



**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)**

Neutral citation: [2024] KEHC 7480 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E096 OF 2019**

**MN MWANGI, J**

**JUNE 14, 2024**

**BETWEEN**

**EMBAKASI RANCHING COMPANY LIMITED ..... PLAINTIFF**

**AND**

**THE REGISTRAR OF COMPANIES ..... 1<sup>ST</sup> DEFENDANT**  
**WANJIRU RICHU ..... 2<sup>ND</sup> DEFENDANT**  
**ANDREW OKUMU ..... 3<sup>RD</sup> DEFENDANT**  
**GABRIEL GITONGA ..... 4<sup>TH</sup> DEFENDANT**  
**JAMES MINGI NJOROGE ..... 5<sup>TH</sup> DEFENDANT**  
**SISTO TUTA MWAMBIA ..... 6<sup>TH</sup> DEFENDANT**  
**PENINAH NYAIREGI MWANGI ..... 7<sup>TH</sup> DEFENDANT**  
**JAMES NJEHU MBOCHI NJERU ..... 8<sup>TH</sup> DEFENDANT**  
**DAVID MWANGI WANDERI ..... 9<sup>TH</sup> DEFENDANT**  
**PHIDELI WANGARI ..... 10<sup>TH</sup> DEFENDANT**  
**JANE NJERI MUREGI ..... 11<sup>TH</sup> DEFENDANT**  
**CHRISTOPHER ELIUD KAKURU NGIGE ..... 12<sup>TH</sup> DEFENDANT**  
**JOSEPH KINYANJUI NJENGA ..... 13<sup>TH</sup> DEFENDANT**  
**CHARLES KIHAGI THUAH ..... 14<sup>TH</sup> DEFENDANT**  
**JOSEPH JUAN KANANI ..... 15<sup>TH</sup> DEFENDANT**



## RULING

1. The plaintiff/applicant filed a Notice of Motion application dated 28<sup>th</sup> September, 2023 pursuant to the provisions of Order 40 Rule 2 of the Civil Procedure Rules, Sections 1, 1A, 1B & 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law, seeking the following orders –
  - i. Spent;
  - ii. Spent;
  - iii. An order of interlocutory injunction do issue to restrain the 4<sup>th</sup>-15<sup>th</sup> defendants by themselves, their agents and/or servants from holding the Annual General Meeting of the plaintiff/applicant scheduled for 29<sup>th</sup> September, 2023 at St Joseph’s Catholic Church, Kiganjo, Gatundu South, Kiambu County, or any other day and venue whatsoever, pending the hearing and final determination of this suit;
  - iv. Spent; and
  - v. The costs of this application be provided for.
2. The application is premised on the grounds on the face of the Motion and is supported by affidavits sworn on 28<sup>th</sup> September, 2023 and 7<sup>th</sup> December, 2023 by Walter Kigera Waireri, a Director of the plaintiff company. In opposition thereto, the 4<sup>th</sup> defendant filed a replying affidavit sworn on 25<sup>th</sup> October, 2023 by Gabriel Gitonga, the 4<sup>th</sup> defendant herein. The 6<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup> & 15<sup>th</sup> defendants filed a replying affidavit sworn on 18<sup>th</sup> October, 2023 by Joseph Juan Kanani, the 15<sup>th</sup> defendant herein, the 10<sup>th</sup> defendant filed a replying affidavit sworn on 11<sup>th</sup> October, 2023 by Phideli Wangari, the 10<sup>th</sup> defendant herein, the 12<sup>th</sup> defendant filed a replying affidavit sworn on 11<sup>th</sup> October, 2023 by Christopher Eliud Gakuru Ngige, the 12<sup>th</sup> defendant herein, and the 13<sup>th</sup> defendant filed a replying affidavit sworn on 11<sup>th</sup> October, 2023 by Joseph Kinyanjui Njenga, the 13<sup>th</sup> defendant herein.
3. The application was canvassed by way of written submissions. The plaintiff’s submissions were filed on 8<sup>th</sup> December, 2023 by the law firm of Ngata Kamau & Company Advocates. The 8<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> & 13<sup>th</sup> defendants’ submissions were filed on 10<sup>th</sup> December, 2023 by the law firm of Tim Kariuki & Company Advocates, and the 11<sup>th</sup> & 15<sup>th</sup> defendants’ submissions were filed by the law firm of Khaminwa and Khaminwa Advocates on 27<sup>th</sup> February, 2024.
4. Mr. Ngata Kamau, learned Counsel for the plaintiff submitted that the meeting of 29<sup>th</sup> September, 2023 did not take place though the defendants purport to have held the said meeting in another venue after they were dispersed by the police from the church grounds, which is in contempt of the Court orders. He stated that the said meeting was illegal in a manner similar to the illegal meeting of 13<sup>th</sup> April, 2019 held at Kenyatta International Convention Centre, which is the subject matter of this suit. He further averred that the conveners of the meeting of 29<sup>th</sup> September, 2023 were acting in contempt of Court orders issued by Judge Grace Nzioka on 30<sup>th</sup> July, 2019 and on 9<sup>th</sup> September, 2022 by Judge Dorah Chepkwony. Counsel referred to the case of *Giella v Cassman Brown* [1973] EA 360 and submitted that the plaintiff has met the conditions for the grant of an injunction.
5. He stated that the plaintiff has already tendered its evidence and demonstrated that it has a prima facie case with a probability of success, and it has also demonstrated that it shall suffer irreparable harm if people with an illegal mandate of directorship of the plaintiff are allowed to assume its office without a proper mandate of the majority of its bonafide shareholders. Mr. Ngata Kamau urged this Court



