



**Kishushe Ranching Cooperative Society Ltd v Mwandoto (Civil Case E004 of 2023) [2024] KEHC 13002 (KLR) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 13002 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL CASE E004 OF 2023  
GMA DULU, J  
SEPTEMBER 19, 2024**

**BETWEEN**

**KISHUSHE RANCHING COOPERATIVE SOCIETY LTD ..... PLAINTIFF**

**AND**

**DANSON KIDAI MWANDOTO ..... DEFENDANT**

**RULING**

1. Before me is an application brought by way of Amended Notice of Motion dated 23<sup>rd</sup> October 2023 filed under Order 51 Rule 1 and Order 40 of the Civil Procedure Rules, as well as Section 1A, 1B, 3 and 3A of the *Civil Procedure Act* (Cap.21).
2. The application was filed through counsel Mutinda & Wambura Nthiga Advocates for the plaintiff (hereinafter referred to applicant), and seeks the following orders:-
  1. (Spent).
  2. (Spent).
  3. That the court be pleased to issue an order of temporary injunction restraining and barring the respondent together with his agents, servants and/or workers from implementing and/or giving effect to any of the resolutions made at the Special General Meeting (SGM) held on 18<sup>th</sup> August 2023 pending hearing and determination of the suit.
  4. That the costs of the application be provided for.
3. The application has grounds on the face of the Notice of Motion, that the respondent was on 2<sup>nd</sup> February 2023 unanimously suspended as Secretary by the applicant's Board of Management; that since the said suspension however, the respondent had through several notices attempted to convene meetings in the name of the applicant; that on 3<sup>rd</sup> October 2023 the respondent issued a Notice calling a Special General Meeting (SGM) to be held on 18<sup>th</sup> October 2023 at Werugha Multipurpose Hall; that



- the meeting was not sanctioned by the Board of Management of the applicant; that the respondent nonetheless proceeded to hold a Special General Meeting on 18<sup>th</sup> October 2023 in which resolutions were passed forming a parallel Board of Management; that thereafter the respondent had commenced spirited actions towards effecting the resolutions passed on 18<sup>th</sup> October 2023 by attempting to change bank signatories in respect of the applicant's bank accounts held at Cooperative Bank Ltd Voi Branch; that the respondent's attempts to run the affairs of the ranch (applicant) while suspended was against the principles of corporate governance and ought to be stopped forthwith.
4. The Amended Notice of Motion herein, was filed with a supporting affidavit sworn on 23<sup>rd</sup> October 2023 by Narcis Chombo Shete described as Chairman of the Board of Management of the applicant, which amplifies the grounds of the application. Annexed to the said affidavit are a number of documents, including extracts of minutes of the applicant Board of Management meetings held in 2023, and a letter from the County Cooperative Commissioner of Taita Taveta County dated 13<sup>th</sup> October 2023, on the composition of the Board of Management and the Supervisory Board of the applicant.
  5. The application was opposed through a Preliminary Objection filed by the respondent through counsel M/s Jengo Associates Advocates on 20<sup>th</sup> November 2023 in which it was contended that this court has no jurisdiction to deal with the dispute herein under Section 76 and 77 of the Cooperative Societies Act (Cap.490). This preliminary objection was however dismissed by this court vide a ruling delivered on 8<sup>th</sup> May 2024.
  6. The application was also opposed through a replying affidavit sworn on 23<sup>rd</sup> February 2024 by Simeon Mwakajo Irina the County Director of Cooperatives, in which it was deponed that for over four (4) years no members meeting had been convened to discuss the cooperative society's accounts which had never been audited; that there had arisen an issue of mining on the ranch land; that Kishushe Ranching Cooperative Society Ltd was the predecessor of Kishushe Cooperative Society Ltd; that the purported amendment of the by-laws had contravened the provisions of the Cooperative Societies Act.
  7. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Mutinda & Wambura Nthiga Advocates for the applicant, as well as the submissions filed by Jengo Associates Advocates for the respondent. Both sides relied upon decided court cases. I note also that the law firm of Kihiko & M Law Advocates LLP, filed submissions for the respondent, though I did not see any pleading filed by them.
  8. This being an application for interlocutory injunctive orders pending hearing and determination of the substantive suit, the considerations to be taken by a court in such an application are as clearly stated in the case of *Giella =Versus= Cassman Brown Ltd (1973) 158*. In brief, the applicant must demonstrate to this court that he has a prima facie case with probability of success. Secondly, the applicant must demonstrate that if the injunctive orders sought are not granted, the applicant will suffer irreparable damage or loss which is not capable of adequate compensation in the form of award of damages. Thirdly, if the court is in doubt, it will decide the application on the balance of convenience.
  9. Has the applicant herein demonstrated a prima facie case with probability of success? A prima facie case, is a case which may possibly succeed, not a case that must succeed. In this regard, in my view, it is sufficient if I only cite the case of *Mrao Ltd =Versus= First American Bank of Kenya Ltd & 2 Others (2003) KLR 125*.
  10. In the present case, the dispute raised in the application and case is on the legality or regularity of a Special General Meeting (SGM) of the applicant held in October 2023 and resolutions made therein



and actions therefrom. That being so, depending on the evidence to be tendered in the substantive trial, the court's decision might go either way.

11. In my view therefore, the applicant has demonstrated a prima facie case with probability of success.
12. Will the applicant suffer irreparable loss or damage if the injunctive orders sought are not granted? In my view, from the evidence and facts placed before me in this application, the applicant has not demonstrated that it will suffer irreparable loss or damage, if the injunctive orders sought are not granted. In this regard, the applicant being a corporate entity as a company, is not the property of a Board Member or Board Members, but the property of the general membership.
13. Thus mere jostling for Board of Management membership positions cannot be said to constitute irreparable loss, unless those who might be in office at any time are alleged to be doing illegal and detrimental acts to the company and membership which cannot be adequately compensated in the form of damages.
14. Since no such evidence of detrimental acts has been placed before me, I thus find that the applicant has not demonstrated that they will suffer irreparable loss, if the temporary injunctive orders sought are not granted.
15. As for the balance of convenience test, in my view in the present case, it is more prudent to let the corporate body continue to operate, rather than grant injunctive orders to satisfy personal interests of individuals, which could result in disabling its operations for an indefinite period. Such stoppage of the company's operations would not make business sense and may infact be destructive to the company.
16. Thus, since the application does not meet all the requirements for the grant of interim injunctive orders, I find no merits in the application.
17. I dismiss the amended Notice of Motion application dated 23<sup>rd</sup> October 2023, and decline to grant any of the orders sought. As there is still the pending the main suit herein, costs of this application will follow the decision in the main suit.

**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred – Court Assistant

Mr. Mutinda for applicant

Mr. Mutugi and Mr. Jengo for respondent

