



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL DIVISION**

**HC. CIVIL CASE NO. E064 OF 2021**

**LILIAN WAKIYA MWAURA.....PLAINTIFF**

**VERSUS**

**GATATHA FARMERS COMPANY LIMITED.....DEFENDANT**

**RULING**

1. The Plaintiff instituted this suit through a plaint dated 4<sup>th</sup> March, 2021 seeking the following reliefs:

- An injunction against the Respondent Company to refrain from continued contravention of the Companies Act in organizing an annual general meeting
- A mandatory injunction mandating the Respondent Company to fulfil the requirements for holding a virtual general meeting of the shareholders.
- An order to regulate the conduct of the affairs of the Respondent Company in future.
- An order requiring the Respondent Company to circulate financial statements for the previous accounting period as a precursor to announcing and/or approving a rights issue.
- An order requiring the Respondent Company not to make any alternations to the articles of Associations without leave of court.
- Costs of the suit.

2. An application dated 4<sup>th</sup> March, 2021 was filed simultaneously with the plaint but was subsequently marked as withdrawn. Subsequently the application dated 7<sup>th</sup> April, 2021 was filed. The said application seeks the following orders:

1. That pending the hearing and determination of this suit, a temporary injunction do issue from this honourable court restraining the defendant herein by itself or its agents/employees/representatives from implementing the resolution for the Right issue of 340,000 shares passed during the Hybrid and Virtual Annual General Meeting held on 6<sup>th</sup> March 2021.
2. That pending the hearing and determination of this suit, a temporary injunction do issue from this honourable court restraining the Respondent/Defendant or its agents/ employees/representatives from implementing/ enforcing the resolution of the Hybrid and Virtual Annual General Meeting held on 6<sup>th</sup> March 2021 with regards to the re-election of the retiring two directors of the Respondent/Defendant.
3. That pending the hearing and determination of this application a temporary injunction do issue restraining the Respondent /Defendant from implementing or enforcing any and all resolutions discussed and approved during the Hybrid and Virtual Annual General Meeting held by Respondent/ Defendant on 6<sup>th</sup> March 2021.
4. That this honourable court grant the Plaintiff/Applicant leave to amend plaint.

5. That any other order that the honourable court may deem fit and just do issue.

6. That costs be in the cause.

3. The application was opposed as for the replying affidavit sworn as 3<sup>rd</sup> June, 2021.

4. The Defendant filed the Preliminary Objection based on the grounds that the Plaintiff's application dated 7<sup>th</sup> April, 2021 is incurably defective and an abuse of the court process.

5. The Preliminary Objection was canvassed by way of written submissions which I have considered.

6. As regards Preliminary Objections, the principles to be met are set out in *Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors [1969] EA 696*, and as endorsed by the Supreme Court of Kenya in the case of *Hassan Ali Joho & Another v. Suleiman Said Shahbal & 2 Others, Petition No. 10 of 2013, [2014] eKLR [paragraph 31]* as:

*“To restate the relevant principle from the precedent-setting case, Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors (1969) EA 696:*

*‘a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion’.*”

7. It is apparent from paragraph No. 4 of the Plaintiff that the Defendant's Annual General Meeting was to be held on 6<sup>th</sup> March, 2021. The reliefs sought in the plaintiff concern the said Annual General Meeting. On the other hand, the orders sought in prayers 1,2 and 3 of the application dated 7<sup>th</sup> April, 2021 are in respect of the resolutions of the meeting held on 6<sup>th</sup> March, 2021.

8. Prayers 1,2, and 3 in the application dated 7<sup>th</sup> April, 2021 are not anchored in the plaintiff. Consequently, the relief's sought in the plaintiff that relate to the orders sought in the application dated 7<sup>th</sup> April, 2021 have been overtaken by events.

9. Prayer No. 4 of the application seeks leave to amend the plaintiff. Taking into account Section 1A and 1B of the Civil Procedure Act and Article 159 (2)(d) of the Constitution of the Republic of Kenya, I do not agree with the submissions by the Defendant's Counsel that the application is defective for having sought prayers for temporary injunction simultaneously with prayers for amendment of the plaintiff in the same application. The prayers in the application are distinct and there is no prejudice that will be visited on any party as the court will deal with each of the prayers separately.

11. With the foregoing, the upshot is that prayers 1, 2, and 3 of the application dated 7<sup>th</sup> April, 2021 are hereby struck out. The application to proceed to the hearing of the rest of the prayers in the application. Costs in cause.

Dated, signed and delivered at Nairobi this 17<sup>th</sup> day of November, 2021

**B. THURANIRA JADEN**

**JUDGE**