



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

HCCC NO. 277 OF 2016

GITHUNGURI CONSTITUENCY RANCHING COMPANY LTD.....PLAINTIFF

-VERSUS-

AHMED CHEGE GIKERA.....1ST DEFENDANT

HENRY WAINAINA KIHORO.....2ND DEFENDANT

RULING

1. **Githunguri Constituency Ranching Company Limited** (herein after '**the Company**') initiated this suit against two Defendants, namely **Ahmed Chege Gikera** the 1st Defendant and **Henry Wainaina Kihoro** the 2nd Defendant. By this action the company seeks three prayers that:

a) A permanent injunction to restrain the Defendants by themselves, their agents, and/or assigns from holding a special General meeting of the Company on the 16th July 2016 (now past) and/or on any other date, without rendering compliance with the applicable provisions of the law;

b) A permanent injunction to restrain the Defendants from maintaining and running an office of the Plaintiff company at the Wakihoru Building, Ruiru Town and/or in any other place, purporting it to be the Plaintiff's registered office and/or branch;

c) A permanent injunction to restrain the Defendants from representing themselves, holding themselves out, corresponding with third parties, making public announcements or in any manner purporting to be directors of the Plaintiff company.

2. The Company is a land buying company. It buys land with the objective of sharing it amongst its shareholders. It has over **5,000** share holders. As it is commonly known the company, being a land buying company, has had its share of leadership disputes which have translated to numerous court cases being filed by opposing parties.

3. What is before me is a chamber summons application dated **13th June 2018**. That application has two prayers. In the first prayer the company seeks, that the Defendants, be jointly and severally restrained by an order of this court from operating a parallel office of Githunguri Constituency Ranching Company Ltd at **Wakihoru Building Ruiru** town or any other place. The Company also seeks joinder as defendants of **Stanley Kibuku Njoroge, Joseph KInyanjui Muthoni, Teresiah Wangui Mathai, John Rimuri Waweru, Rahab Njoki Wanjohi, Elijah Ngugi Njoroge** and **Jane Njeri Kimani**.

4. The application is supported by the affidavit of the **Company's Chairman** of the Board of Directors.

5. The Chairman deponed that the company is a public land buying company with over **5,000** share holders. The company's affairs are managed through the Board of Directors who are elected annually at the Annual General Meetings (**AGM**) of the Company.

6. The deponent then gave a brief back ground of the Company. He began by stating that there had been consistent resistance, from the Defendants, who have impeded the elected Board of Directors from running the Company. In the year **2010** when the Company was scheduled to hold its AGM, there was attempt to restraining and stop that meeting. That an order was issued in the case **HCCC NO. 798 of 2010** ordering the police from Ruiru Police Station to give security to ensure the meeting proceed. There was another attempt to stop an **AGM in 2012** but the court declined to grant the order.

7. The Board of Directors, on **6th December 2013** resolved unanimously to remove from the **Board Henry Wainaina Kihoro**, the 2nd Defendant. Subsequent to this, numerous cases were filed in respect to this Company. Case **HC MISC. NO. 12 of 2014** was filed by the 2nd

Defendant seeking to stop an **AGM** set for **18th January 2014**. The Court at inter parties hearing, in that matter ordered the **Registrar of Companies** to preside over the election of directors of the Company.

8. The Defendants filed an action in **Kerugoya ELC No. 7 of 2015** whereby the **AGM** was stopped on an ex parte order. When it was revealed that other suits existed, the matter was withdrawn.

9. Another suit was filed in Thika Chief Magistrates Court, by persons, who the Chairman of the Board is of the view were associated with the Defendants. That suit was withdrawn.

10. The Defendants again filed **HC MISC. 512 of 2015 (JR)**. Justice W. Korir, in his Judgment in that matter of **25th May 2016** dismissed the Defendants' case and of interest made the following comments:

“There is however a disturbing pattern which the members of the company must bring to a halt for their own benefit. The many cases before the courts are indeed clear evidence of how parties can abuse the court process. The main thing about these matters is a fight over the management of the affairs of the company. I think that fight was clearly resolved by Mutungi, J. through the order dated 10th November, 2014 in Nairobi ELC Misc. Application No. 12 of 2014 when he gave orders directing the holding of an annual general meeting of the company. The elections were to be supervised by the Registrar. In my view, the order was complied with when the elections were held on 17th December 2015. Any person dissatisfied with the manner in which the elections were held ought to revert back to Nairobi ELC Misc. Application No. 12 of 2014. Filing of a multiplicity of suits in an attempt to go round that order is simply a waste of courts' time and the resources of the company”

11. The deponent stated that the Defendants have been and continue to pass off and misrepresent themselves as directors of the Company. That they are, as a consequence, causing confusion. That they have, without authority prepared company documents and thereby have defrauded shareholders and members of the public. Complaints have been filed with the police which have resulted in the Defendants being charged with Criminal offences of making false documents contrary to **Section 357** of the **Penal Code**; personation, by falsely presenting themselves as chairman and secretary of the company, contrary to **Section 382** of the Penal Code; and forgery of the company's letter head contrary to **Section 349** of the Penal Code.