- to give the defendants timelines within which they should prosecute their defence so as to enable the Court to make a fair and just determination of this matter.
6. Mr. Macharia Gakuo, learned Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> & 7<sup>th</sup> defendants submitted that his clients have not assumed any duties of the plaintiff company. He associated himself with the plaintiff's submissions and urged this Court to allow the instant application.
  7. Mr. Musa, learned Counsel for the 4<sup>th</sup> & 5<sup>th</sup> defendants referred to annexure WKW 1, an advert annexed to the plaintiff's affidavit in support of the instant application and submitted that the names of his clients are not shown to have been behind the said advertisement. He further submitted that there are already injunctive orders in place, which his clients have neither breached nor caused breach of the said orders. Counsel argued that the instant application seeks to assert an order that is already in place, but has failed to show who has and/or has caused breach of the said order, and for that reason, the application herein should be dismissed and this suit be set down for hearing.
  8. Mr. Kengara, learned Counsel for the 6<sup>th</sup> & 9<sup>th</sup> defendants submitted that his clients did not attend the meeting of 29<sup>th</sup> September, 2023, and they have observed the orders of Nzioka and Chepkwony JJ. He further submitted that the instant application is vague on who did what, and in any event, interim orders have been in place for the last five (5) years. Mr. Kengara urged this Court to expedite the hearing of the suit.
  9. Ms. Shumula, learned Counsel for the 11<sup>th</sup> & 15<sup>th</sup> defendants submitted that her clients did not participate in the meeting of 29<sup>th</sup> September, 2023. She stated that according to the 11<sup>th</sup> & 15<sup>th</sup> defendants, the said meeting was cancelled, hence this Court cannot use its resources to determine the legality of a meeting which was cancelled since it will be a venture in futility that will not aid the Court to meet its overriding objective under Section 3A of the *Civil Procedure Act*. Counsel relied on the case of Solai Nyobei Farm Limited v Philip Cheptumo & another [2015] eKLR and stated that the application herein is fatally defective since the alleged contemnors have not been stated. She urged for the application herein to be dismissed and for the suit to be set down for hearing.
  10. Mr. Kariuki, learned Counsel for the 8<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> & 13<sup>th</sup> defendants relied on the provisions of Order 40 (1)(a) & (b) of the Civil Procedure Rules 2010 and the cases of Giella v Cassman Brown (supra) and American Cyanamid Co. v Ethicom Limited [1975] A AER 504 and submitted that an injunction is granted when any property in dispute in a suit is about to be disposed of or alienated, or it is about to be disposed of or sold by any party to the suit. He further submitted that the plaintiff has not demonstrated a prima facie case with a probability of success. Counsel also referred to annexure WKW 1, which is an advert annexed to the plaintiff's affidavit in support of the instant application and contended that his clients were not the ones who placed the said advertisement, as it clearly indicates that it was done by Bernard Kiragu, the plaintiff's Company Secretary.
  11. It was stated by Counsel that the general meeting of 29<sup>th</sup> September, 2023 was requested for by shareholders of the plaintiff company. He further stated that the interlocutory orders given by the Court were only to be in force pending the hearing and determination of the application dated 17<sup>th</sup> April, 2019 which has since been determined, and not pending the hearing and determination of this suit as alleged. He further stated that the orders issued by Lady Justice Nzioka on 31<sup>st</sup> July, 2019 did not suspend the operations of the plaintiff company and particularly the plaintiff company's obligation as provided for under Section 275A of the *Companies Act*, No. 17 of 2015, which mandatorily requires the plaintiff to convene a general meeting once every year.
  12. Further, that under Section 279 of the *Companies Act*, the members/shareholders of a company have the power to convene a general meeting at the expense of the company if, after having been required to



