 2006 and 28th November,2013 were not valid since the Registrar of Companies did not have a list of members of the 1st Plaintiff company and could not verify the list submitted in the case of the meeting of 28th November,2013. That as for the meeting held on 28th October,2013, no list of members in attendance was submitted nor was the meeting preceded by 21 day notice
117. As to the second issue Counsel opined that if the court were to find the elections held on 28th November 2013 to be valid then it would mean that the 1st Plaintiff has not held an annual general meeting for the last eleven years to the detriment of the company and shareholders. Section 275A (1) of the [Companies Act, 2015](#) requires a company except single member companies, to hold a general meeting once a year. Counsel, relied on the case of *Seruji Limited Vs Savannah Cement Limited: Savannah Heights Limited (Interested Party)* [2021] KEHC 26 (KLR)
118. Counsel further made reference to section 280 of the [Companies Act 2015](#), empowering the Court to convene an annual general meeting where it is impracticable for a company to hold such a meeting. Reliance was placed on the case of *Radio Frequency Systems (EA) & Anor Vs Simon Horner & 2 Others* [2020] eKLR, and submitted that pursuant to Section 280 of the [Companies Act 2015](#) the court has powers, either on application or of its own motion, to require a meeting to be convened, held and conducted.



119. It is contended that indeed the 1st Plaintiff has not held an annual general meeting for 11 years and it has been impracticable to convene conduct and hold one as a result of the differences between the 2nd and 3rd Plaintiff on the one hand and Defendants on the other hand. In the case of Seruji Limited; the court observed that failure to hold general meetings was irregular and unlawful.
120. It is submitted and this Court is urged to order the 1st Plaintiff to convene, conduct and hold a general meeting with the aim of appointing directors of the 1st Plaintiff company under the supervision of the Registrar. It is averred that Section 93 (1) of the *Companies Act*, 2015 requires a company to lodge a copy of its Register of members with the Registrar That if the court is minded to grant orders under Section 280 (2) of the *Companies Act*, 2015, there ought to be an ancillary or consequential direction that the annual general meeting be preceded by compilation of the 1st Plaintiff register of members under the supervision of the Registrar of Companies.

Analysis & Determination

121. The Court considered the protracted matter spanning over 10 years, lengthy pleadings filed, numerous Applications filed heard and determined and some withdrawn, several Rulings delivered relating to the subject-matter evidence adduced written submissions and the issue(s) that emerge for determination are;
- a. Was the election conducted on 28/11/2013 in accordance with the law (Memorandum and Articles of Association of the Company) *Companies Act*
 - b. What remedies are available to be granted?
122. The Plaintiff's claim through PW1 is that the Defendants' convened meeting of 28/11/2013 with section of members and conducted elections of Board of Directors of Wendano Matuu in non-compliance of the law. PW1 and other Directors elected in 2006 had not resigned, the Notice issued for the meeting was not by member of 1st Plaintiff and the members/shareholders were not verified via Register as eligible to vote. The Lists presented to Registrar of Companies were 2 for same election. PW2 stated that although he guided the members on conduct of elections, he was shouted at and the crowd was unruly, he there fore proceeded to oversee the election. He intimated that he had no List / Register of members/shareholders to vet /cross check share certificates proxies letter of authority and if eligible to vote.He admitted after elections he signed the Report gave the Chairman DW1 and Secretary who signed but there was no List of members/shareholders attached.
123. The Plaintiff stated that after the illegal meeting as no Notice of 21 days was issued (the letter by Registrar of Companies did not constitute requisite Notice) The Letter dated 4/12/2013 from Messrs Laichana Mugambi Advocates was to the effect elections of AGM 28/11/2013 were illegal and later letter of 9/9/2019 from Rikan Registrars that they did not file returns for Wendano Matuu Company.The Defendants filed forged and fraudulent returns on 29/11/2013 at the Company Registry and misled Registrar of Companies to register them as new Directors of the Public Company Wendano Matuu.
124. PW3 detailed that after elections the Registrar of companies received 2 sets of documents one stamped with Registrar of Companies stamp and the other not stamped and there was no list of members/shareholders who participated in the election attached.There was correspondence from Rikan Registrars that contrary to filings of Returns alleged to be by them they did not preside over elections and did not file Returns and Report. The matter was subject to Criminal investigations culminating with a criminal case ongoing against certain parties.



