



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL CASE NO 22 OF 2018

TAWAI LTD.....PLAINTIFF

VERSES

NATHAN WANJALA MUHINDI.....1ST DEFENDANT

FRED JUMA MUMIA.....2ND DEFENDANT

PATRICK WAFULA MAKOKHA.....3RD DEFENDANT

ALFRED SINDANI WANOYNYI.....4TH DEFENDANT

MARTIN NYONGESA.....5TH DEFENDANT

NATHAN WANYAMA.....6TH DEFENDANT

DIRECTIONS

1. For the reasons which shall be stated later herein this court is unable to determine the application for contempt herein as well as the substantive application for injunction as prayed for by the Applicants and opposed by the Respondents.

2. By a brief decision by my brother **Justice Njoroge** of the Environment and Land Court dated 25th October 2018, he directed that:

“It appears to me that the issue of ownership or transfer of the land is preceded by the mandate of this court. This court would not skip the issue of directorship and determine the matters of the land. It would be improper.”

3. The court then referred the matter to this court. This court has perused the entire pleadings herein as well as the applications for injunction as well as the contempt application on record. Lucky enough none of them has been determined.

4. This is yet another Tawai matter which has dotted the corridors of justice here at Kitale among other jurisdictions. The question of Tawai parcel of land has captured too the attention of the provincial administration as well as the county security teams as well as the media. Apparently the parties over the years rightfully or so have used the justice system to ventilate their differences.

5. This court states so for the simple reason that there are many suits which the parties whether directors, members or surrogates have filed multiplicity of suits to perpetuate their interests. There have been criminal cases settled and I suspect on-going and I bet every coin that given the volatile and sensitive situation of this matter we shall witness other plethora of cases.

6. At the centre of all the legal battles are innocent parties who are unable to comprehend the vicious wars being fought by those with means to hire counsels and those hoodwinking the rest that they are advancing their interest. The above conclusion is not an idle one. The following matters are currently either pending, concluded or have just been held in abeyance awaiting the parties to take action.

7. They include **ELDORET ELC CASE NO.87 OF 2015**. The same is also pending on appeal. **KITALE ELC NO. 55 OF 2013**, **KITALE HCC NO 16 OF 2017**, **KITALE HCC NO. 113 OF 2018** among others.

8. Looking at these files and I suspect there must be others not included they all revolve around the ownership and directorship of Tawai Ltd. The parties therein have filed multiplicity of applications and all in the name of advancing sectarian interest. This court would not attempt to reproduce their respective prayers for the sake of saving judicial time and space. The bottom line is that the courts have become a playground for the parties. Nobody seemed interested to ensure that bonafide shareholders and other purchasers obtain their titles and use them for other meaningful purposes.

9. For the foregoing reasons this court must activate its Constitutional mandate. It cannot be embroiled in the turf wars of directors and other splinter groups. Our registry cannot receive annually files in the names of the plaintiff. Sanity must be restored.

10. The provisions of **Article 159** of our constitution should be emphasised in regard to the mandate given to this court. **Sub article 2** thereof states that:

“in exercising judicial authority, the courts and tribunals shall be guided by the following principles-

a. justice shall be done to all, irrespective of status;

b. justice shall not be delayed;

d. justice shall be administered without undue regard to procedural technicalities.”

11. Having stated so what is the way forward as regards the plaintiff company? The best way forward is as proposed by my brother Njoroge J. There must be determination of who are the bonafide officials of the company and the only entity which determines that shall be the Registrar of Companies.

12. It shall further be imperative to know who the original shareholders of the company are and who are the purchasers thereafter. In this regard once the original members or shareholders are determined then all the purchasers shall “stand behind” so to speak those whom they bought from.

13. Once the above exercise is concluded the ministry of lands and the relevant departments including the survey shall kick in the last phase. In my view this could be the only way to resolve the plaintiffs almost half a century old feud. The above constitutional provision insulates this court and mandates it to do right to ensure that justice is served to the proverbial wanjiku.

14. For the foregoing reasons and pending further directions of this court it is hereby ordered that:

a). There be stay of any sale, transfer or dealing with Land Parcel number LR 5705/R Tawai farm by the current, previous or individual shareholders or any other party pending further directions from this court.

b). The Registrar of Companies do furnish this court with the current leadership status or Directors of the Plaintiff Company not later than 14 days from the date herein.

c) Pending further directions from this court no Director present or past or member or shareholder or purchaser of the suit parcel of land should file any suit, application or claim relating to the Plaintiff Company without first obtaining the leave of this court.

d). Pending further directions of this court no account with any bank or such other financial institution should be opened in the name of the Plaintiff Company by any past or present Directors or officials without the leave of this court.

e). None of the parties herein shall withdraw this suit without the leave of the court.

f). The applications herein are hereby held in abeyance pending further directions from this court.

g).Costs in the cause.

Dated, signed and delivered at Kitale this 11th day of June, 2019.

H. K. CHEMITEI

JUDGE

11/06/19

In the presence of:-

Nyakundi holding brief for Kassim for the Plaintiff/Applicant

None appearance for the Respodnent

Court Assistant – Kirong

Directions given in open court.