convene a general meeting under Section 277 of the Act, the Directors fail to do as required by Section 278 of the Act. He asserted that the said power was not suspended by the Court, thus the members/ shareholders of the plaintiff company were within their rights and the law to convene the general meeting that was held on 29<sup>th</sup> September, 2023 at St. Joseph's Catholic Church. It was submitted by Counsel that the order stopping the meeting of 29<sup>th</sup> September, 2023 was directed to the wrong parties hence it could not be enforced. He stated that the said meeting proceeded as planned and new Directors for the plaintiff company were elected.

13. Mr. Kariuki contended that as things stand now, the instant application as well as the entire suit have been overtaken by events since all the Directors who had been reinstated by the Court on 31<sup>st</sup> July, 2019 and some of those who had been told to remain in the CR-12 were replaced by the members/ shareholders during the general meeting held on 29<sup>th</sup> September, 2023. It was contended that the deponent of the plaintiff's affidavit in support of the instant application had not demonstrated that he is a Director of the plaintiff company as alleged, and that he has the authority/resolution of the plaintiff company's Board of Directors to bring the present application. Counsel stated that the said deponent is a busy body and has no locus to file the application herein. He argued that the plaintiff has not demonstrated what irreparable injury it stands to suffer in the event the application herein is disallowed.
14. In a rejoinder, Mr. Ngata Kamau submitted that the people who convened the meeting of 29<sup>th</sup> September, 2023 were the 4<sup>th</sup> to 15<sup>th</sup> defendants. He further submitted that Mr. Bernard Kiragu has never been the plaintiff's Company Secretary, since if he was, he would have convened the meeting with the plaintiff's Directors.

