



REPUBLIC OF KENYA



**Mndeke & 8 others v County Livestock Officer - Taita Taveta County Peter Mwashighadi & 4 others (Judicial Review 1 of 2024) [2024] KEHC 11035 (KLR) (16 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11035 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
JUDICIAL REVIEW 1 OF 2024**

**GMA DULU, J**

**SEPTEMBER 16, 2024**

**(FORMERLY NAIROBI JR MISC. APP NO. E014 OF 2024)**

**IN THE MATTER OF: AN APPLICATION BY THE  
MGENO RANCHING (DIRECTED AGRICULTURAL)**

**CO. LTD**

**AND**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO COMMENCE  
PROCEEDINGS IN THE NATURE OF JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF: THE COMPANY ACT 2015,**

**AND**

**IN THE MATTER OF: SECTIONS 8 AND 9 OF THE  
LAW REFORM ACT CAP 26 LAWS OF KENYA**

**BETWEEN**

**PETER SOWA MNDEKE ..... 1<sup>ST</sup> APPLICANT**  
**ARNOLD MSHE SHE ..... 2<sup>ND</sup> APPLICANT**  
**AFIZI NYAMBU IBRAHIM ..... 3<sup>RD</sup> APPLICANT**  
**CLANTONE MWANGOE WADU ..... 4<sup>TH</sup> APPLICANT**  
**FERDINAND MWANGAZI ..... 5<sup>TH</sup> APPLICANT**  
**WRIGHT MCHARO ..... 6<sup>TH</sup> APPLICANT**  
**BEN MGAHANA ..... 7<sup>TH</sup> APPLICANT**  
**JOE MSHINDO ..... 8<sup>TH</sup> APPLICANT**



JOHNSON MWANJEWI ..... 9<sup>TH</sup> APPLICANT

AND

COUNTY LIVESTOCK OFFICER - TAITA TAVETA COUNTY PETER  
MWASHIGHADI ..... 1<sup>ST</sup> RESPONDENT

MARTIN OWINDO ..... 2<sup>ND</sup> RESPONDENT

THE OFFICE OF LIVESTOCK OFFICER - TAITA TAVETA  
COUNTY ..... 3<sup>RD</sup> RESPONDENT

ISSAC MBOGHO ..... 4<sup>TH</sup> RESPONDENT

THE MGENO RANCHING (DIRECTED AGRICULTURAL) COMPANY  
LIMITED ..... 5<sup>TH</sup> RESPONDENT

### RULING

1. Before me is a Notice of Motion dated February 16, 2024 filed by the nine (9) *ex parte* applicants through counsel Osero & Company Advocates under the [Companies Act](#) 2015, as well as Section 8 of the [Law Reform Act](#) (cap.26) and Order 53 Rule 3 of the [Civil Procedure Rules](#).
2. The application seeks the following orders:-
  - a. An order of certiorari to quash the decision of the respondents made on December 23, 2023 during the AGM of the 5<sup>th</sup> respondent.
  - b. An order of prohibition prohibiting the respondents from acting, issuing orders, directions or acting in any manner whatsoever on the adverse decision taken by them on December 23, 2023.
  - c. An order of prohibition prohibiting the purported care taker committee from assuming office of the applicants.
  - d. That costs of the application be provided for.
3. The application has grounds on the face of the Notice of Motion that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents during the Annual General Meeting (AGM) of the 5<sup>th</sup> respondent held on December 23, 2023 irregularly, improperly, illegally and unlawfully decided to dissolve and/or disband the Board of Directors of the 5<sup>th</sup> respondent; that the 5<sup>th</sup> respondent was a limited company in which operations and resolutions are subject to the provisions of the [Companies Act](#) and that the respondents had no power whatsoever to dissolve the Board of Directors of the interested party (should be 5<sup>th</sup> respondent) under the [Companies Act](#) and the Company Articles; that the decision of the 1<sup>st</sup> – 4<sup>th</sup> respondents to dissolve and or disband the Board of Directors of the 5<sup>th</sup> respondent was made in breach of natural justice, the [Companies Act](#) and Articles of Association and was unreasonable in the circumstances of the case; that the purported care taker committee of the 5<sup>th</sup> respondent was illegally appointed by the 1<sup>st</sup> respondent; that the purported dissolution of the Board of Directors of the interested party (should be 5<sup>th</sup> respondent) has caused and will continue to cause the instability of the 5<sup>th</sup> respondent and result to substantial and immeasurably loss and damage to the company and its stakeholders; that the Board of the 5<sup>th</sup> respondent was illegally dissolved and or disbanded, and the operations of the 5<sup>th</sup> respondent stalled; that the applicants can no longer access their offices and cannot sign the necessary documents such as cheques for seamless operation of the 5<sup>th</sup> respondent.