125. DW4 indicated from the perusal of Wendano Matuu file, there was no appointment of Company Secretary to preside over elections and file Returns, there was no presence or representation of Registrar of Companies in elections of a public Company and no Lists of members/shareholders who participate in the election and there were 2 lists presented not confirming the genuine list.
126. On the other hand the Defendants, stated that members complained that the Directors of Wendano Matuu had not held AGM from 2006 -2013 when they wrote to Registrar of Companies who wrote a letter and called a meeting of 4/8/2013 and scheduled AGM on 28/11/2013. Again, PW3 and DW4 confirmed from Registrar of Companies records that by and large Wendano Matuu had not conducted AGM. The members complained of land/property sold without resolution to their detriment and did not get their share as explained by DW2 who has waited over the years for her entitlement valued at 1000 shares. The members also complained of loans taken for personal use by Directors and Auctioneers were to sell the land and recoup the loan. DW4 from records confirmed loan of Ksh 35million and Defendants confirmed loan of 10 million against 1st Plaintiff Wendano Matuu and these loans were attributed to the Plaintiffs who held office since 2006-2013.
127. The Chief DW3 confirmed that the Wendano Matuu land comprised of 580 acres was sold and reduced to 380 acres and members still awaiting their share. The new Team upon election were given 4 months to report on status of the Company when they called a meeting in May 2014 they were cited for contempt of Court and barred from any further activity of the Company. The coffee farm and machinery continue to be mismanaged.
128. The versions by Plaintiffs and Defendants are competing parallel and contradicting evidence on the process of AGM election of Directors of Wendano Matuu Company in 2006 and 2013 and management and operations of the said Company; particularly dissipating properties of the Company. Each team; the Plaintiffs who were in office since 2006-2013 were accused of mismanagement & AGMs were not held; the Incoming Team the Defendants their election was alleged to be marred by irregularities.
129. The Court from the above outline finds that the protracted litigation has been about 2 warring factions to the detriment of members and shareholders. There has been a deadlock, stalemate and impasse between factions and hindering smooth running of the Company and members left anxious and frustrated without benefit of their investments.
130. At the outset relying on the evidence of formal witnesses PW3 & DW4 Officials from the Office of Registrar of Companies and their records confirm irregularities in filing of Returns to confirm that the elections conducted on 28/11/2013 were in compliance with the law. Each witness made reference to documents/reports filed and issues of manipulation doctoring of documents/reports arose. These were subject of criminal investigation culminating with prosecution of criminal cases. Therefore, this Court shall not delve in the issue of fraud and forgery save to note that Rikan Registrars categorically confirmed they did not conduct elections of Wendano Matuu and did not file their Returns.
131. In the case of Embakasi Ranching Company Limited v Registrar of Companies & 14 others (Commercial Case E096 of 2019) [2024] KEHC 7480 (KLR) (Commercial and Tax) (14 June 2024) (Ruling), the Court observed thus:

“ 45. This means that the Board of Directors that Mr. Bernard Kiragu was referring to in the advertisement of the meeting for 29th September, 2023 are the ones listed in the aforementioned CR-12, who were precluded from assuming any office duties, including convening an AGM for the plaintiff’s shareholders by this Court’s (differently constituted) orders issued on 31st July, 2019. Even



though I agree with Counsel for the 8th, 10th, 12th & 13th defendants that pursuant to the provisions of Sections 277 & 278 of the Companies Act, members/shareholders of a company can request and/or require Directors of a company to convene a General Meeting and if the Directors do not comply with the said request then the members/shareholders powers as provided for under Section 279 of the Companies Act come to life. However Section 277 (7) states that –

“A request for the directors to convene a general meeting is not effective unless it is -

- a. In hard copy form or in electronic form; and
- b. Authenticated by the person or persons making it.”

132. There ought to have been compliance in Notice of 21 days issued for the meeting of 28/11/2013. The Registrar of Companies Letter was not the statutory Notice. Secondly, the Notice alleged to have been issued was challenged as it was by one who was not member/shareholder or Secretary to the Company.

133. In the case of William Njiraini Nguru v Mununga Tea Factory & 3 others [2015] eKLR the Court observed that

“the management of companies whether private or public is governed by the Companies Act Cap 486 Laws of Kenya (now repealed). Also cited is the case of Zaburi Musa Hamisi & 3 others v Ishmael Hillon & 4 others [2015] eKLR in which the Court similarly held that the general principle is that courts are very reluctant to interfere with the internal management of an association unless the constitution of the association is breached or there is contravention of the rules of natural justice.”