#### **Analysis And Determination.**

15. I have considered the instant application, the grounds on the face of the Motion and the affidavits filed in support thereof. I have also considered the replying affidavits filed by the defendants together with the written and oral submissions made by Counsel for the parties. The issues that arise for determination are –
  - i. Whether Mr. Waireri had the requisite locus standi to file the application herein; and
  - ii. Whether an order for temporary injunction should issue against the defendants.
16. The plaintiff in its supporting affidavit sworn by Mr. Walter Kigera Waireri deposed that the 4<sup>th</sup> to 15<sup>th</sup> defendants had through an advertisement in the Daily Nation Newspapers of 7<sup>th</sup> September, 2023 convened the plaintiff's Annual General Meeting scheduled to take place on 29<sup>th</sup> September, 2023 (now past) at St Joseph's Catholic Church, Gatundu South, Kiambu County.
17. He averred that on 30<sup>th</sup> July, 2019, Hon. Lady Justice Grace Nzioka gave interlocutory orders pending the hearing and final determination of this suit which were to guide the governance and internal management of the affairs of the plaintiff in the intervening period. That one of the orders given on that date was that the Directors of the company who were then in office were to continue transacting the business and the management of the affairs of the plaintiff until the hearing and final determination of this suit, and the names of the 2<sup>nd</sup> to 15<sup>th</sup> defendants were to remain in the CR-12 issued by the 1<sup>st</sup> respondent on 15<sup>th</sup> July, 2019.
18. He further averred that in view of the above, the defendants have no capacity to convene any meeting of the plaintiff as the instruments of management and statutory instruments including the Shareholders' Register, are domiciled in the plaintiff's Head Office at Ruai, Embakasi, Nairobi County, to which the defendants have no access.



19. It was stated by the plaintiff that all the plaintiff's general meetings have for over the decades since 1975 been held at its Head Office grounds at Ruai or next door at Muhuri Muchiri Secondary School, except for the meeting of 19<sup>th</sup> April, 2019 when the defendants purported to hold the impugned meeting at the Kenyatta International Conference Centre. He further stated that the meeting of 29<sup>th</sup> September, 2023 was intended to be held at a venue unknown to the majority of the shareholders.
20. Mr. Waireri contended that the Register that was to be used in the scheduled general meeting is unknown, since there is a dispute in this suit as to who the bonafide shareholders of the plaintiff company are. He further contended that the 4<sup>th</sup> to 15<sup>th</sup> defendants claim that the plaintiff has 2000 shareholders, whereas the plaintiff claims that it has 10,000 shareholders.
21. The 4<sup>th</sup> defendant in his replying affidavit deposed that the deponent of the plaintiff's affidavit in support of the application herein is not a recognized Director of the plaintiff company, thus he lacks any legal capacity to transact any business on behalf of the plaintiff. He averred that the directorship and the running of the day-to-day operations of a company is the preserve of the persons appearing on the CR-12.
22. It was stated by the 4<sup>th</sup> defendant that the impugned advert was made by the Company Secretary and there is no evidence of wrong doing or violations of the Companies Act, 2015 that have been pleaded by the plaintiff. He further stated that the meeting of 29<sup>th</sup> September, 2023 was necessitated by a Notice dated 25<sup>th</sup> July, 2023 by the shareholders of the plaintiff company, requesting the Company Secretary to convene an AGM.
23. The 4<sup>th</sup> defendant contended that there are no Court orders stopping the plaintiff's shareholders from requesting for, convening and holding an AGM at a venue of their choice. He asserted that to the best of his knowledge the meeting of 29<sup>th</sup> September, 2023 did not take place since it was cancelled vide a cancellation notice/advert dated 24<sup>th</sup> September, 2023, that was made and circulated through the Daily Nation Newspapers.
24. The 4<sup>th</sup> defendant deposed that the application herein amounts to asking this Court to curtail, gag and suspend the rights of shareholders which are provided for under Sections 34 and 275A of the Companies Act.
25. The 6<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup> & 15<sup>th</sup> defendants in their replying affidavit sworn by Mr. Joseph Juan Kanani, deposed that the existence of this case should not interfere with the running of the plaintiff company, since the Court order will not absolve the current CR-12 Directors' criminal liability for failing to file returns. He averred that the orders sought limit the course of law to take effect and put the plaintiff company in serious jeopardy as the failure to hold annual general meetings is continuous, and may lead to the Directors on the company's CR-12 being penalized by the Registrar of Companies.
26. Mr. Kanani urged this Court to lift the current orders of injunction that are in place as they usurp the rights of shareholders to ensure the company is operational. He stated that the failure to hold an AGM in the last four years is detrimental to the plaintiff company as either the 1<sup>st</sup> defendant or any other member during the pendency of this suit may apply for de-registration of the company or its dissolution, thus affecting the shareholders who have not been issued their land rights.
27. The 10<sup>th</sup> defendant in her replying affidavit deposed that the plaintiff's AGM was convened by its Company Secretary pursuant to a Notice dated 25<sup>th</sup> July, 2023 issued by the plaintiff's members/shareholders, for convening of the said AGM since the plaintiff's Directors who were reinstated by the Court on 31<sup>st</sup> July, 2019 refused to convene the said meeting as instructed by the plaintiff's shareholders in a meeting held on 19<sup>th</sup> May, 2023.



