



REPUBLIC OF KENYA



Mwangi v Njenga & 7 others; Kinyanjui & 4 others (Interested Parties) (Commercial Case E001 of 2023) [2024] KEHC 5475 (KLR) (16 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5475 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
COMMERCIAL CASE E001 OF 2023
FN MUCHEMI, J
MAY 16, 2024**

BETWEEN

JOHN GITHINJI MWANGI APPLICANT

AND

CHARLES NGUGI NJENGA 1ST RESPONDENT

PHILIP KARIUKI GATHENGE 2ND RESPONDENT

GRACE WACHINGA MUCHAI 3RD RESPONDENT

PETER MWANGI MUTURI 4TH RESPONDENT

JOHN MAINA MBURU 5TH RESPONDENT

**GITHUNGURI CONSTITUENCY RANCHING COMPANY LIMITED 6TH
RESPONDENT**

REGISTRAR OF COMPANIES 7TH RESPONDENT

REGISTRAR OF LANDS 8TH RESPONDENT

AND

ESTHER WAITHERA KINYANJUI INTERESTED PARTY

JOHN RIMU WAWERU INTERESTED PARTY

FRANCIS WAINAINA NGIGI INTERESTED PARTY

ELIJAH NGUGI NJOROGE INTERESTED PARTY

HENRY WAINAINA KIHORO INTERESTED PARTY



RULING

Brief Facts

1. The application dated 24th October 2023 seeks for injunctive orders restraining the 1st to 5th defendants from transacting any business on behalf of the 6th defendant and appearing before any court to give evidence while purporting to be the directors of the 6th defendant from carrying themselves as directors of the 6th defendant pending the hearing and determination of the suit inter parties. The applicant further seeks for orders of stay of all suits filed in court relating to the buying and selling of the land belonging to the 6th defendant whose transaction were stewarded by the 1st to 5th defendants.
2. In opposition to the application, the respondents filed Grounds of Opposition dated 5th November 2023 and a Notice of Preliminary Objection dated 23rd November 2023.

Plaintiff/Applicant's Case

3. The applicant states that the 6th defendant was incorporated on 3rd December 1973 and that he is a shareholder of the 6th defendant under membership number 1680 which he received from his late parents, one Wangari Githinji. The applicant further states that he is listed as the vice chairman of the 6th defendant and further that he, the 5th respondent and the 1st interested party were directors of Githunguri Ranching Welfare Association. Thus as directors of Githunguri Ranching Welfare Association, the applicant states that he, the 5th respondent and the 1st interested party decided to take over directorship of the 6th respondent.
4. On 10th August 2009, the applicant states that he, the 5th respondent and the 1st interested party took out a notice of an extra ordinary meeting of the 6th respondent and the 5th respondent, the 1st interested party, himself, John Waweru Wanjohi, Peter Mwangi Mutuku, George Ngochi Mbugua, David Kimurai Mungai, George Kimani Mwaura and Elijah Ngugi Njoroge signed on the notice. Thus, the extra ordinary meeting for the 6th respondent was slated for 12th September 2009 but the same was cancelled.
5. The applicant contends that although the chairman did not attend the said meeting and a small group including himself got together and purported that the annual general meeting of the 12th September 2009 had taken place. The applicant further contends that it is at that illegal and irregular meeting that the 1st to 5th applicants and himself were purportedly elected as directors.
6. The applicant argues that the meeting was convened in breach of the Company Act as there exists no members register to date, consequently no elections can be held without a members register and no one can be elected as a director of the company unless he/she is a shareholder. The applicant further argues that the 1st to 5th respondents are not shareholders of the 6th respondent company. The applicant further contends that it is indicated that the registrar of companies, registered the aforesaid persons on 14th September 2009 notwithstanding that no annual general meeting took place. The purported registered directors were John Maina Mburu, Elijah Ngugi Njoroge, Esther Waithera Kinyanjui, George Ngochi Mbugua, Peter Mwangi Muturi, John Githinji Mwangi, Grace Wachinga Muchai, Henry Wainaina Kihoro, Paul Mbugua Ngochi, Stephen Maina Mwangi and John Waweru Wanjohi. Further, the applicant contends that all the books, registers and seals of the 6th respondent were taken to the offices of Githunguri Ranching Welfare Association.



