Kew Gardens Limited v Registrar of Companies (Miscellaneous Civil Application E 307 of 2019) [2021] KEHC 151 (KLR) (Civ) (14 October 2021) (Ruling)

Neutral citation: [2021] KEHC 151 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL

MISCELLANEOUS CIVIL APPLICATION E 307 OF 2019

F TUIYOTT, J

OCTOBER 14, 2021

BETWEEN

KEW GARDENS LIMITED ..... APPLICANT

AND

REGISTRAR OF COMPANIES ..... RESPONDENT

RULING

1. It is clear to this Court that the Notice of Motion of 31st July 2019 cannot satisfactorily resolve the feud in the shareholding in Kew Gardens Limited.

2. That Motion seeks the following 3 prayers:-

    1. .....

    2. THAT this Honourable Court be pleased to compel the Respondent to de-archive the Applicant's file and/or allow the Applicant to conduct its business by availing the file pending the hearing and determination of this application inter-parte.

    3. THAT this Honourable Court be pleased to order the Respondent to refrain from inhibiting and/or interfering with the shareholding and resolutions of the Applicant as held as at 27th February 2018.

    4. THAT this Honourable Court be pleased to restrain the Respondent from impeding the functions of the Applicant's Directors as relates to the Applicant Company.

3. The Registrar of Companies (the Respondent) has conceded to prayer 2 and this Court will be making formal orders to that effect.

4. As regards prayers (3) and (4), there would have to be difficulty. There is clearly a shareholder dispute between Silvia Pallottino on the one hand and Muciarelli Fabio and Siro Muciarelli on the other. The latter asserts the present shareholding to be:-

   Shareholder Shares

   Silvia Pallottino 520

   Muciarelli Fabio 30

   Giovanni Rinaldi 230

   Muciarelli Siro 220

5. The other side insists the shareholding to be:-

   Shareholder Shares

   Muciarelli Fabio 180

   Silvia Pallottino 370

   Giovanni Rinaldi 230

   Muciarelli Siro 220

6. The applicant has produced a CR 12 showing the shareholding as at 27th February 2018 which differs from that produced by Silvia showing shareholders as at 19th April 2018. The gist of prayers (3) and (4) of the Notice of Motion is that the Registrar of Companies should respect the position of shareholding as at 27th February 2018. Yet, the CR 12 of 19th April 2018 shows that, according to the Registrar, the position of shareholding is already different from 27th February 2018.

7. The position cannot revert to that of 27th February 2018 when there is no prayer for reversal of the status as at 19th April 2018 and no order to that effect can be granted. It seems to me that prayers (3) and (4) have been overtaken by events. The Court also takes a view that the applicant or the aggrieved directors may need to file a substantive suit that addresses the shareholder dispute.

8. In the end, I allow prayer (2) of the Notice of Motion dated 31st July 2019. Prayers (3) and (4) are declined. Each party to bear its own costs.

DATED AND SIGNED THIS 29TH DAY OF SEPTEMBER 2021

F. TUIYOTT

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF OCTOBER 2021

A. MABEYA, FCI Arb

JUDGE