28. She averred that the Company Secretary of the plaintiff company reports to the Board of Directors, thus the Board in office was well aware of the shareholders' demands but chose to ignore them. She further averred that pursuant to the provisions of Section 279 of the *Companies Act*, the plaintiff's shareholders have the power to convene a General Meeting at the expense of the company if after having been required to convene a general meeting under Section 277 of the said Act, the Directors fail to do so as required by Section 278 of the Act, which is the case here.
29. It was stated by the 10<sup>th</sup> defendant that none of the orders issued by this Court have stopped the plaintiff company from performing its statutory obligations as provided for in the *Companies Act* including holding General Meetings and electing or removing directors.
30. The depositions contained in the replying affidavits of the 12<sup>th</sup> & 13<sup>th</sup> defendants are a replica of the 10<sup>th</sup> defendant's relying affidavit, thus I shall not reproduce them.
31. In its further affidavit, the plaintiff deposed that the 10<sup>th</sup>, 11<sup>th</sup> & 13<sup>th</sup> defendants are inviting this Court to sanitize an illegality and contempt of Court, which invitation this Court should not countenance. Whether Mr. Waireri had the requisite locus standi to file the application herein.
32. The defendants contended that the deponent of the plaintiff's affidavit in support of this application Mr. Walter Kigera Waireri, has no locus standi to file the application herein on behalf of the plaintiff, since he has not demonstrated that he is a Director of the plaintiff company and that the plaintiff's Board of Directors resolved to file the instant application. On the issue of whether or not Mr. Waireri is a Director of the plaintiff company, this Court notes that in its ruling of 28<sup>th</sup> July, 2023, having interrogated the Court orders issued by Hon. Justice Nzioka on 31<sup>st</sup> July, 2019 and the two rulings by Hon. Judge Chepkwony dated 18<sup>th</sup> October, 2022 and 13<sup>th</sup> March, 2023, it held that –

“As correctly submitted by Mr. Kithi, the orders that would regulate the issue of the plaintiff's representation are those issued by Hon. Judge Nzioka on 31st July, 2019. Hon. Judge. Chepkwony in a bid to interpret the said directions held that by virtue of the Court orders issued on 31st July, 2019, the former directors who were still in office continue holding office, hence the newly elected directors whose names are in the company's CR-12 are precluded from assuming any office duties including appointment of Advocates on behalf of the plaintiff company until the dispute herein is heard and determined.”
33. Further, as can be seen from the Court record, on 28<sup>th</sup> February, 2020, Mr. Waireri testified as PW2 on behalf of the plaintiff. During examination-in-chief, he stated that he has been a Director and Chairman of the plaintiff company since the year 2015 when they took over office. The said fact was not controverted by any of the defendants during cross-examination. In view of the foregoing, even though Mr. Waireri is not listed in the plaintiff company's CR-12 as one of the plaintiff's Directors, being a Director of the plaintiff company before the Directors currently listed in the plaintiff's CR-12 were allegedly elected, he is rightly still in office and was within his rights to assume any office duties including swearing an affidavit on behalf of the plaintiff company, since the orders made by Judge Nzioka on 31<sup>st</sup> July, 2019 are still in place.
34. Further, all the affidavits filed on behalf of the plaintiff in this suit have been sworn by Mr. Waireri in his capacity as a Director of the plaintiff company, and the defendants have never challenged his Directorship and/or the legality of the said affidavits on grounds that they were sworn by a non-Director, and/or without a resolution from the plaintiff company. Given the said circumstances, the defendants are estopped from challenging Mr. Waireri's Directorship of the plaintiff company pending the further hearing and determination of the case.