134. In Zaburi Musa Hamisi & 3 others v Ishmael Hillon & 4 others [2015] eKLR the Court held that:-

“The general principle that has emerged from our jurisprudence with regard to internal management of such associations is that the courts are very reluctant to interfere with their internal management unless the Constitution of the association is breached or there is contravention of the rules of natural justice...In TANUI & 4 OTHERS V BIRECH & 11 OTHERS [1991] KLR 510 the Court of Appeal summarised this principle as follows:

‘While it is not the business of the High Court or the Court of Appeal to involve itself in the day to day running of institutions ...yet where it is shown that such an organization is conducting its affairs in a manner contrary to its constitution and to the detriment of its members, then the High Court and the Court of Appeal would not only be entitled to but is under a duty to compel it, either, by injunction or otherwise, to obey its constitution.’”

135. From the above case-law, applied to facts of this instant case, the dispute regarding elections of 2006 and 2013 and management and operations of Wendano Matuu cannot be resolved by declaration of 1 faction over the other as bona fide Directors of Wendano Matuu Company, unless the evidence tilts the balance of justice. In this case, it is one’s word against the other. Taking into account members / shareholders of the Wendano Matuu have anxiously waited for their allocation of land according to shares, the leadership wrangle can only be resolved by fresh elections.



136. In *Agricultural Development Corporation of Kenya vs Nathaniel K.Tum & Anor* [2014] eKLR, where the Court observed that; -

“Therefore, the directors assume the responsibility of ensuring that the company abides by all legal requirements; all that will preserve its juristic personality and property; and avoiding default that would attract serious legal sanctions, or affect its juristic personality and assets. The legal requirements include; accountability of its business to the shareholders and to the law; operations; directorship; liabilities; assets; payment of taxes, only to mention but a few. Besides liability on the directors, if a company fails to observe the legal responsibilities and obligations set out in law, it will face serious legal penalties and sanctions; some default may occasion temporary disablement but there are others which are dire and may lead to its de-registration or winding-up. Should the gravest of the consequences for non-compliance with the law attach, the juristic existence of the company is decimated and the property may fall *bona vacantia* to the government.”

137. In the case *Jenerus Wanjau Wanderi & 7 others v Kiru Investments Co. Ltd* [2019] eKLR, the court observed at paragraph 21 and 23 that:

“

“21 The dispute as pleaded in the plaint revolves around governance and the management of an incorporated public company. A company is an inanimate legal person. The centre piece of corporate governance is the AGM. It is at that meeting that the directors account to the members and the latter get a say on the management of their company. So critical is the AGM that under the *Companies Act* 2015, failure to hold the meeting attracts criminal sanctions.

23. But the court cannot countenance the current state of affairs or condone the failure to hold a general meeting for over a decade. The court is imbued with power to intervene to correct the course at this stage. Section 280 of the Act is express on the matter. It is clear from the depositions that the company is unable to conduct the meeting in the manner required by the articles of the company or the Act.”

See Also; *Gitahi Gethenji & 3 others v James Ndungu Gethenji & 3 others* [2018] eKLR

Disposition

138 In application of Section 131, 132, 277 & 279 of *Companies Act* 2015 (that set out AGM and elections of Directors of a Company) & Section 382 & 389 of *Companies Act* 2015 (that set out the Roles Of Registrar of Companies) this Court in exercise of Section 280 of *Companies Act*, 2015 orders as follows;

139. An election of Directors of Wendano Matuu Public Company shall be held within 3 months from today in accordance with Memorandum & Articles of Association of the Company and/or in compliance with the *Companies Act* 2015.

140. The election shall be prepared and presided over by the Registrar of Companies and Team.

141. The Registrar of Companies shall compile and avail Register of Assets, Register of Accounts held by / of Wendano Matuu Company to the Court; Court No1 Machakos High Court by 24/9/2025

142. The Land Registrar Machakos shall compile List of Properties, owned, leased, charged, mortgaged by Wendano Matuu Public Company to the Court ;Court No 1 Machakos High Court by 24/9/2025



and shall not register any property, sale transfer subdivision of Wendano Matuu until elections are conducted.

143. The OCS Machakos Police Station & Regional Commissioner Machakos County shall ensure safety and security of conduct of Wendano Matuu and members/shareholders of Wendano Matuu Company before during and after the election.

144. The Registrar of Companies to ensure a current updated list of members/shareholders/proxies/representatives is first prepared and available for inspection and/or facilitate appointment of Company Secretary before conduct of lawful elections under *Companies Act*.

145. The results of the election shall also be relied to the Court Court No1 Machakos High Court by/on 1/10/2025

For release of assets, property and access to accounts thereafter. The new Directors shall take over management and operations of the Company

139. Any aggrieved party or urgent application shall be filed before Court No 1 Machakos High Court.

140. Each party to bear own Costs of the suit.

JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS HIGH COURT VIRTUALL ONLINE ON 14/7/2025.

M.W. MUIGAI

JUDGE

