



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW MISC. CIVIL APP NO.479 OF 2016

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF; CERTIORARI, PROHIBITION AND MANDAMUS.

AND

IN THE MATTER OF CIVIL CASE NO. 30 OF 2015 AT CHIEF MAGISTRATE COURT AT THIKA

AND

IN THE MATTER OF THE HIGH COURTS SUPERVISORY JURISDICTION: ARTICLE 165 (5), 6, 7, CONSTITUTION OF KENYA, 2010.

AND

IN THE MATTER OF THE COMPANY'S ACT

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

REGISTRAR OF COMPANIES.....RESPONDENT

EX-PARTE APPLICANT: JOSEPH KAMUNYA KINUTHIA

JUDGEMENT

1. By a Notice of Motion dated 20th March, 2016, the *ex parte* applicant herein, **Joseph Kamunya Kinuthia**, seeks the following orders:

1. That judicial review order of Mandamus be granted to the ex parte applicants to compel the respondent herein to register Stanley Kibuku Njoroge, Joseph Kinyanjui Muthoni, Teresiah Wangui Mathai, Ahmed Gikera Chege, John Rimui Waweru, Henry Wainaina Kihoro, Rahab Njoki Wanjohi, Elijah Ngugi Njoroge and Jane Njeri Kimani being persons elected at a special extra ordinary meeting held at Kwihota Primary School play ground on 23rd May 2015 as directions of Githunguri Constituency ranching company limited.

2. That costs be provided for.

2. According to the applicant, an extra ordinary special meeting of shareholders of **Githunguri Constituency Ranching Company Limited** was held on 23rd May 2015 at Kwihota Primary School pursuant to a court order issued by **Hon. Osarigo** in CMCC 30 of 2015 and returns of the aforesaid meeting to the registrar of companies were done on 25th May 2015.

3. It was however averred that the respondent in cahoots with other persons attempted to cancel the AGM and elections of directors on 27th May 2015. According to the applicant, on 20th August 2015 the respondent acknowledged receipt of the returns and the request to process a CR 12.

4. The applicant disclosed that he filed judicial review Misc Civil Application No. 245 of 2015 on 24th August 2015 and that this Court on 22nd January 2016 allowed the substantive motion and quashed the proceedings before the Chief Magistrates Court, Thika in Civil Suit No.

30 of 2015 while directing that the effect of quashing the proceedings in question was to quash the order halting the scheduled special extra ordinary meeting to elect the directors of the interested party. Accordingly, the ex parte applicant obtained the liberty to proceed with the said meeting since the Court held that the effect of order quashing the impugned proceedings was to give rise to a positive order”

5. The applicant however lamented that the respondent has refused, failed and/or neglected to register persons elected at the special extra ordinary meetings as the *bona fide* directors of **Githunguri Constituency Ranching Company Limited** necessitating this application for grant of orders of *mandamus* to compel him to perform its statutory duties.

Respondent's Case

6. The application was however opposed by the Respondent and in so doing the Respondent filed the following grounds of opposition:

- 1. That there is no specific legal duty owed by the respondent to applicant and such the order of *mandamus* cannot issue in the circumstances.**
- 2. That the prayer sought by the applicant is too general and vague as it fails to disclose to the court to what end the judicial review remedies of *mandamus* would be applied.**
- 3. That the application as drawn and taken out is incurably defective incompetent and is otherwise an abuse of court process.**
- 4. That the application is based on contradictory allegation which borders on mere belief, suspicion and speculations and hence incapable of any judicial review determination.**

Interested Party's case

7. The application was opposed by the interested herein **Githunguri Constituency Ranching Company Limited**.

8. According to the interested party, in a General meeting held on 12th September 2009 members elected directors and that since then the company has been holding annual general meetings and has filed returns and strictly adhered to the requirements of the company's law rules and regulations. However, the Annual General meeting held in the year 2010 was met with some resistance from a few former directors of the company who even attempted to stop the meeting just weeks before the date set for the annual general meeting by filing civil suit at Milimani Law Court being HCC no. 798 of 2010. Similarly, in the year 2012 the disgruntled former directors and their cronies filed a suit at the High Court of Kenya at Milimani Law Courts seeking to stop the company's annual general meeting but their application was dismissed by **Honourable Mr. Justice Kimondo**.

9. It was further deposed that prior to the planned Annual General meeting of 2013 one **Mr. Henry Wainaina Kihoro**, then a director and a board member was removed by the Board as a director and secretary to the board after the directors discovered that he was secretly colluding with land brokers who are non-members of the company in disposing off members plots without authority. Accordingly, the Board's resolution of the 6th December 2013 was served upon the Registrar of Companies on 31st December 2013 and the company proceeded to file E.L.C No 42 of 2016 for recovery of over 200 plots which were illegally grabbed by him.