35. On the second issue of whether or not the plaintiff's Board of Directors resolved to file the instant application, it is trite law that where a suit is to be instituted for and on behalf of a company, there should be a company resolution to that effect. This is pursuant to the provisions of Order 4 Rule 1(4) of the Civil Procedure Rules, 2010 which states as hereunder –

“Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.”

36. Order 4 of the Civil Procedure Rules, 2010 relates to plaintiffs. Further, Order 4 Rule 1 (5) of the said Rules provides that the provisions of sub-rules (3) and (4) shall apply mutatis mutandis to counter-claims. It is evident that the said provision make no reference to the affidavits sworn in support of applications. It is my considered view that the provisions of Order 4 of the Civil Procedure Rules, 2010 do not apply to applications and affidavits filed in support and/or in opposition thereof. Applications are provided for under Order 51 of the Civil Procedure Rules, 2010. Order 51 Rule 4 provides that–

“Every notice of motion shall state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served.”

37. From the above provisions, the requirement to file a Board resolution is only at the point of institution of a suit and not when filing interlocutory applications in an existing suit, as the company has already authorized institution of the said suit. In the Ugandan case of *United Assurance Co. Ltd v Attorney General SCCA NO.1 of 1998* quoted by the Court in the case of *Bethany Vineyards Limited & another v Equity Bank Limited & 2 others [2020] eKLR*, the Supreme Court of Uganda addressed this issue and held that –

“... It was now settled, as the law, that, it does not require a board of directors, or even the general meeting of members, to sit and resolve to instruct Counsel to file proceedings on behalf and in the names of the Company. Any director, who is authorized to act on behalf of the company, unless the contrary is shown, has the powers of the board to act on behalf of that Company.”

38. Bearing in mind the above decision, and having found that Mr. Waireri is a Director of the plaintiff company and has every right to assume any office duties with regard to the plaintiff company, it was neither mandatory nor necessary for him to demonstrate that the plaintiff company had resolved to file the application herein.

39. In the premise, this Court finds that Mr. Waireri had the requisite locus standi to file the affidavit in support of the application herein.

Whether an order of temporary injunction should issue against the defendants.

40. This application is heavily anchored on the Court orders issued by Hon. Lady Justice Nzioka on 31<sup>st</sup> July, 2019 where she held inter alia–

“That in the meantime status quo on the ground being that the directors in the office to remain in the office and the ones indicated in the CR-12 form as directors to remain as such.”

41. As explained, in paragraph 32 of this ruling, this Court in its ruling delivered on 28<sup>th</sup> July, 2023 held that the orders made by Hon. Lady Justice Nzioka were to stay in force pending the hearing and determination of the dispute between the parties herein and/or this suit. For this reason, the



defendants' contention that the said orders were only valid during the pendency of the application dated 17<sup>th</sup> April, 2019, and that they elapsed upon determination of the said application are unfounded and far from being truthful.

