



Nyandarua Progressive Agency Limited v Mugo & 2 others (Civil Case E029 of 2022) [2023] KEHC 19674 (KLR) (6 July 2023) (Ruling)

Neutral citation: [2023] KEHC 19674 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE E029 OF 2022
HK CHEMITEI, J
JULY 6, 2023**

BETWEEN

NYANDARUA PROGRESSIVE AGENCY LIMITED APPLICANT

AND

FRANCIS WAINAINA MUGO & 2 OTHERS RESPONDENT

RULING

1. In its Notice of Motion dated 27th September 2022 the applicant prays for orders that pending the determination of the suit the respondent's to surrender the following company documents ;the green book containing members records payments, 4 mother head titles namely LR No 6289,9938,9939 and 9942, company seal, AFC loan discharge of charge, minute books, receipt books, map, company inventories, office files, bank account details, ledger books, Omolo registers, creditors and debtors list, company records and documents and all other documents belonging to the applicant within their possession.
2. The applicant asked for costs as well.
3. The application was supported by the sworn affidavit of Eliud Samuel Maina sworn on 26th September 2022 and the grounds on the face of the application.
4. The said affidavit has given a chronology of the differences between the current official and the respondents. It appears from the same that the main dispute between them was litigated under Suit No Nakuru HCC No 25 of 2017. The court in that case delivered its judgement on 27th May 2020 which allowed the suit and set aside an election which had chosen the respondents as officials.
5. The respondents filed an application for stay pending appeal and the court delivered its ruling on 29th April 2021 granting a conditional stay pending appeal. The said orders allowed the directors who were elected on 13th April 2018 to continue with their responsibilities which in this case were the applicants.



6. It is therefore the applicant's contention that having been elected on 13th April 2018 they were mandated to carry on with the work but they cannot do so as the respondents were still holding the company's instruments. They therefore prayed that they be compelled to surrender them noting further that they were re-elected after a fresh election on 6th May 2022.
7. The respondents vide the replying affidavit of Stanley Kabachia Gikuma sworn on 27th October 2022 have opposed the said application on several grounds. Of great importance is the fact that the applicants were now "forum shopping" noting that the court in civil case no 25 of 2017 had found the applicants in contempt after breaching the orders of the court issued on 29th April 2021.
8. It was his case that the applicants had no mandate to seek the orders sought since there was an order staying any action pending the Court of Appeal decision. Essentially, they were already in contempt and they should not be allowed to benefit.
9. The supplementary affidavit of Eliud Maina Waweru sought to respond to the replying affidavit and beside denying most of the issues deponed upon denied that they were contemnors and that since they were legally in the office they should be allowed to operate without any let or hindrance and that they can only do so with the company's equipment's.
10. The court directed the parties to file written submissions which I have perused together with the cited authorities and see no reason why I should reproduce them for now.
11. What is evident is that the war between the parties has been long and protracted one. Suit no HCCC 25 of 2017 was largely concluded and the respondents were dissatisfied and have filed a Notice of Appeal. The said appeal is yet to be heard. Meanwhile the court on 29th April 2021 issued stay orders which were ideally conditional.
12. Paragraph (c) of the said order states as follows;

“ that the elected directors and officials in the meeting held on 13th April 2018 shall continue managing the affairs of the plaintiff company with a rider that the said directors are restrained by this court from dealing in any way with the plaintiff company properties, meaning they shall not sell, lease, charge or issue title deeds to the shareholders pending the hearing and determination of the appeal.”
13. My understanding therefore of the above order is to the effect that the plaintiffs can still run the company in the usual day to day operations less the sanctions given by the court. The respondents have not denied that they are not in custody of the instruments and or company's properties cited in the application or at all.
14. The applicants cannot therefore operate without the same as long as they are in office. The said properties do not as a matter of fact belong to the applicants or the respondents but the company. It is recognised through the court order that the applicants as at the time of the ruling were bona fide leaders and not the respondents.
15. In my view therefore the management of the plaintiff cannot be effective in the absence of the records asked by the applicants. The respondents have no reason whatsoever to keep them. At any rate I take it that having them in their custody unless otherwise shown does not permit the applicants to go contrary to the order of stay mentioned above.



16. Consequently, and for the reasons given above the respondents are hereby directed within the next Fourteen (14) days from the date herein to deliver to the applicant's counsel on record all the items mentioned under paragraph 2 of the above notice of motion.

17. The costs shall await the outcome of the suit.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 6TH DAY OF JULY 2023.

H K CHEMITEI

JUDGE