10. It was disclosed that the company arranged for an Annual General Meeting for the year 2013 set for 18th January 2014. However after the removal of **Mr. Henry Wainaina Kihoro** as a director and secretary to the board, he in revenge engineered a plan to disrupt the company's affairs starting with the said Annual General Meeting by filing HCC MISC NO.12 of 2014 and obtaining an interim order staying the said meeting. The said MISC HCC No.12 of 2014 proceeded in Court and finally on 6th November 2014 Honourable **Mr. Justice Mutungi** gave orders/directions on the holding of the Annual General meeting. In so doing, Mutungi, J directed the hitherto halted Annual General Meeting to proceed and the Registrar of Companies was directed to attend and officiate the meeting as the Returning Officer. Accordingly, the Registrar of Companies vide a letter dated 22nd December 2014 summoned the directors of the company regarding the said orders.

11. However when the company discovered that **Henry Wainaina Kihoro** had organized a parallel Annual General Meeting to that called by the company, the directors of the company moved to Court and the **Gitumbi, J** on 8th day of January 2015 stayed the parallel Annual General Meeting and the notice convening the meeting.

12. It was the interested party's case that the calling of a parallel Annual General meeting was a clear indication that **Henry Wainaina Kihoro** was in contempt of court (orders of **Mutungi J.**) and in the order of 8th January 2015, **Gitumbi, J** granted leave to the company to commence contempt proceedings against him. The interested party averred that in order to meet the time lines given by **Mutungi, J** on the holding of an Annual General meeting the company notified the registrar of companies vide a letter dated 2nd January 2015. In further compliance with the said order, the company published a notice of its Annual General meeting in the **Daily Nation Newspapers** informing all members of the company of the Annual General Meeting slated for 15th January 2015. In the meantime, on 14th January 2015 the interested party received a letter from the Registrar of Companies dated 13th January 2015 in which the Registrar of Companies required to be furnished with a register indicating the number of shares held by each member before noon of the same day 14th January 2015 which was not possible since the Annual General Meeting was scheduled for the following day 15th January 2015.

13. The same day, 14th January 2015 the interested party's chairman went to the office of the Registrar of Companies and informed him that it was not possible for the company to comply with the directives in the letter dated 13th January 2015, firstly because the notification was too short and the secondly that if the Registrar came for the Annual General Meeting he/she would find the register at the meeting.

14. It was averred that on the 20th day of March 2015 the Registrar of Companies wrote to **Henry Wainaina Kihoro** informing him that his planned parallel Annual General Meeting was cancelled. When **Henry Wainaina Kihoro** found that he was not able to use proper methods to hold an Annual General Meeting, he joined hands with his few sympathizers/land brokers who are not company members among them **Ahmed Chege Gikera** and **Joseph Kamunya Kinuthia** and when they noted that a Kerugoya High Court Judge **Mr. Justice Boaz Olao** was on leave the said **Ahmed Chege Gikera** quickly proceeded to Kerugoya and filed HCC ELC No.7 of 2015 and Counsel for **Ahmed Chege, Mr. Wangai** who was also counsel of **Henry Wainaina Kihoro** in ELC No.12 of 2014 appeared before a Deputy Registrar and with the full knowledge that a Deputy Registrar of the High Court could not hear an application for an injunction that was meant for a judge, the counsel argued his application and he obtained ex-parte orders directing that the Board of Directors of Githunguri Constituency Ranching Company Limited not transact any business for and on behalf of the company till inter-parties hearing and the said Deputy Registrar of the Kerugoya High Court **Mr. Andayi W.F** directed inter-parties hearing for 6th March 2015 and therefore the interim orders were to last till then.

15. However, on 6th March 2015 **Olao, J.** resumed and heard the application and observed that the matter was for the ELC Nairobi being sneaked to his Court and that there existed Misc. HCC ELC No. 12 of 2014 at Nairobi and in his wisdom he directed the ELC No.7 of 2015 Kerugoya be transferred and to be mentioned on 10th March 2015 at Nairobi. The Judge however did not extend the orders given by **Mr. Andayi** the Deputy Registrar therefore the orders lapsed on 6th March 2015.

