



**Tawai Limited v Muhindi & 5 others (Civil Case 22 of 2018)  
[2024] KEHC 4474 (KLR) (3 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4474 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CIVIL CASE 22 OF 2018**

**AC MRIMA, J**

**MAY 3, 2024**

**BETWEEN**

**TAWAI LIMITED ..... PLAINTIFF**

**AND**

**NATHAN WANJALA MUHINDI & 5 OTHERS ..... DEFENDANT**

**RULING**

1. On 28<sup>th</sup> day of February 2024, this Court delivered a ruling on the representation of the Plaintiff. In essence, the Court found that both the firms of Messrs. Kassim Sifuma & Associates and Messrs. Karanigrey & Company Advocates were both instructed by the Plaintiff, at different times, to represent it.
2. The Court gave the Plaintiff time to settle the issue of representation. On 12<sup>th</sup> April 2024, Mr. Karanigrey informed this Court that both firms of Advocates still had separate instructions to appear for the Plaintiff.
3. Based on the ruling on the directorship of the Plaintiff delivered in the High Court of Kenya at Kitale in Civil Suit No. 17 of 2018 (Formerly Kitale High Court Civil Suit No. 113 of 2008) Wycliffe Okutoyi & 11 Others vs. The Hon. Attorney General & 5 Others on 23<sup>rd</sup> day of November 2023, Mr. Karanigrey made an application to withdraw this suit since the suit, according to the ruling aforesaid, was instituted by 'Directors' who were illegally in office and, hence, was incompetent and a nullity.
4. Whereas the rest of the parties supported the withdrawal application, Mr. Sifuma sought for time to consult his client. The matter was then adjourned.
5. When the matter came up on 19<sup>th</sup> April 2024, Mr. Sifuma informed this Court that his firm was representing some of the members of the Plaintiff and the firm of Messrs. Karanigrey & Company Advocates was representing other members. Counsel further informed this Court that his clients had



- instructed him to decline the application to withdraw the suit and instead the suit be stayed pending compliance with the ruling in Kitale HCCC No. 17 of 2018.
6. The rest of the parties were still of the position that the suit be withdrawn. In fact Mr. Karanigrey reiterated that the members who instituted this suit were declared not to have been genuine directors of the Plaintiff and as such could not represent the Plaintiff in any manner.
  7. Given the nature of the application, this Court reserved it for this ruling.
  8. The positions by Counsel and parties have been carefully considered.
  9. It is true that this Court rendered a ruling on the Plaintiff's directorship in Kitale HCCC No. 17 of 2018 on 23<sup>rd</sup> November 2023.
  10. Some of the orders made by this Court in the said decision were as follows: -
    - a. A Declaration do hereby issue that there is only one company in the name of Tawai Limited [No. C. 12,746] which was incorporated on 15<sup>th</sup> June, 1974 and which company has two Directors being Zakayo Richard Chesoni and Mary Aherwa Chesoni.
    - b. A Declaration do hereby issue that the Notification of Change of Directors for Tawai Limited filed on 21<sup>st</sup> February, 2005 with the Registrar of Companies is a nullity, unlawful, ineffective and void ab initio. The same is hereby quashed forthwith.
    - c. A Declaration do hereby issue that any dealings, transactions, decisions, resolutions and actions allegedly by Tawai Limited made and/or undertaken by or under the directions or orders of any other Director(s) other than Zakayo Richard Chesoni and Mary Aherwa Chesoni are a nullity, unlawful, ineffective and void ab initio. The same is/are hereby quashed forthwith.
    - d. The Registrar of Companies is hereby ordered to rectify the register by removing any entry or entries, as the case may be, that altered or changed the directorship of Tawai Limited from the original subscribers.
    - e. The Registrar of Companies shall also remove from the register any other entry or entries, if any, that changed, altered or affected the shareholding and/or status of Tawai Limited prior to the 21<sup>st</sup> February, 2005.
  11. None of the parties informed this Court that the said orders were being challenged in any way. It was, therefore, on the basis of the above orders that Counsel Mr. Karanigrey sought to withdraw the suit and Counsel Mr. Sifuma sought for time to have the directorship regularized first.
  12. The Court in Kitale HCCC No. 17 of 2018 declared that the Plaintiff which was incorporated on 15<sup>th</sup> June, 1974 had only two Directors who were Zakayo Richard Chesoni and Mary Aherwa Chesoni. The Court went ahead to declare any dealings, transactions, decisions, resolutions and actions allegedly by Tawai Limited made and/or undertaken by or under the directions or orders of any other Director(s) other than Zakayo Richard Chesoni and Mary Aherwa Chesoni as illegal and quashed them all.
  13. The Plaint in this suit was filed on 31<sup>st</sup> January 2018 before the Environment and Land Court through Messrs. Kassim Sifuna & Associates. The Verifying Affidavit accompanying the Plaint was sworn by one George Mubichakani Malanga who described himself as the Chairman of the Board of Directors of the Plaintiff.
  14. It, therefore, means that the said George Mubichakani Malanga and the other members who constituted the 'Plaintiff's Board of Directors' which George Mubichakani Malanga purportedly



chaired were the persons who were declared as non-directors of the Plaintiff and all the actions they had taken on behalf of the Plaintiff in their capacities as the directors nullified.

15. One of the actions taken by the Directors who were decreed to have been in office illegally was the institution of this suit in 2018. As said, the Court's decision on the directorship still stands.
16. Deriving from the foregoing, this suit is, hence, a non-starter. Simply put, the suit was instituted by persons who were not the lawful directors of the Plaintiff and as such lacked the capacities to represent the Plaintiff. It was on that understanding that Mr. Karanigrey, rightly so, sought to have the suit withdrawn.
17. This Court agrees with Counsel that the suit cannot be maintained. It remains a nullity and incompetent. The Plaintiff can only maintain proper suits on the basis of resolutions made by the rightful board members.
18. Further, the position taken by Learned Counsel Mr. Sifuma that his firm represented some board members and the other firm represented the rest of the board members is untenable in law. The Plaintiff is a limited liability company. Such a company only acts through board resolutions. The Board of Directors, cannot, in any way issue two different resolutions on the same issue. In other words, the Plaintiff cannot give contradictory instructions on the way forward on this suit.
19. Having said as much, this Court remains alive to the fact that in any event, any alleged resolution by any other Directors apart from Zakayo Richard Chesoni and Mary Aherwa Chesoni lacks any legal leg to stand on.
20. This Court believes that it has said enough to determine the way forward in this matter.
21. Since the instant suit is a nullity and a non-starter, it is hereby struck out with no orders on costs.
22. Those are the orders of this Court.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 3<sup>RD</sup> DAY OF MAY, 2024.**

**A. C. MRIMA**

**JUDGE**

**Ruling delivered in open Court and in the presence of:-**

No appearance for the Plaintiff/Tawai Ltd

Nathan Wanjala Muindi, 1<sup>st</sup> Defendant

Fred Juma Mumia, 2<sup>nd</sup> Defendant

Patrick Wafula Makokha, 3<sup>rd</sup> Defendant

Alfred Shindani Wanyonyi, 4<sup>th</sup> Defendant