7. The applicant states that the 2nd interested party made a report of the loss of key records of the 6th defendant vide OB No. 19/15/09/2009 at Ruiru police station and the same was published by the Daily Nation of 25th November 2009. The documents went missing complicating cases of fraud and double allocation of plots. The applicant learnt that documents like maps and members register could not be traced and the explanation given by the 5th defendant was that the records disappeared after burglars broke into the offices before the new management took over two months ago.
8. The applicant contends that the 5th interested party, who had been illegally elected as the secretary of the 6th respondent vide the illegal takeover decided to relinquish his position because he did not agree with the 5th respondent herein. Furthermore, the 5th respondent commenced many criminal cases against the 5th interested party using fake allegations, that none of the directors approved. The applicant further states that the criminal cases against the 5th interested party, in particular and other persons were done by the 5th respondent herein as an individual and not sanctioned by any meeting of the board of directors of the 6th respondent. The 5th respondent also commenced ELC No. 42 of 2016 Githunguri Constituency Ranching Co. Ltd v Henry Wainaina Kihoro to take over the property of the 5th interested party to cripple him financially. The 1st interested party was kicked out as a director of the 6th defendant by the 5th defendant herein in 2017 for disagreeing with him.
9. The applicant avers that the financial status of the 6th defendant is a hidden secret held by the 5th defendant as such it is not known how much the 6th defendant is worth and in fact its expenditure is unknown. Furthermore, the land survey of the 6th defendant is done secretly by the 5th defendant and he makes company registers and maps as he wishes defrauding genuine shareholders of their land.

The 1st – 6th Respondents' Case

10. The respondents oppose the application on the premise that it is misconceived and bad in law. The respondents state that the applicant has not satisfied the requirements of grant of an interlocutory injunction thus rendering the application a non-starter.
11. The respondents contend that the entire suit and the application are incompetent as the issues raised herein were heard and determined in Nairobi High Court Misc 512 of 2015 together with Nairobi High Court Misc App. No. 12 of 2014 hence res judicata. The respondents contend that the application is calculated at delaying the ultimate disposal of the miscellaneous application and ought to be dismissed with costs.

The Applicant's Submissions

12. The applicant reiterates what he deposed in his affidavit and submits that the case involves fraud by the respondents which cannot be ignored by the court. The board of the 6th defendant is a fraud and continues to defraud unsuspecting members of the public and shareholders of their land thus it is in the public interest that the 6th defendant being a public company that the orders sought are granted.
13. The applicant relies on Section 7 of the *Civil Procedure Act* and submits that the suit is not res judicata as he was not a party in the previous suits as cited by the respondents. The issue in the current suit relates to fraud perpetrated by the 1st to 8th respondents. The suits cited were in courts that could not determine fraud perpetrated by the purported directors.

The Respondent's Submissions

14. The respondents filed submissions but the submissions are on the application dated 24th November 2024 which the court already rendered its ruling on 7th March 2024.



