



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL CASE NUMBER 2 OF 2019

MATHIAS JUMA KHISA1ST PLAINTIFF

MARY PRAXECEDES NALIAKA.....2ND PLAINTIFF

ANTONINA WAFULA MUNIALO.....3RD PLAINTIFF

DAVID JUMA WAFULA4TH PLAINTIFF

ABRAHAM RICHARD EYAUMA5TH PLAINTIFF

VERSES

GEORGE MALANGO MABICHAKANA1ST DEFENDANT

JACOB MUNIALO2ND DEFENDANT

CHARLES NAFULA MASINDE.....3RD DEFENDANT

COOPERATIVE BANK OF KENYA.....4TH DEFENDANT

RULING

1. The applicants application dated 14th January 2019 prays that the respondents specifically 1st to 3rd be restrained from operating account number [particulars withheld] situate at the 4th Defendant. The said account is under the name of Tawai ltd a company in which the parties herein are directors as well as shareholders.
2. According to the supporting affidavit of the 1st Applicant the Respondents have operated the same without resolutions of the board of directors of Tuwai Company Ltd. In the premises he prays that they should be stopped as a matter of urgency.
3. The first Respondent/Defendant vide his replying affidavit dated 21st January 2019 has denied the Applicants allegations and has proceeded to argue that they have no locus since they are not bonafide members of Tuwai ltd. That even if they are they are not bonafide directors as they were not validly elected but they generally inherited those positions improperly.
4. The 1st Respondent equally attached several annexures to his affidavits which suggest that there seemed to have been some borrowing of money by some of the Plaintiffs from the Company. In a nutshell he suggested that there has been embezzlement from Tuwai Ltd.
5. The court has perused the application as well as the entire pleadings on record and without going into the merits of the said application I think Tuwai Company Ltd is a necessary party in these proceedings. It is so necessary for the simple reason that the parties herein except the 4th Defendant are the Directors and or Shareholders. The account they seek to have frozen by these court is of the said Company.
6. Although widely mention, for some unknown reasons it has not been made a party. The provisions of Order 1 rule 10(2) states that:

“the court may at any stage of the proceedings ,either upon or without the application of either party ,and on such terms as may appear to the court to be just , order that the name of any party improperly joined , whether as plaintiff or defendant , be struck out , and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all the questions involved in the suit , be added.”

7. In the premises I hold that the presence of the said company shall help the court effectively settle the issues at hand. This court takes judicial notes that there have been myriad of suits filed by various parties within the jurisdiction of this court touching the company. Suffice to state that once it is on board appropriate directions may be issued.

8. So as to secure the interest of the parties herein and the company I find that freezing of the company account as prayed by the defendant may bring a needed lull at the company's interest and for that matter both the interest of the Plaintiffs and the Defendants.

9. As can be deduced from the above findings it may not be necessary for thus court at this stage to wade into the merits or demerits of the application. That would apply once the necessary party namely, the company, would be on board.

10. It is therefore ordered as follows:-

a. The applicants are hereby granted leave to enjoin Tuwai company ltd as a defendant or as a plaintiff whichever applies within 14 days from the date of this ruling and thereafter serve the defendants.

b. There be a freezing of account number [particulars withheld] at Cooperative Bank Kitale Branch pending the hearing and determination of the application herein and or further directions from this court.

c. Costs in the cause.

Delivered, signed and Dated at Kitale this 13th day of May, 2019.

H.K CHEMITEI

JUDGE

13/5/19

In the presence of:

Bororio for Kassim for Defendants

No appearance for the Plaintiffs.

Court Assistant – Kirong

Ruling read in open court.