



Kirobon Farmers Co. Limited v Kandie & 6 others; Sigei & another & another (Interested Parties) (Civil Suit E016 of 2021) [2024] KEHC 9734 (KLR) (8 August 2024) (Ruling)

Neutral citation: [2024] KEHC 9734 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL SUIT E016 OF 2021
HI ONG'UDI, J
AUGUST 8, 2024**

BETWEEN

KIROBON FARMERS CO. LIMITED PLAINTIFF

AND

DANIEL KANDIE 1ST DEFENDANT

CHRISTOPHER KOMEN 2ND DEFENDANT

PATRICK CHEPKWONY 3RD DEFENDANT

SUSAN RONO 4TH DEFENDANT

SIGILAI CHERUIYOT 5TH DEFENDANT

BETTY TOO 6TH DEFENDANT

STANLEY CHEMNGOREM 7TH DEFENDANT

AND

JACKSON SIGEI & ANOTHER INTERESTED PARTY

KIBWABE ARAP BYOMNDO INTERESTED PARTY

RULING

1. This ruling is in respect of two applications. The first one is dated 22nd August, 2023 while the second one is dated 19th September, 2023.
2. In the application dated 22nd August, 2023 the defendants / applicants pray for the following orders:
 - i. Spent.



- ii. That this honourable court be pleased to order the Plaintiff to conduct another general meeting for election of directors under the supervision of the Registrar, Companies.
 - iii. That the said meeting be held at Nakuru Agricultural show ground.
 - iv. That the Officer Commanding Station, Nakuru Central Police Station to provide security.
 - v. That the costs of this application be granted in the cause.
3. The application is based on the grounds on its face and the 1st defendant/applicant's affidavit sworn on even date. He deposed that the plaintiff/respondent did an advert to its members of an Annual General Meeting (AGM) which was to be held on 18th August, 2023. All the members were invited and the main agenda communicated as being election of directors as per the directions of the court. In its ruling delivered on the 27th July 2023, the court directed that the AGM be held in tandem with the consent orders issued on the 16th July 2023(sic) and the same be chaired by the Registrar of Companies.
 4. He deposed further that the plaintiff/respondent proceeded to hold the meeting in the absence of the Registrar of Companies and in contravention of the orders issued by this honourable court. Additionally, that attempts to postpone the meeting to a further date when the Registrar of Companies would be notified were met with stern rejection and hostility forcing them to flee the venue. Thereafter the plaintiff/respondent proceeded to appoint an interim team to lead the said election and AGM.
 5. He went on to depose that it was prudent that the resolutions from the aforementioned AGM be rendered null and void and an order issued for another AGM to be conducted under the guidance of the Registrar of Companies. Further, that it was in the interest of justice and that of the elderly members of the company that the meeting be held at Nakuru Agricultural Showground to enable them participate. This is to avoid the possibility of violence, since these elderly members reside in Ngata within Nakuru, Rongai area. It is his desire that the OCS Nakuru Central police station is directed to provide security when the AGM is held.
 6. The plaintiff/respondent in its written submissions indicated that it filed a replying affidavit dated 29th August 2023. This court upon perusal of the entire court record did not find the said affidavit.
 7. The application dated 19th September, 2023 was filed by the defendants/applicants seeking the following orders;
 - i. spent.
 - ii. That an Order for temporary injunction be and is hereby issued against the newly elected and registered directors of the Plaintiff/Respondent from taking over the conduct and operations of the Respondent pending the determination of the Application dated 22nd August 2023.
 - iii. That costs of this application be provided for.
 8. The application is based on the grounds on its face and the affidavit of the 1st defendant/applicant sworn on even date. He deposed that the defendants/applicants had filed an application dated 22nd August, 2023 seeking for orders barring the assuming office by the purportedly elected directors during the AGM held on 18th August, 2023. That pending the hearing and determination of the said application, the purportedly elected officials and others not elected went ahead to have themselves registered as directors of the plaintiff.
 9. It is his averment that should the court fail to restrain the purportedly registered directors, the application dated the 22nd August 2023 shall be rendered moot and the court shall make orders in



vain, since the subject matter would have been overtaken by events. She added that they would suffer irreparable loss and damage unless the orders sought therein were granted.

10. In response, the plaintiff/respondent filed a replying affidavit dated 4th October, 2024 and sworn by one of its directors Samuel K. Birir. He averred that the application dated 19th September, 2023 was an abuse of the court process for reasons that there were other similar applications filed by the applicants in the present matter. These are dated 26th January 2022, 28th March 2023, 22nd August 2023 and the present one.
11. He deposed further that they had not elected and registered themselves as directors of the company since the said directors were all elected by the members. Also, that the present application had been overtaken by events as the directors duly elected had been endorsed by the Registrar of Companies. Furthermore, that the election was held on 18th August 2023 while the applicants filed their application on 22nd August 2023 and had failed to raise any issue during the AGM. He added that the applicants had not filed any counter claim and they could therefore not apply for interim orders of injunction.
12. Both applications were canvassed by way of written submissions.

