



REPUBLIC OF KENYA



KENYA LAW
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Changwonyi & another v Registrar of Companies & 10 others (Civil Case E026 of 2022) [2023] KEHC 2247 (KLR) (16 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2247 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE E026 OF 2022
HK CHEMITEI, J
MARCH 16, 2023**

BETWEEN

CHERUIYOT ARAP CHANGWONYI APPLICANT

AND

SOLAI RUIYOBEL FARM LIMITED PLAINTIFF

AND

REGISTRAR OF COMPANIES 1ST RESPONDENT

MUSA KIPTOO TOROITICH & 9 OTHERS 2ND RESPONDENT

RULING

1. In his Notice of Motion dated September 21, 2022 the 1st applicant prays for the following reliefs;
 - (a) there be a temporary injunction stopping the 2nd to 7th defendants, the estates of the 8th to 10th defendants their agents and servants from claiming through them from conducting any affairs of the company (2nd plaintiff) as directors.
2. The applicant has also prayed for the status quo ante to be maintained pending the determination of the suit as well as costs of the application.
3. The application is based on the grounds thereof and the supporting affidavit of the applicant sworn on September 20, 2022.
4. The applicant claims to be the remaining survivor of the 2nd plaintiff company and that a meeting was done on August 7, 2020 courtesy of the 1st to 9th defendants without his knowledge. He went on to depone that his signature was forged and that he never approved any general meeting conducted at Acacia Groove Resort Kikopei Gilgil.



5. In the said meeting some new crops of new officials were elected without his knowledge and approval and a new CR12 form sent to the 1st defendant.
6. He went on to state that although by the consent dated November 14, 2019 vide Civil Case No 24 of 2019 in which the court directed that together with the 2nd respondent they were to call for a special general meeting, the same was called without his consent and this ran foul the said consent.
7. In the premises, he prayed that all that the meeting was set to achieve be set aside especially the purported elections that had been done and the position reverts to what the consent had directed.
8. Richardson Kipkoech Bundotich the 4th respondent swore a replying affidavit on his own behalf and that of the other respondents dated October 17, 2022 in which he set out the chronology of the matter including the historical background of the 2nd plaintiff by attaching various minutes of the same which was essentially incorporated as a land buying company.
9. The respondents further attached various pleadings in respect to the litigation matters they have been involved in namely Nakuru Hcc No 24 of 2019 and Judicial Review Number 14 of 2019. All the said matters had to do with the holding of a general meeting of the company.
10. That by the consent mentioned above the parties agreed to conduct a general meeting seven days after the said consent. It was the respondents case therefore that it was not true that the applicants signature was forged and that he was well aware of the meeting. In any case the said meeting was held pursuant to the consent between the parties.
11. When the matter came up for directions the court directed that the same be disposed by way of written submissions which the parties have complied.
12. The basic thread running across the said submissions is whether the applicant is entitled to the orders sought and if so what likely harm would he suffer if it's not granted.

Analysis and determination.

13. It is evident that the parties have had a long litigious history contrary i believe to the aspirations of forming the land buying company. Generally, all the founding directors have since died except probably the applicant alone.
14. The court in appreciating the facts herein is guided by the consent dated November 14, 2019 which stated in part;

“ that pursuant to the order issued on May 30, 2019 in Nakuru HC Judicial Review no. 14 of 2018 R v Registrar of Companies, Exparte Solai Ruiyobei Farm Limited requiring a special general meeting be called to elect new directors, the 1st plaintiff and the defendant do call for a special general meeting on behalf of the 2nd plaintiff within 7 days of this consent.”
15. According to the replying affidavit of Mr Bundotich paragraph 23 to be specific, a meeting was held on 14th November 2019 where all the remaining directors including the applicant were made to be directors and to proceed to complete the sub division of then land and hand it over to the owners.
16. The above meeting of November 14, 2019 if it was held has not been demonstrated. The consent clearly indicated that a meeting was to be held seven days after the consent. I have perused the annexures to the said affidavit and I'm unable to see any notice calling for the meeting as directed in the consent.



17. If a meeting was done, then there is no evidence that the applicant was involved or at all. The applicant has not helped matters either since he has not attached any such notice of any such meeting as he claimed. In this regard therefore there is a probability that there may not have been any notice to such meeting since his consent was required and if there was one no minutes were ever taken.
18. Consequently, and by virtue of the consent entered by the parties voluntarily this court does not find that the same was duly complied with. In the estimation of the respondents the applicant may be a vexatious litigant but i think that if they chose to enter into a valid consent then there was no reason to exclude him in the calling of the meeting.
19. The respondents have not denied that they did not involve him in the process of calling for the meeting and in my view, however insignificant his input was he ought to have been considered.
20. There was an argument in their submissions that the applicant ought to have filed a derivative suit instead of this suit. This point is legitimate save only to add that the same may not be necessary because of the consent entered by the parties.
21. What then is the fate of the matter.? It is true that the 2nd plaintiff has no known any peace ever since its inception. All the original directors have passed on and i believe the new crop of leaders are the second generation. They must however do things legally and or lawfully. They cannot purport to breach the law in the process of carrying out the mandate given to them. The minority must also have their say as the majority have their way.
22. The applicant has established that he is entitled to the prayers sought. The applicant if the orders are not granted stands to suffer harm as his input was not considered taking into consideration the fact that he was instrumental in crafting the consent order.
23. The respondents stand to suffer no loss as they will still have the chance including being elected into the offices they are already holding if indeed they qualify.
24. In the premises this court shall exercise its inherent jurisdiction as provided under Article 159 of *the Constitution* and Section 3 and 3(a) of the *Civil Procedure Act* to ensure speedy determination of the leadership dispute hanging on the 2nd plaintiff. There are supposedly innocent parties to the entire litigation being played herein. The said litigation must come to an end.
25. Consequently, the court directs that;
 - (a) The purported meeting held on the November 14, 2019 or any other meeting held thereafter is set aside with all the attendant consequences including any resolutions or elections of the office bearers.
 - (b) The purported CR12 issued on August 7, 2020 for all intent and purposes is hereby set aside and the status quo ante is ordered.
 - (c) A special general meeting be called within 30 days from the date herein in line with the consent dated November 4, 2019 for purposes of electing new directors.
 - (d) The said meeting shall be advertised in the media and one of the widely circulating newspapers and shall be conducted and chaired by the 1st respondent.
 - (e) The costs of the said meeting shall be met by the 2nd respondent.
 - (f) This matter shall be mention before this court within 60 days from the date herein for further directions.



(g) costs shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 16TH DAY OF MARCH 2023.

H. K. CHEMITEL.

JUDGE

