



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.45B OF 2020

HENRY CHEMORMOR OMARI & 30 OTHERS.....PLAINTIFFS

VERSUS

MUSA CHERUTICH & 33 OTHERS.....DEFENDANTS

UKINGONI FARM CO. LIMITED.....INTERESTED PARTY

RULING

1. The present suit was filed on 22nd July 2020 by the firm of Gordon Ogola, Kipkoech & Company Advocates on behalf of 31 plaintiffs. The plaintiff named 34 persons as defendants and Ukingoni Farm Co. Ltd as an interested party. On 16th September 2020 the firm of Mukite Musangi & Co. Advocates made an application for one Mbugua Ngugi to be enjoined in the suit as an interested party. On 12th October 2020 the firm of Githongori & Harrison Associates Advocates filed a memorandum of appearance dated 7th October 2020 for the interested party, Ukingoni Farm Co. Ltd. On 12th November 2020 the firm of Mirugi Kariuki & Co. Advocates filed a Notice of change of Advocates dated 3rd November 2020 signifying that the interested party, Ukingoni Farm Co. Ltd had appointed the firm to act for them in place of Githongori & Harrison Associates advocates. On 3rd November 2020 and 26th November 2020 when the application for joinder of the proposed interested party came for hearing, both law firms appeared for Ukingoni Farm Co. Ltd and that necessitated the issue of representation of the interested party, Ukingoni Farm co. Ltd to be resolved before the matter could proceed.

2. On 24th November 2020 the firm of Githongori & Harrison Associates Advocates filed a Notice of Motion praying for the following orders:-.

1. That the notice of change of advocates dated 3rd November 2020 by the firm of Mirugi Kariuki and Co. Advocates be struck out.

2. That this honorable court does order the unconditional stay of proceedings in ELC 45B of 2020 (the instant suit) pending hearing and determination of ELC 72/2018 - Ukingoni Farm Limited & 2 others vs Chief Land Registrar and others).

3. That in alternative to prayer 2 (above) this honorable court be pleased to consolidate ELC 45B of 2020 (the instant suit) and ELC 72/2018 Ukingoni Farm Limited & 2 others –vs- Chief Land Registrar and others.)

4. That costs of this application be in the cause.

3. This ruling is however restricted to the issue of representation of the interested party and will not deal with prayers 2 and 3 which will be dealt with after the issue of representation is resolved. The application is supported on the grounds set out on the body of the application and on the affidavit sworn in support thereof by Ben Munyasia who *inter alia* deposes that he is the company secretary of Ukingoni Farm Co. Ltd, the interested party having been appointed on 15th February 2016. In support of the application, Mr. Munyasia deposes that the 1st plaintiff, Henry Chemjor Omar is not a director/shareholder of the interested party and avers that the Registrar of Companies vide a letter dated 5th January 2017 (should have been 5th January 2018) as it was responding to a letter dated 2nd November 2017), revoked the CR12 that had indicated the 1st plaintiff and others were directors of the interested party.

4. Harun Chepkeitany Chemjor swore a replying affidavit dated 20th January 2020 stating he was a director and the chairperson of the Board of Directors of the interested party, Ukingoni Farm Co. Ltd in opposition to the application by the firm of Githongori & Harrison Associates Advocates. In support of his assertion that he was a director of the interested party he annexed the CR12 issued by the Registrar of Companies on 14th August 2017; the same CR12 that was supposedly revoked by the Registrar of Companies letter of 5th January 2018. The deponent averred that the documents annexed to the affidavit sworn by Mr. Ben Munyasya were fabricated and insisted the said Ben Munyasya had no authority to represent the interested party as he was not appointed by the Board of Directors of the interested party as

Company Secretary. The deponent maintained that the directors indicated in the CR12 of 14th August 2017 were the bonafide and genuine directors of the interested party and that they appointed the firm of Mirugi Kariuki & Company Advocates to represent the Company in these and other court proceedings.

5. It is evident that what is in issue as related to the interested party is the ownership and directors of the company. There have been previous and there is an ongoing case namely Nakuru ELC No.72 of 2018 where the interested party is named as a party. It is apparent that unless and until the ownership and the directorship of the interested party is settled/resolved it will be problematic to proceed with the cases. A company can only act through its agents, who are the board of directors. The board of directors by a resolution may appoint a firm of advocates to act for and/or represent a company in any legal proceedings.

6. In the present matter separate sets of directors claim to be the bonafide directors of the interested party, Ukingoni Farm Co. Limited. The ownership and directorship of the Company is disputed. A dispute relating to ownership and/or directors of a company and /or the appointment of a director or company secretary falls outside the jurisdiction of this court. Such jurisdiction as per the companies Act 2015 rests with the High Court. This court cannot make a determination of who between the firm of Mirugi Kariuki & Company Advocates and Githongori & Harrison Associates Advocates has been duly appointed to represent Ukingoni Farm Limited in these proceedings without making a determination as to who the bonafide directors of the company are. There cannot be two sets of directors of a company at the same time and neither can there be different owners of a Company. In as far as Ukingoni Farm Co. Ltd is concerned, the current ownership and directorship is a live issue that needs to be determined.

7. Invariably since the issue of ownership of and the directorship of Ukingoni Farm Limited is core to the progression of this suit and *Nakuru ELC No.72 of 2018- Ukingoni Farm Limited & 2 others -vs- Chief Land Registrar and others*, I hereby order and direct that the two suits be stayed pending the determination by the High Court of who are the genuine directors and shareholders of Ukingoni Farm Limited. The parties to move the High Court appropriately within the next six months from the date hereof. Any interlocutory orders issued in this or in Nakuru ELC No.72 of 2018 will remain in force for a period of 12 months from the date hereof and will unless an extension is granted by the court on the application of any party, lapse on the expiry of the period 12 months from the date of this ruling and stand discharged for all purposes.

8. I make no order for costs in regard to the application.

9. Orders accordingly.

RULING DATED SIGNED AND DELIVERED AT NAKURU VIRTUALLY THIS 15TH DAY OF JULY 2021.

J M MUTUNGI

JUDGE