Defendants/Applicants' submissions

13. These are dated 2nd July, 2024 having been filed by GKL Advocates LLP on 12th July, 2024. Counsel identified two issues for determination.
14. The first issue is whether the court should grant orders of temporary injunction. Counsel submitted that the applicants who are members of the plaintiff/respondent would suffer irreparable injury if the said order is not granted. Further, that some of the directors who were not elected went ahead and registered themselves as directors. That the said actions clearly indicate that the registered directors did not have the best interests of the company at heart.
15. He further submitted that the applicants were apprehensive that the actions of the newly elected directors were detrimental to the operations of the company and the same would affect them as members. In support of his submissions counsel placed reliance on the decisions in *Giella v Cassman Brown & Company Limited* [1973] EA 358, *Mrao Ltd v First American Bank of Kenya Limited and 2 Others* [2003] eKLR, *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR and *Amir Suleiman v Amboseli Resort Limited* [2004] eKLR.
16. The second issue is whether another AGM for election of directors should be held. Counsel submitted that since the meeting held by the respondent on 18th August 2023 was contrary to the court orders issued on 16th July 2023(sic) then the resolutions made were not binding on the members of the company. That it was therefore essential that the court orders for another AGM for the election of directors.
17. In conclusion, counsel submitted that the applicants had met the criteria for grant of the orders sought and urged the court to allow the applications as prayed.

Plaintiff/respondent's submissions

18. These are dated 24th May, 2024 and were filed by Ochieng' Gai & Company Advocates on 27th February, 2024. Counsel reiterated the contents of the applications herein together with the responses thereto and submitted that the said applications were an abuse of the court process since the applicants took advantage of the existing suit to file seven (7) applications thereby wasting the court's time.



19. He further submitted that the respondent could not force the Registrar of companies to attend and chair a meeting and it was enough for them to notify and invite the said office for the said meeting. He urged the court to dismiss the application dated 22nd August, 2023 with costs and the suit be set down for hearing on a priority basis.

Analysis and determination

20. I have considered the two applications together with the affidavits sworn in support, the replying affidavits, the grounds of opposition and the submissions by the respective parties. I opine that the issue for determination by this court is whether both applications or either of them is merited.
21. I will first deal with the application dated 22nd August 2023 which seeks for orders that the plaintiff/respondent conducts another AGM for election of directors at Nakuru Agricultural show ground under the supervision of the Registrar, Companies and the OCS Nakuru Central Police Station to provide security.
22. It is not in dispute that the plaintiff/respondent conducted an AGM for the election of new directors on 18th August, 2023. However, the defendant/applicants contend that the same was done in total disregard of the orders issued by this court on the 16th July 2023 (sic). The plaintiff/respondent is of a contrary view and argues that the AGM was conducted lawfully, the directors were elected rightfully and it was the defendants/applicants who were keen on wasting the court's precious time.
23. Having looked at the orders issued on 16th July 2021 and not 16th July, 2023 as referred to by the defendants/applicants, I note that the orders issued therein were specific on the date, venue and time when the AGM by the plaintiff/respondent was to be conducted. Further, the court also directed that the said AGM be presided over by the Registrar of Companies or his representative. The plaintiff/respondent does not deny having conducted the AGM on 18th August 2023 in the absence of the Registrar of companies or his/her representative. In its submissions, counsel argued that it was not in the plaintiff's/respondent's place to force the Registrar of companies to attend the AGM and the much it could do was to issue a notice and send an invitation.
24. In view of the above, it is evident that the plaintiff/respondent in conducting the AGM on 18th August 2023 and in the absence of the Registrar of companies defied the court orders issued on 16th July, 2021 which emanated from a consent entered by both parties. Clearly, the plaintiff/respondent has not been keen on ensuring that the Registrar of companies or his representative presides over the AGM as agreed by the parties and ordered by the court. The sending of a letter or notice to the Registrar in my opinion is not sufficient. The plaintiff/respondent ought to have done everything in its power to secure the attendance of the Registrar of companies or his representative before conducting the AGM since that is what the parties consented to. This court notes that the plaintiff/respondent has been in constant defiance of court orders and the rulings delivered by this court on 23rd June 2022 and 27th July 2023 is proof of the same. The defendants/applicants sought for similar orders as in the present application and the court vide the aforementioned ruling set aside the AGM conducted on 29th December 2021.
25. The consent entered into by the parties on 16th July 2021 on how the AGM is to be conducted is still in place and the parties herein are therefore bound by it. *In SNI v AOF* [2020] eKLR the court held as follows;

“Prudence, indeed will dictate that parties legal effect deprived from the consent orders should be deliberately be bound unless there is evidence that every material fact in their possession was invariably mistaken or mis-represented to warrant a variation or complete



setting aside the order. It is integral as the Court held in *Flora N. Wasike v Destinno Wamboko* [1988] eKLR that:

“It is now settled Law that a consent Judgment or order has a contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out. (See the decision in *J. M. Mwakio v Kenya Commercial Bank Ltd CA No. 28 of 1982*).”

26. For the above reasons I find the application dated 22nd August 2023 to be merited. It follows that the AGM conducted on 18th August, 2023 was not in line with the court orders issued on 16th July, 2021. It is therefore inconsequential, null and void. It follows that the application dated 19th September, 2023 is overtaken by events. The application dated 22nd August, 2023 is hereby allowed.
27. The plaintiff/respondent is directed to organize and comply with the consent order of 16th July, 2021. The AGM shall be held on 10th September, 2024 at Nakuru Agricultural Show ground at 10am. The rest of the terms of consent to remain intact. This matter will be mentioned on 24th September, 2024 to confirm compliance and further directions on the hearing.
28. These orders to be served on the Registrar of Companies, and OCS Nakuru Central Police Station for compliance.
29. Costs shall be in the cause
30. Orders accordingly

DELIVERED VIRTUALLY THIS 8TH DAY OF AUGUST, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG’UDI

JUDGE

