



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO. 231 OF 2016 (O.S)
IN THE MATTER OF COMPANIES ACT CHAPTER 486 LAWS OF KENYA
AND
IN THE MATTER OF DIRECTORS AND SHARE HOLDERS OF [Particulars Withheld] ENTERPRISES LTD

BETWEEN

LNN.....PLAINTIFF/APPLICANT

GNN.....DEFENDANT/RESPONDENT

RULING

1. Parties in this matter came to this court today expecting to receive the court's judgment. This is part of a long-drawn dispute between a husband and wife, the plaintiff and the defendant. The matrimonial property issue was heard and judgment was delivered on **16th March 2012** in case **HCCC Nairobi Civil Case No. 45 of 2002 (O.S)**. The court in that case determined the parties share of the matrimonial property except one, namely property **L.R. [Particulars Withheld]**. That property is registered in the name of a company called **[Particulars Withheld] Enterprises Ltd**.
2. The Plaintiff in this case alleges she was a director of **[Particulars Withheld] Enterprises Ltd** while the defendant was the other director.
3. The defendant alleges to the contrary, that the plaintiff was not and is not a director of **[Particulars Withheld] Enterprises** but rather that his co-director is a lady known as HW.
4. There is also in this file a letter dated **25th June 2014** written by the assistant Registrar of companies which states that the directorship of **[Particulars Withheld] Enterprises Ltd** is, GN the defendant with one share and EWN with one share.
5. This case commenced hearing on **5th February, 2019**. On **22nd May 2019** the court received parties submissions and reserved judgment on **30th July 2019**. Judgment could not be delivered on that date because I was off duty on other official engagement. It was adjourned to today's date.
6. The reason I have not written the Judgment as the parties expected is because in the hearing of this case HW and EWN were not given opportunity to be heard even though the prayers the plaintiff seeks would lock them out of being directors of **[Particulars Withheld] Enterprises Ltd**. They have a right to be heard before this court makes determination that might affect their rights or interest. Giving them a right to be heard will be in keeping with the principle of natural justice. The right to be heard includes the right to present evidence as well as to submit arguments. See the case **Judicial Service Commission –v- Mbalu Mutava & Another [2015] eKLR** viz:

“The right to fair hearing as a rule of natural justice, a part of the common law, has in modern times been variously described as “*fair play in action*”, *justice of the common law*”; “*common fairness*” “*fairness of procedure*” or simply as “*duty to act fairly.*”
7. It is because of the above realisation, that the said two parties had not been given an opportunity to be heard, that I restrained myself from delivering my judgment in this matter. I shall require the defendant to serve documents and pleading on HW and EWN because he alleges that they are his co-directors.

8. I therefore make the following orders:

- a. *GNN shall serve all the documents and pleadings and hearing notice in this case upon HW and EWN within 14 days from todays date.*
- b. *This case shall be fixed for hearing at the reading of this Ruling on which date HW and EWN shall inform the court if they wish to participate in this case or not. If not this court will proceed to deliver its judgment.*
- c. *There shall be no order as to costs.*

DATED, SIGNED and DELIVERED at NAIROBI this 4th day OCTOBER, 2019.

MARY KASANGO

JUDGE

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

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

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

..... **FOR THE DEFENDANT**