42. The defendants have denied having convened the meeting of 29<sup>th</sup> September, 2023 and stated that the said meeting was convened by the plaintiff's Company Secretary, on the instructions of the plaintiff's shareholders contained in the Notice dated 25<sup>th</sup> July, 2023, pursuant to the provisions of Section 279 of the Companies Act. They further stated that there are no orders in place barring the plaintiff's shareholders from exercising their rights under Section 279 of the Companies Act. This Court has perused the Notice dated 25<sup>th</sup> July, 2023 and noted that it refers to a meeting that took place on Friday 19<sup>th</sup> May, 2023 held in the presence of the plaintiff's Board of Directors, where it was resolved that the plaintiff's Board of Directors would promptly organize an AGM, and that since they had failed to do so, a number of the plaintiff's shareholders requested the plaintiff's Company Secretary to convene an Extra Ordinary General Meeting whose agenda was to conduct elections for the plaintiff's Board of Directors.
43. The minutes of the meeting that was supposedly held on 19<sup>th</sup> May, 2023 were not exhibited by any of the parties to this suit in order for this Court to ascertain whether such a meeting was held, which group of Directors (if any) was present in the said meeting, and what resolutions were arrived at, in the said meeting. Further, in as much as the defendants contend that the meeting of 29<sup>th</sup> September, 2023 was convened by the plaintiff's shareholders, the advert of the said meeting annexed to the plaintiff's affidavit in support of the instant application shows that the said meeting and agenda was by order of the Board of Directors and not shareholders of the plaintiff company.
44. The deponent of the plaintiff's supporting affidavit who is a Director of the plaintiff company disowned the said Notice, and averred that Mr. Bernard Kiragu is not the plaintiff's Company Secretary. However, on perusal of the plaintiff's CR-12 dated 2<sup>nd</sup> August, 2023, annexed to the 6<sup>th</sup>, 9<sup>th</sup> & 11<sup>th</sup> defendants' replying affidavit, the said Bernard Kiragu is listed as the Secretary. The same information also appears on the plaintiff's CR-12 dated 17<sup>th</sup> January, 2023, annexed to the 4<sup>th</sup> defendant's replying affidavit, and the one dated 12<sup>th</sup> September, 2022 annexed to the 10<sup>th</sup>, 12<sup>th</sup> & 13<sup>th</sup> defendants replying affidavits. On perusing all the aforesaid CR-12s, I note that the Directors listed thereon are not only the same, but are also the defendants herein.
45. This means that the Board of Directors that Mr. Bernard Kiragu was referring to in the advertisement of the meeting for 29<sup>th</sup> 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 31<sup>st</sup> July, 2019. Even though I agree with Counsel for the 8<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> & 13<sup>th</sup> 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.”
46. From the foregoing, even if this Court was to find that the meeting of 29<sup>th</sup> September, 2023 was convened by the plaintiff's shareholders, the defendants have not demonstrated that the said



shareholders complied with the provisions of Sections 277(7) of the *Companies Act*, which requires that the Notice to the Board of Directors should be in writing. For this reason, this Court finds that the plaintiff's shareholders had no right to convene a General Meeting that had not been sanctioned by the plaintiff's Board of Directors who were in office as at 31<sup>st</sup> July, 2019 when Hon. Lady Justice Nzioka issued status quo orders.