16. It was averred that when the file in Kerugoya HCC ELC NO. 7of 2015 was transferred to Nairobi High Court it was allocated a new number HCC ELC NO.80 of 2015 (**Ahmed Chege Gikera -vs- John Maina Mburu and 7 others**). However upon realising that the order issued by **Hon. Andayi** had lapsed, on 6th March 2015, **Ahmed Chege Gikera** the plaintiff and his group fronted one of them, **Mr. Joseph Kamunya Kinuthia**, now the ex-parte applicant in this case to file Another suit at Thika Law Courts being CMCC ELC No. 30 of 2015 - Joseph Kinuthia -vs- the Caretaker Committee of Githunguri Constituency Ranching Company Limited. According to the interested party, the said **Ahmed Chege** after failing to obtain an extension of the illegally obtained orders in HCC ELC No. 7 of 2015 in Kerugoya fraudulently decided to hide behind **Mr. Joseph Kamunya** and they purported to file a case against an amorphous outfit calling itself a Caretaker Committee of Githunguri constituency ranching company limited comprising of themselves and the litigants moved with speed to record a consent order before the court in the following terms:

1. That the suit filed by the plaintiff/ applicant be and is hereby withdrawn.
2. That the respondent herein convenes an annual general meeting for purposes of electing directors for the Githunguri Constituency Ranching Company Limited within the next 30 days.
3. That share certificates be used to identify *bona fide* shareholders for purposes of participating in the aforesaid meeting.
4. That the registrar of companies to supervise and be the returning officer during the conduct of the aforesaid elections.
5. That the OCS Ruiru and the OCPD Kiambu shall provide security and ensure that good order is observed at the aforesaid elections.
6. That each party to bear its own costs for this suit.

17. It was the interested party's case that the Magistrate's Court did not have jurisdiction to order elections or an Annual General meeting of a limited company to be convened under the **Companies Act** Chapter 486 Laws of Kenya where it is expressed clearly that for the purpose of that Act, a Court means the High Court.

18. In the interested party's view, under the law a limited liability company's meeting can only be convened in three ways:-

(i) By the Board of Directors in office (ii) By requisition of the shareholders in an extra ordinary general meeting or (iii) By an order of the court; where Court means, High Court as per the **Companies Act** Chapter 486 Laws of Kenya now repealed as Act No 17 of 2015.

19. It was therefore contended that a court without jurisdiction and in a withdrawn suit had unceremoniously taken over a jurisdiction that, by statute, is reserved for a High Court Judge. It was further contended that there is no place in law of a Caretaker Committee that can convene a meeting of a Limited Company when there are elected directors in office so the order was to that extent unworkable. To them, it is also a matter of common knowledge and law that shareholders of a Limited Company should be given a 21 days' notice before an Annual General meeting is held therefore making their consent order ineffective since it was issued on 18th May 2015 directing convening of a meeting purportedly to be held on 23rd May 2015 in just 5 days from the date of issuance of the said order. The interested party further asserted that an election of a company's directors cannot be convened and identity of shareholders be determined using share certificates, only a register of members can properly establish who shareholders are but the conveners of the caretaker's meeting knew they had prepared fake share certificates to perfect their ill-motives.

20. To the interested party, it is also inconceivable how the order left out the participation of the elected directors who are still in office and again what purpose was the consent order to serve in a withdrawn suit, supposing there arose a dispute during the ill-advised and fraudulent election?.

21. It was therefore contended that the above reasons may have informed the decision of the Registrar of Companies in rejecting to participate in a fake or Kangaroo meeting.

22. However, the Registrar of Companies was served with an order on the 18th May 2015 directing him/her to attend a meeting on 23rd May

2015 and to supervise a meeting and be the returning officer of an election without a company's register neither was there any notice issued to members. It was disclosed that when the legally elected directors of Githunguri Constituency Ranching Company Limited noticed about the planned illegal meeting/ coup, they moved to the same court in order to stop the purported planned meeting and **Hon. D.N. Ireri** issued order to 22nd May 2015 halting the purported extra ordinary General meeting.

23. It was averred that the Registrar of Companies wrote to the counsel for the plaintiff over the purported Annual General Meeting vide a letter dated 20th August 2015 whose contents in my view are educative on how an election or Annual General Meeting of a Limited Company should be conducted under the **Companies Act**. By a letter of an even date the Registrar of Companies wrote to S.N Thuku & Co. Advocates with similar sentiments a clear indication that no meeting took place on 23rd May 2015 pursuant to the consent order recorded in Thika CMCC ELC No.30 of 2015 since the registrar of Companies could obviously not write such letters in a meeting he/she attended and supervised and therefore one would ask who was the returning officer during their purported meeting.

24. It was averred that **Mr. Ahmed Chege Gikera** abandoned his HCC ELC No.7 of 2015 Kerugoya and he proceeded to Nairobi where he appointed his crony by the name **Joseph Kamunya Kinuthia** and his counsel who represented him in both HCC ELC No. 7 of 2015 at Kerugoya and ELC App No. 12 of 2014 at Milimani to file a Judicial Review application No.245 of 2015 and this Court on 23rd July 2015 granted the leave therefore which leave was to operate as a stay of proceedings in Civil Suit No.30 of 2015 Thika that the ex-parte applicant in this case who claims to be the purported Chairman of the amorphous outfit calling itself a Caretaker Committee of Githunguri Constituency Ranching Company Limited was the defendant.

