



**Mpetti & another (Suing as the Legal Representatives of the Estate of Samuel Sekerot Ole Mpetti)
v Mpetti & 3 others (Civil Suit E001 of 2023) [2023] KEHC 20120 (KLR) (18 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20120 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL SUIT E001 OF 2023
F GIKONYO, J
JULY 18, 2023**

BETWEEN

**TERESA AUMA MPETTI 1ST PLAINTIFF
DANIEL SASINE MPETTI 2ND PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF SAMUEL
SEKEROT OLE MPETTI**

AND

**EDWARD KADIPO MPETTI ALIAS HASSAN E.K. OLE
MPETTI 1ST DEFENDANT
NAROK HIGHWAYS TOWERS COMPANY LIMITED 2ND DEFENDANT
REGISTRAR OF COMPANIES 3RD DEFENDANT
A-G 4TH DEFENDANT**

RULING

1. Before me is an application dated February 14, 2023. The applicants sought 7 orders but which may be condensed into 5 as follows: -
 - i. That an order of temporary injunction do issue restraining the 1st defendant from further collecting, obtaining and utilizing pay outs of any nature and dividend obtained from the 2nd defendant by virtue of his shareholding.
 - ii. That an order of temporary injunction do issue restraining the 2nd defendant from disbursing and/or releasing pay outs of any nature and/or dividends to the 1st defendant.



- iii. That an order do issue compelling the 2nd defendant to render an account of all pay outs of any nature and/or dividends disbursed and/or paid out to the 1st defendant by virtue of his shareholding.
 - iv. That an order of temporary injunction do issue restraining the 3rd defendant from making any further changes in the register of companies as regards the 2nd defendant
 - v. Costs of this application.
2. The application is brought under articles 40, and 159 of the Constitution, Sections 1A, and 3A of the Civil Procedure Act, and Order 40 of the Civil Procedure Rules.
 3. The application is based on the grounds on the face of the application. It is also supported by the supporting affidavit of Teresa Auma Mpeitti and Daniel Sasine Mpetiti jointly sworn on February 14, 2023.

Directions of the court

4. On February 21, 2023, this court issued the following directions; -
 - i. The respondents are to file and serve replies to the application in 14 days.
 - ii. Upon service, applicant to file and serve submissions within 2 days thereof.
 - iii. Upon service in ii) above the respondent to file and serve submissions in 7 days thereof.
 - iv. Narok CMC Succession cause no. E092 OF 2021 to be submitted to this court forthwith.
 - v. Mention on March 30, 2023.
5. On May 24, 2023, Ms Tuya for the applicants and Ms Ombati for the 1st defendant agreed to file submissions.
6. Upon perusal of the court record, the court observed that the 3rd and 4th defendants/respondents have not filed their replies despite being served. Further, the 1st, and 2nd defendants and the plaintiffs did not file their written submissions.
7. But, that notwithstanding, the court will make appropriate orders herein.

Analysis and determination

8. On the basis of the papers filed in court, there are two issues that are not in dispute. One, that the Plaintiffs are the legal representatives of the estate of Samwel Sekerot Ole Mpetiti alias Sekerot Ole Mpetiti (deceased). Two, Narok Highways Towers Company Limited was formerly known as Narok Corner Bar and Restaurant Limited which was incorporated vide certificate no C34655 on May 28, 1987.
9. The controversy however, is on whether the deceased was a shareholder in the 2nd defendant company.
10. The plaintiffs stated that the deceased was a shareholder of the 2nd defendant company. The 1st defendant denied that assertion by the plaintiffs and stated that the deceased has never been a shareholder of the 2nd defendant company.
11. The question of membership of the company is usually resolved by reference to the register of members and relevant filings or statutory filings in the company registry.



12. The plaintiffs contend that at the point of incorporation of Narok Corner bar and restaurant Limited, the deceased was a director and shareholder of the company. They have annexed a copy of Form 203, which indicates the particulars of directors and secretaries. The said form has the name of the deceased-Sekerot Ole Mpetiti listed among the directors thereof.
13. The 1st defendant denied that his late brother was ever a member, shareholder or director of the 2nd defendant company. He annexed and relied on the form dated September 9, 2020 which does not have the name of the deceased in the particulars of shareholders and directors of the company.
14. The plaintiffs and the 1st defendant have produced two documents which contain contradicting or different information. In light thereof, the Registrar of Companies being the relevant custodian of public record on companies should be the person bound to provide the court with details and particulars of shareholders, and the directors of Narok Corner Bar and Restaurant Limited from registration i e on May 28, 1987 to the change of name through a resolution passed on November 12, 2008, and from the said change, details and particulars of shareholders and directors of Narok Highway Towers Company Limited to current.
15. The court therefore directs the 3rd Defendant to provide the court within 30 days, of details and particulars of shareholders, and the directors of Narok Corner Bar and Restaurant Limited from registration i e on May 28, 1987 to the change of name through a resolution passed on November 12, 2008, and from the said change, details and particulars of shareholders and directors of Narok Highway Towers Company Limited to current.
16. The Registrar shall more specifically provide the court within 30 days with: -
 - i. A copy of the Register of Members of the company and a copy of any amendment to the register of members lodged with the registrar;
 - ii. All statutory forms in respect of shareholding of the company lodged with the registrar of company herein for each statutory reporting year during the period delineated above.
 - iii. Certified copies of entries by the Registrar in respect of the shareholding of the company herein for the period delineated above.
17. Upon receipt of the information and documents above ordered, the court will give parties an opportunity to submit on them and determine the question whether the deceased was a director of the 2nd defendant company. The core issue in the application before me is accordingly deferred.
18. The Registrar of Companies shall be served with this order immediately with a properly inscribed penal notice that any disobedience of the order may attract penal sanctions including being cited for contempt of court. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE
APPLICATION THIS 18TH DAY OF JULY, 2023**

F. GIKONYO M.

JUDGE

In the presence of:

1. Mr. Kasaso – CA
2. Ms. Njihia for Tuya for plaintiffs



3. Ombati for 1st defendant
4. Kiprono holding brief for Muigai for 2nd defendant
5. No appearance for Registrar or AG.