4. The application is hinged or grounded on the verifying affidavit and statutory statement, filed with the Chamber Summons for leave as required in Judicial Review proceedings.
5. In response to the application, a replying affidavit sworn on February 23, 2024 by Peter Mwakughu – Company Office Administrator of the interested party (should be 5<sup>th</sup> respondent), the Mgeno Ranching (Directed Agricultural) Company Ltd was filed, in which it was deposed that a meeting of shareholders was convened for December 23, 2023 which was called to order at 11:05 am; that the said meeting went on smoothly until during the report of the Chairman when the issue of the secret sale of 500 bulls by a faction of the Board of Directors arose which was already subject of a court case in Wundanyi Misc. Civil Suit No. E009 of 2023; that the shareholders present became increasingly provoked until the Sub-County Livestock Production Officer (1<sup>st</sup> respondent) as agent of the Ministry of Livestock intervened in his capacity as Director to restore order; that the 1<sup>st</sup> respondent then proposed to the shareholders that a resolution be passed either to maintain or dissolve the current Board of Directors; that the shareholders then unanimously resolved to dissolve the Board of Directors which was proposed by Member No. 446 Walter Madedo Mcharo and seconded by Member No. 320 Raphael M. Mwawughanga; that the 1<sup>st</sup> respondent did not interfere with the poll but only proposed the poll and later guided the shareholders to elect new regional directors who would form a new Caretaker Board to oversee the affairs of the interested party (5<sup>th</sup> respondent) for three (3) months; that the prayers in the Notice of Motion should thus not be granted.
6. In response to the same application, Wright Kiondo Mcharo, Ben Mgahana, and Joel Gabriel Mshindo (6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> applicants) through counsel Mwazighe & Company Advocates, filed a Notice of Motion dated March 4, 2024 challenging the authenticity of their purported signatures as giving authority to sue herein in the Notice of Motion dated February 16, 2024, and who asked for the following orders:-
  1. That the application be certified urgent and service thereof be dispensed with in the first instance.
  2. That the court do order that the authority to plead in this matter be subject to forensic examination and/or investigations by the Director of Criminal Investigations at Mwatate to determine the origin of the signature, purported to belong to 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> applicants.
  3. That based on the outcome of the investigations, this court be pleased to issue an order striking out the applicants from this suit and order that persons so found to have forged signatures be charged with criminal offences accordingly.
  4. The court be pleased to grant such or further orders it deems fit to grant in the interest of justice.
  5. That the costs of the application be in the cause.
7. This application dated March 4, 2024 has grounds on the face of the Notice of Motion that the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> applicants did not participate in filing the Judicial Review matter herein; that they did not sign the purported authority to plead and thus their purported signatures were forgeries; that the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> applicants supported the resolutions of members at the AGM of December 23, 2023 in respect of the Board of Directors of the 5<sup>th</sup> respondent; that this court assists them in establishing the origin of the disowned signatures; that allowing the said signatures to be relied upon would put them in a position which they never intended to be in the first place.



