



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO. 43 OF 2017

MARGARET MUKAMI CHEGE.....PLAINTIFF

VERSUS

STEPHEN MWANGI NJUGUNA.....DEFENDANT

JUDGMENT

1. In a Plaint dated 20/08/2017, Margaret Mukami Chege, the Plaintiff herein, sued the Defendant, Stephen Mwangi Njuguna, praying for the following:

a. The Honourable Court to order that the Plaintiff being a co-director of Steggy Mobile Technology Limited to given access to the Company's assets, bank accounts to be able to run the Company affairs.

b. That the Defendants do render the Company accounts from 2011 to date and thereafter the Court to direct that all the profits made on the aforementioned period be shared equally between the Defendant and Plaintiff who own the Company on a 50/50 basis.

c. Interests on 2 above

d. Costs of the suit.

2. The Plaintiff took out summons and served the Defendant. An affidavit of service was duly filed in Court. The Defendant failed to enter appearance or file a defence. An interlocutory judgment was entered on 27/11/2017. A date was taken for formal proof. However, when the Plaintiff's Process Server went to serve the hearing date, both he and the Plaintiff was surprised to find that the Defendant had moved away from his last known address. All attempts to trace him proved fruitless. This prompted the Plaintiff to make an application for leave to serve the Defendant using substituted service.

3. I heard the Application to serve using Substituted Service on 21/01/2019 and granted the prayer. Substituted service was effected by way of publication in the East African Standard of 06/02/2019. The Defendant still failed to take any action. Formal proof was scheduled for 28/05/2019. The Plaintiff testified in her behalf and did not call any witnesses.

4. The Plaintiff testified that she and the Defendant incorporated the company known as Steggy Mobile Technology Limited (hereinafter, "Steggy") on 02/09/2008. She produced the Certificate of Incorporation and signed Memorandum and Articles of Association. She said that she was an equal partner in the Company.

5. The Plaintiff testified that after incorporation, they applied to Safaricom Ltd to work as Mpesa agents. They were successful. The Company was assigned 3 Mpesa tills in 2009; and then 8 more tills 5 months later. By 2011, the Plaintiff told the Court, they were operating 25 tills. Owing to the increase in the business, the Plaintiff told the Court that they employed the Defendant's brother as an aggregator. He was based in Gilgil. Thereafter, the Plaintiff went on maternity leave.

6. During this period, the Plaintiff and the Defendant's matrimony was rocked by disagreements and the two separated. When the Plaintiff returned from maternity leave, she says she found that the Defendant and his brother had changed all the passwords and PIN to the business. She could, therefore, no longer access business records.

7. The Plaintiff testified that she went to Safaricom Headquarters to report that the Defendant had locked her out of the business. She was advised to obtain CR12 Report from the Company Registrar's Office. When she did so, the Plaintiff says she discovered that the Defendant had forged documents to remove her as a Director and shareholder. She produced three documents she obtained at the Registrar's Office which, she says, are forged:

a. An affidavit allegedly deponed on 19/08/2011 which states that the Plaintiff wishes to transfer all her shares in Steggy to Stephen Mwangi Njuguna and Josephine Mumbi Mwangi and resign as a Director;

b. A letter dated 19/08/2011 to the same effect;

c. A Transfer of Shares form.

8. The Plaintiff insists that these documents are all forged and that she never signed any of them.

9. The Plaintiff wrote a letter dated 06/05/2013 to the Registrar of Companies complaining about the forgeries. When she went back to the Registrar's office on 05/08/2013, the Plaintiff says that she now found that the Defendant had somewhat changed the ownership and directorship of Steggy back to the status quo ante: she was now a co-director and owned 500 ordinary shares. She produced a CR12 Form dated 06/08/2013 to this effect.

10. However, when the Plaintiff went back to Safaricom, she was told to summon the Defendant who refused to honour the summons. She later learnt that the Defendant had managed to change the trade name for the Safaricom business to Beyoly and that someone else is managing the Mpesa tills. She stated that her prayers were to be given a Court order that she is a legitimate director of Steggy and that she has a right to access the Company's assets and bank accounts. She also wants the Court to order an accounting for all monies received on behalf of the Company.

11. The Suit is undefended. The Plaintiff gave credible and straightforward evidence. She produced documents to back up her claims. I am persuaded that she has always been a Director and co-shareholder of Steggy. I am also persuaded that the Defendant attempted to lock her out by purporting to show that she had resigned and transferred her shares. Finally, I am persuaded that the Defendant acted fraudulently in locking the Plaintiff out of the Company and refusing to account for the assets, accounts and profits of the Company.

12. In my view, the prayers sought are eminently deserved. Consequently, the Court makes the following orders:

a. A declaration hereby issues that the Plaintiff herein is a co-director of Steggy Mobile Technology Limited and that she has a right to access the Company's assets and bank accounts and otherwise participate in the running of the affairs of the Company.

b. An order hereby issues directing the Defendant to render the Company accounts from 2011 to date;

c. An order hereby issues that the Defendant declares all the profits and thereafter the Court to direct that all the profits made from 2011 to date and that the said profits be shared equally between the Defendant and Plaintiff.

d. The Defendant shall pay interests on (c) above.

e. The Defendant shall pay the costs of the suit

13. Orders accordingly.

Dated and delivered at Nakuru this 5th December, 2019

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JOEL NGUGI

JUDGE