47. The above notwithstanding, this Court gave an interlocutory injunction pending the hearing and determination of the application herein on 28<sup>th</sup> September, 2023, thus stopping the meeting of 29<sup>th</sup> September, 2023 from taking place. In addition, on 24<sup>th</sup> September, 2023 a cancellation notice/advert dated 24<sup>th</sup> September, 2023 was made and circulated through the Daily Nation Newspapers, which is the same mode that was used to advertise the Notice of the said meeting. This can be seen from annexure GG2 attached to the 4<sup>th</sup> defendant's replying affidavit. It is evident from the defendants' affidavits that as a result of the said cancellation, the 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup> & 15<sup>th</sup> defendants did not attend the meeting of 29<sup>th</sup> September, 2023.
48. The 8<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> & 13<sup>th</sup> defendants in their replying affidavits confirm that the police from Kiganjo Police Station dispersed the crowd from the original meeting venue, thus they met at a different location. In view of the aforesaid events, this Court is not in a position to confirm how many people attended the said meeting that the 8<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> & 13<sup>th</sup> defendants allege took place, and if the attendees formed the required quorum to proceed with a General Meeting, noting that there is a dispute of even who the bonafide shareholders of the plaintiff company are.
49. Having found that the meeting of 29<sup>th</sup> September, 2023 was convened by the plaintiff's Board of Directors as they appear on the plaintiff's CR-12, and who are also the defendants herein, the 8<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> & 13<sup>th</sup> defendants' contention that the Court orders of 28<sup>th</sup> September, 2023 were issued to the wrong parties, thus they could not be enforced are neither here nor there. In any event, the said meeting of 29<sup>th</sup> September, 2023 was illegal and irregular since it was convened by a Board of Directors who have orders restricting them from assuming any of the plaintiff's office duties, and there was a Court order stopping the said meeting from taking place.
50. In addition, this Court in its ruling of 28<sup>th</sup> July, 2023 held that the Court (differently constituted) has on two different occasions held that the plaintiff's Directors who were in office as at 31<sup>st</sup> July, 2019 when Hon. Lady Justice Nzioka issued status quo orders were to remain in office until the suit was heard and determined. For this reason, the defendants and/or the plaintiff's shareholders cannot at this juncture purport to elect new Directors. In view of the foregoing, I am persuaded that if the instant application is not allowed, the plaintiff shall suffer irreparable loss and harm that cannot be compensated by an award of damages. This is because new Directors will have been elected, thus the plaintiff company shall have a set of three Board of Directors fighting over the management and/or control of the affairs of the plaintiff company, hence exposing the plaintiff's shareholders to loss.
51. In the premise, this Court finds that the plaintiff has satisfied the conditions that warrant being granted an order of interlocutory injunction as was set out in the case of *Giella v Cassman Brown & Company Limited* (supra), that-

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”



52. The above holding was applied with approval by the Court of Appeal in the case of Mrao Limited v First American Bank of Kenya Ltd. & 2 others [2003] eKLR where it was held that -

“So, what is a prima facie case” I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”

53. On the allegation that the plaintiff’s Directors who were reinstated by this Court on 31<sup>st</sup> July, 2019 have failed to hold an AGM for the plaintiff since their reinstatement, thus exposing the plaintiff company and its Directors as they appear on the CR-12 to penalties, fines and the risk of the plaintiff company being de-registered by the 1<sup>st</sup> defendant, this Court notes that the Companies Act provides avenues to the defendants and any other shareholder of the plaintiff company to move the Court for appropriate orders to that effect.

54. In order for the plaintiff company to move on with its affairs swiftly without interruption from any person or entity, the dispute between the parties herein has to be determined by the Court with finality instead of numerous applications being filed. The plaintiff adduced evidence and has since closed its case, thus what is pending is the hearing of the defendants’ case, which has taken approximately four (4) years to take off. For this reason, this Court finds that it is in the interest of justice to expedite the hearing of the defendants’ case and thereafter, delivery of the a judgment in this suit which will address all the issues in controversy between the parties herein.

55. In the circumstances, this Court finds that the application dated 28<sup>th</sup> September, 2023 is merited. Consequently, I make the following orders -

- i. An interlocutory injunction is hereby issued restraining the 4<sup>th</sup>-15<sup>th</sup> defendants by themselves, their agents and/or servants from holding the Annual General Meeting of the plaintiff/ applicant Scheduled for 29<sup>th</sup> September, 2023 (now past) at St Joseph’s Catholic Church, Kiganjo, Gatundu South, Kiambu County, or any other day and venue whatsoever, pending the hearing and final determination of this suit;
- ii. Costs are awarded to the plaintiff to be borne by the 4<sup>th</sup> - 15<sup>th</sup> defendants.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14<sup>TH</sup> DAY OF JUNE, 2024. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Mr. Ngata Kamau for the plaintiff

Ms Mutua h/b for Mr. Macharia for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 7<sup>th</sup> defendants

Mr. Musa h/b for Mr. Kithi for the 4<sup>th</sup> & 5<sup>th</sup> defendants

Mr. Kariuki for the 8<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> defendants



Mr. Mirie h/b for Mr. Keng'ara for the 6<sup>th</sup> & 9<sup>th</sup> defendants

Mr. Luyai – Court Assistant.