8. By consensus of all counsel for the parties herein, it was agreed that the two applications be determined together. This ruling will thus determine both applications dated February 16, 2024 and March 4, 2024 respectively.
9. The two applications were canvassed through written submissions. Parties counsel filed written submissions. Mr. Mwzighe for 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> applicants who filed the application dated March 4, 2024, relied on their submissions as well as the replying affidavit to the initial Judicial Review application dated February 16, 2024.
10. Having perused the documents filed, I note that though counsel for the applicants in the initial Judicial Review application dated February 16, 2024 stated in court that they had filed their written submissions, no such submissions were filed. I also asked the Court Assistant to find out from the electronic system but no submissions were found. However, counsel for the respondents MAK & Partners Advocates filed written submissions to the initial application dated February 16, 2024 opposing the said application, as well as additional submissions emphasizing that they did not oppose the application dated March 4, 2024 filed by Mwzighe & Company Advocates for the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> applicants.
11. I have to acknowledge that Counsel who filed submissions cited and, relied on decided court cases.
12. Having considered the pleadings filed and submissions of the counsel for the parties, in my view, since the application dated March 4, 2024 has not been opposed through a replying affidavit, and since the law does not allow this court to force a litigant to be a party in court proceedings, and since the applicants therein claim that they were joined in these Judicial Review proceedings commenced in the Notice of Motion dated February 16, 2024 without their written authority, and based on forged signatures, this court has no justification to retain them as parties in the Judicial Review proceedings herein.
13. I thus strike out the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> applicants as parties in the Notice of Motion dated February 16, 2024. They thus cease to be applicants in the Judicial Review application therein with costs. In effect, I allow the application dated March 4, 2024 on that account.
14. As for the prayers in the said application dated March 4, 2024, for court orders for investigations to be conducted by the Director of Criminal Investigations, before determining the application dated February 16, 2024, in my view granting such orders would go beyond this court's legitimate jurisdiction in Judicial Review matters, which is to address and correct illegal, irregular and unfair practices of public or private entities or officers, acting in quasi judicial capacities. I will thus not issue any orders for conducting investigations on the alleged forgeries of signatures, but I instead hereby guide the affected parties the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> applicants that they are at liberty to make formal reports or complaints to the police, including the Director of Criminal Investigations, for appropriate investigative and other actions to be taken by the relevant organs of the State against the forgery culprits.
15. Coming now to the Notice of Motion dated February 16, 2024, the remaining applicants in that application, except 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> applicants, had the burden to demonstrate to this court under section 107, 108 and 109 of the *Evidence Act* (cap.80), that the alleged illegal, irregular or unfair actions complained of in the Notice of Motion, were done and by the named respondents, to justify the issuance of the orders sought from this court against them.
16. From my evaluation of the information and evidence placed before me, they have not done so. This is because, they have not disclosed or demonstrated to this court any such illegal, irregular, or unfair action done by the respondents or any of them. In my view, the fact that a person has been removed



from a position in the Board of Directors of a company per-se, is not illegal or irregular, and does not call for judicial review reliefs, if there is no demonstrated violations of the law, or procedure, or on grounds of unfairness.

17. In the present case also the persons who made the decisions were described as the shareholders and not the respondents. The said shareholders were not brought to court to explain what happened. Thus maybe the people who should account for the actions or wrong actions are left free, and instead other people are now brought to court.
18. On my part therefore, from the facts and evidence place before this court, I find that the application dated February 16, 2024 is not maintainable or merited and is for dismissal on two main reasons.
19. In dismissing this application, I want to emphasize two reasons. The first major reason is that it is evident that three (3) of the listed applicants Nos. 6, 7 and 8 were joined in the Judicial Review proceedings without their authority and the other remaining applicants have not suggested or indicated to this court any reason why that happened. The remaining applicants have thus not fulfilled the test of the grant of the equitable reliefs sought, since it is required that he who comes to equity must show that they have themselves done equity, and have come to court with clean hands. There is in my view, a clear demonstration of dishonesty herein, which militates against the grant of judicial review orders, to the remaining applicants, as they want to mislead the court. In such situation, granting the orders would easily result in an injustice.
20. The second reason why the Notice of Motion dated February 16, 2024 is for dismissal, is because the remaining six (6) applicants have not demonstrated to this court any illegal or irregular acts done by the respondents or any of them which would be a justifiable basis or reason for grant of the equitable reliefs sought in the application. I will thus dismiss the application dated February 16, 2024.
21. Consequently; and for the above reasons, I order as follows:-
  - i. I allow the application dated March 4, 2024 to the extent that I strike out the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> applicants from the list of applicants in the Judicial Review application dated February 16, 2024, that is Wright Mcharo, Ben Mgahana and Joe Mshindo, who cease to be parties therein.
  - ii. I dismiss the application dated January 16, 2024 in its entirety and decline to issue any of the orders sought.
  - iii. I award costs of the two applications to the respondents. I also award costs of the two applications to Wright Mcharo, Ben Mgahana, and Joe Mshindo.
  - iv. For avoidance of doubt, the said costs of the two applications herein will be paid jointly and severally by Peter Sowa Mndeke, Arnold Msheshe, Afizi Nyambu Ibrahim, Clantone Mwangoe Wadu, Ferdinand Mwangazi and Johnson Mwanjewe, the remaining applicants in the application dated February 16, 2024.

**DATED, SIGNED AND DELIVERED THIS 16<sup>TH</sup> DAY OF SEPTEMBER 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Omagwa for applicants in application dated February 16, 2024



Mr. Mwazighe for applicants in application dated 4<sup>th</sup> March 2024

Mr. Kuloba for respondent