12. The Chairman further deposed that the Defendants have opened and are operating a parallel company office in Ruiru town and are causing damage and confusion to the Company. That unless they are restrained by the Court they will continue doing so.

13. Professor **Kiama Wangai** representing the two Defendants including the proposed Defendants opposed the application. In opposition there was filed a Preliminary Objection, grounds of opposition and submissions.

14. The Preliminary Objection is dated **3rd July 2018**. Its content is as follows:

i) That the Application dated 12th July 2016 and 13th June 2018 is bad in law in that the same offends the provisions of Section 6 of the Civil procedure Act. As the issues raised in the applications herein are pending in ELC Misc. No. 12 of 2014 which the application will be coming up for hearing on 5th November 2018;

ii) That the applications as filed are an abuse of the Court Process and should be dismissed with costs to the Defendants/Respondents.

15. It is important to state that parties appeared before court on **18th February 2019** when today's date was given as a Ruling date. That notwithstanding the advocate for the Defendant did not elaborate how the company's application would be affected by a matter, **ELC Misc. No. 12 of 2014**, which was slated for hearing on **5th November 2018**, a date now passed.

16. A careful examination of the Preliminary Objection will reveal that it offends the jurisprudence of **Mukisa Biscuit Manufacturing Co. Ltd – vs- West End Distributors [1969] EA 696**. That objection invites this court to determine contested matters. The Supreme Court in the case; **Independent Electoral & Boundaries Commission –vs- Jane Cheperender & 2 Others [2015] eKLR**, restated what a proper Preliminary Objection is, thus:

“As to whether a preliminary Objection is one of merit, this Court has already pronounced itself on the threshold to be met. The Court endorsed the principle in Mukisa Biscuits Manufacturing Co. Ltd –vs- West End Distributors [1969] EA 696, in the case of Hassan Ali Joho & Another –vs- Suleiman Said Shahbal & 2 Others, Petition No. 10 of 2013, [2013] eKLR [paragraph 31]:

“To restate the relevant principle from the precedent-setting case, Mukisa Biscuit Manufacturing Co. Ltd –vs- 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.’”

The Supreme Court further stated:

“Thus a preliminary Objection may only be raised on a ‘pure question of law’. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”

17. From the above it will become clear that the preliminary Objection raised by the defendant is incompetent and is dismissed with costs to the Plaintiff.

18. The Company, in presenting its application, relied on affidavit evidence of the Chairman of its Board. The Defendants did not rely on any evidence in opposition to the application. It follows that what was deponed by the Chairman of the Board is uncontroverted.

19. The Defendants relied on their advocated written submission. Such written submission cannot advance facts without those facts being supported by evidence under oath. It follows that the matters in those written submission, which are essentially factual, will not assist this Court to determine the application.

20. The prayers which are sought by the Company, being unopposed by evidence under oath, are merited and are granted. The Company is also awarded costs of the application dated **13th June 2018**.

21. In the end I grant the following orders:

a) An injunction is hereby issued, until the hearing and determination of this suit restraining; Ahmed Chege Gikera, Henry Wainaina Kihoro, Stanley Kibuku Njoroge, Joseph Kinyanjui Muthoni, Teresiah Wangui Mathai, John Rimui Waweru, Rahab Njoki Wanjohi, Elijah Ngugi Njoroge and Jane Njeri Kimani, from operating a parallel office of Githunguri Constituency Ranching Company Limited at Wakihoro Building in Ruiru Town and/or any other place;

b) The following are hereby joined as Defendants in this cause: Stanley Kibuku Njoroge, Joseph Kinyanjui Muthoni, Teresiah Wangui Mathai, John Rimui Waweru, Rahab Njoki Wanjohi, Elijah Ngugi Njoroge and Jane Njeri Kimani;

c) The said Defendants shall file and serve their defences to this action within 15 days from today;

d) The Preliminary Objection dated 3rd July 2018 is dismissed with costs to the Plaintiff;

e) The Plaintiff is awarded costs of the application dated 13th June 2018.

Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 9TH day of MAY, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie.....**COURT ASSISTANT**

.....**FOR THE PLAINTIFF**

..... **FOR THE 1ST DEFENDANT**

.....**FOR THE 2ND DEFENDANT**