The Law

15. The applicant is essentially seeking for an interlocutory injunction but upon perusal of the parties' pleadings it is prudent to address the preliminary objection raised by the respondents. It is the respondents' case that the issues raised are res judicata as they were heard and determined in Nairobi High Court Misc 512 of 2015 and Nairobi High Court Misc. Application No. 12 of 2014. It is noted that the respondent did not avail these cases for perusal to the court. However, the court traced them in the Kenya Law Reports and got a glimpse of what the cases were all about.
16. On perusal of the ruling in Environment & Land Court Misc. Application No. 12 of 2014 Henry Wainaina Kihoro & 2 others v John Maina Mburu & Board of Directors Githunguri Constituency Ranching Co. Ltd it is noted that the application sought for order to punish the applicant for contempt of court against Henry Kihoro and Another for defying court orders that had been issued on 6th November 2014 directing the 6th respondent herein to hold an AGM in 90 days to be supervised by the Registrar General for election of directors. The Annual General meeting of Githunguri Constituency Ranching Company had been challenged on grounds that the same had been illegally and unlawfully convened. The court in its ruling delivered by Mutungi J on 6th November 2014 directed the company to hold fresh elections under the supervision of the Registrar General of Companies.
17. Records show that the said elections were held on 17/12/2015 and directors elected – which election was described as free and fair by the Registrar who was the returning officer. Thereafter, other cases were filed in court challenging the election. One of the cases was Nairobi J.R. Case No.512 of 2015 Ex parte Applicant Ahmad Chege Gikera v Registrar of Companies which was dismissed.
18. The court in rendering its ruling in this J.R. case noted that the 6th defendant company had been in turmoil owing to the challenges and wrangles regarding its management as there had been applications and counter applications on the single subject of running and managing the company. The cases go to the root of who are the directors of the company at any given time. The applicants in those cases have gone to court separately and consecutively on the same issues when some parties lost the election. And these proceedings were dismissed for lack of merit which means that the company elections of 2015 were upheld.
19. It is imperative to note that the case before me among other issues is challenging the elections of the 6th defendant held on 12th of September 2009 on grounds that the Annual General Meeting had not been lawfully convened or was cancelled after being convened. It is not correct to say as argued by the respondent that the election challenged herein was litigated in Nairobi J.R. Case No. 512 of 2015 and in Nairobi Misc. Civil Application No.12 of 2014. These two cases concerned the election of the 6th defendant held in 2015. After the impugned election of 2019, other elections of the company were held and challenged in court in various cases filed by some directors in office or by shareholders.
20. It is then surprising that the plaintiffs herein would not be in order to approach the court to challenge the elections of 2009 while other elections followed, were challenged in court and fresh elections ordered. The same were held and the elected directors served their terms in office. In my considered view, the election held in 2009 is no longer material having been overtaken by events. The plaintiffs allege that the directors elected illegally in 2009 committed fraud in regard to the records of the company and also interfered with records including registers and other records that have facilitated theft and misappropriation of funds and fraudulent sales of land belonging to innocent members and to the company. In my view these allegations ought to be investigated by the Director of Criminal Investigations with a view of the culprits being charged in court.



21. As regards the preliminary objection I find that this suit, though it has its own shortcomings, is not res judicata for the reason that the previous cases involving the elections of the 6th respondent cited in the objection were different in form of the issues involved and the parties who were involved. The preliminary objection, therefore, lacks merit and it is dismissed.
22. The applicants have sought orders to restrain the respondents from dealing in way of sale or transfer with the land of the company. The particulars of the land parcels in question have not been given. Even if the court was to give orders in that regard, it would not give a general order to restrain any person unless the requirements of an injunction in land matters are met. Similarly, this court cannot issue injunctive orders against the respondents not to transact any business of the company at this interlocutory stage without the applicants describing the properties in question.
23. As for the prayer seeking stay of all suits filed in court and relating to the sale and purchase of the land of 6th defendant, the list of such parcels of land and any known or intended transactions have not been provided by the plaintiff. As such, no court of law can give a blanket order which has no basis. Such an order if granted would not be possible to implement.
24. Neither would this court grant an injunction to restrain the directors of the 6th Defendant from appearing in court to give evidence in suits that are not known. The applicant failed to prove particulars of such suits. The respondents are the directors on the 6th defendant's company and unless they are legally removed, they cannot be prevented from performing their duties in an interlocutory application.
25. In regard to the orders sought in the application, I find that the applicant has failed to meet the requirements of the law regarding grant of injunctive orders and as such, this application must fail.
26. This suit is based on events of an election that took place in 2009 and as I have already stated, the suit is in my view, defective and misconceived and may not see the light of the day even if it goes for full hearing.
27. For the above reasons, I hereby make the following orders: -
 - a. That the application dated the 24th November 2023 lacks merit and is hereby dismissed with costs.
 - b. That this suit is incurably defective and misconceived and is hereby struck out with costs.
28. It is hereby so ordered.

RULING DELIVERED AT THIKA, DATED AND SIGNED THIS 16TH DAY OF MAY 2024.

F. MUCHEMI

JUDGE

