



Njenga & 3 others v Kamunge & 3 others (Civil Case E001 of 2022)
[2024] KEHC 6133 (KLR) (14 May 2024) (Directions)

Neutral citation: [2024] KEHC 6133 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE E001 OF 2022
DO CHEPKWONY, J
MAY 14, 2024

BETWEEN

STEPHEN KIARIE NJENGA 1ST PLAINTIFF
MICHAEL KAMOHYE 2ND PLAINTIFF
RICHARD NJAU 3RD PLAINTIFF
EPHANTUS GACHUI 4TH PLAINTIFF

AND

ISAAC NJENGA KAMUNGE 1ST DEFENDANT
FERDINAND MUCHOMBA 2ND DEFENDANT
LAND REGISTRAR, NAROK 3RD DEFENDANT
REGISTRAR OF COMPANIES 4TH DEFENDANT

DIRECTIONS

1. *Vide* a ruling dated 29th September, 2023, the court directed the Plaintiff first do amend its pleadings to include Mukuyuini Farmers Company Ltd as an Interested Party to the suit first before proceedings with the determination of any controversial issue between the parties. Indeed, the Plaintiff filed a Notice of Motion application dated 20th February, 2024 seeking among other orders that Mukuyuini Farmers Company Ltd be enjoined to the suit and several injunctive orders directed against the Defendants restraining them from dealing with the affairs of the said Company and or transferring its properties.
2. When counsel for the parties appeared before the court on 30th April, 2024, Mr. Kibebo, counsel for the Plaintiffs and Mr. Gachoka, counsel for the 2nd Defendant were willing to compromise the application dated 29th February, 2024 and focus on the hearing of the main suit. Mr. Gachoka, counsel for the 2nd



Defendant proposed that the Company be preserved and those who manage its affairs continue to do so provided that the Company's properties and assets are not transferred. M/s. Kibebo on the other hand interpreted Mr. Gachoka's submissions as conceding to the application dated 29th February, 2024 and sought the court to allow it and then proceed with the hearing of the main suit.

3. Having read through the application dated 29th February, 2024 and noted that the Plaintiffs aver that they were elected as Directors/Officials of the Company on 17th February, 2021, the Company's records were not altered and or changed to reflect that position. Since then, they have been unable to proceed with the management of the Company and they accuse the 1st and 2nd Defendants who are the former Directors for being a pain and for continually interfering with the management of the said Company.
4. In my opinion, the determination of persons who are the correct and true Directors of the Company calls upon a thorough examination of the Company's documents and records as may be presented in evidence by the parties. It is after a scrutiny of the evidence that the court may determine on which individual would be acting in the best interest of the Company and who among them should be restrained from the affairs of the Company. As such, those orders cannot issue at this interim stage.
5. However, so as to keep the Company as a going concern, the court needs to issue appropriate orders/directions. Consequently, in view of the facts presented by the parties and submissions made by both counsel for the Plaintiffs and the 2nd Defendant, this court proceeds to direct that the Notice of Motion application dated 29th February, 2024 be and is hereby compromised in terms of the following orders:-
 - a. An order be and is hereby issued for Mukuyuini Farmers Company Ltd to be joined in these proceedings as an Interested Party.
 - b. A conservatory order be and is hereby issued for preservation of assets and official records of Mukuyuini Farmers Company Ltd pending the hearing and determination of the suit herein.
 - c. An order be and is hereby issued allowing the individuals in office and who are currently managing the affairs of Mukuyuini Farmers Company Ltd to continue doing so in so far as they do not alter the Company's official records and or transfer its assets.
 - d. The court notes that 1st Defendant filed a Notice of Motion dated 26th April, 2024 but failed to attend court to prosecute the application as directed in the order dated 29th April, 2024. Consequently, the 1st Defendant is hereby directed to address the issues raised in this application through its statement of defence. The same shall be considered upon hearing of the main suit.
 - e. That the matter be mentioned on 17th June, 2024 to confirm parties have duly amended their pleadings and for pretrial directions.

It is so ordered.

DIRECTIONS DELIVERED, DATED AND SIGNED AT KIAMBU THIS 14TH DAY OF MAY , 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/s. Kibebo counsel for Plaintiff

Mr. Andayi holding brief for Mr. Kibunga counsel for Applicant/1st Defendant