25. The said J.R. No. 245 of 2015 was challenging the civil suit No. 30 of 2015 Thika in which a consent was recorded directing elections of the company's directors to be held. According to the interested party, though leave to file J.R. No.245 of 2015 was granted on 23rd July 2015 and the judge directed the main Motion to be filed within 21 days, the Motion was filed outside the order's directive and after 30 days from July 23rd 2015. After disobeying the Court order and filing the J.R No. 245 of 2015 out of time and without leave of the court the following day 25th August 2015 **Ahmed Chege Gikera** filed a Notice of Withdrawal of HCC ELC No. 80 of 2015 Nairobi.

26. Nevertheless, Judicial Review application No. 245 of 2015 was eventually heard and Judgment was delivered on the 22nd January 2016 and in particular paragraph No.38 thereof, the Court made it clear that the orders made in CMCC NO. 30 of 2015 Thika were not binding on the "interested Party" i.e. Githunguri Constituency Ranching Company Limited and specifically the company had no business with whatever orders whether consent or however clandestinely obtained in Civil Suit No.30 of 2015.

27. Upon realising that his group could not be recognized by the Registrar General for the reason that they had attempted to conduct a sham election, it was averred that **Ahmed Chege** and his group forged a document similar to those issued by the Registrar of Companies and the group caused the list to be published in the *Daily Nation Newspaper* of the 27th day of May 2015. As a consequence of the making of a false Government documents **Mr. Ahmed Chege Gikera** was arrested and charged in Court and the case is still pending before Thika Magistrate's Court Cr No.4630 of 2015.

28. It was the interested party's case that **Ahmed Chege Gikera** is not a trustworthy person as he is facing several other known criminal cases before various courts e.g. Kiambu, Thika and Milimani Law Courts as envisaged by a copy of the annexed charge sheet in Milimani Law Courts Criminal Case No.1577 of 2014 where he is charged alongside his a compliance with **Mr. Henry Wainaina Kihoro** an offence of giving false information to a person employed in the public service.

29. The interested party averred that in a further attempt to cause confusion in the running of the company affairs the said group wrote to the County Commissioner, Kiambu seeking to introduce themselves as the new directors of Githunguri Constituency Ranching Company Limited and upon clarification by the Registrar General by a letter dated the 11th November 2015 Registrar General directed the interested party to call for an Annual General Meeting in compliance with order of Justice Mutungi of Millimani ELC msc application no 12 of 2014.

30. It was disclosed that the illegal acts by the **Ahmed Chege** and his group had reached the public and in a reported news article in the *Star Newspaper* of 21st December 2015 the office of the Registrar General raised concern thereat.

31. Upon the receipt of the Registrar's letter directing that the company do call for an Annual General Meeting the company conceded and wrote back vide a letter dated 13th November 2015 and a notice of the Annual General Meeting was on 18th November 2015 served on the Registrar of companies and published in the Daily Nation Newspaper of 17th November 2015. The company then forwarded to the Registrar General a list of the names of the current directors who wanted to present themselves for re-election as directors and the company also candidly forwarded a separate list of the names of the group headed by **Ahmed Chege** who have throughout expressed their thirst in being elected directors to run the affairs of the company with full intent to cover up their illegal activities.

32. It was averred that upon sensing that they would be rejected in the scheduled election the group led by **Ahmed Chege Gikera** boycotted the Annual General Meeting which nevertheless went on smoothly and directors were elected and returns filed on 19th December 2015. However, **Mr. Ahmed Chege** was not satisfied with not being appointed a director and therefore moved to court and filled judicial review no 512 of 2015 challenging elections of directors held on 17th December 2015 on grounds that judicial review no 245 of 2015 had stopped the elections of directors the information he knew was false and meant to mislead the judge who was handling JR 512/15.

33. According to the interested party, the multiplicity of suits hereinabove stated was summarized by the ruling delivered by **Mutungi, J** in ELC No. 12 of 2014 where he ordered the closure of the office opened by **Ahmed Chege** and his group on the building erected on land parcel No. Ruiru East Block 1/2405 belonging to **Henry Wainaina Kihoro** and he also ordered the said **Henry Wainaina Kihoro** to pay a fine of Kshs.50,000/= within 15 days from 11th December 2015 for purporting to have conducted elections of directors contrary to the judgement delivered earlier by the said the judge in ELC Misc No.12 of 2014 failure to which the said **Henry Wainaina Kihoro** was to be arrested and committed to civil jail for a period of 30 days from the date of such committal for contempt of court. However, **Henry**

Wainaina Kihoro still disobeyed the said court order directing the closure of their parallel office and on 11th July 2017 a warrant of arrest was issued by the High court directing the OCPD Ruiru police station to arrest him and to arraign him before Okongo, J. He was arrested and arraigned in court and he was fined Kshs.50,000/= for disobeying court orders.

34. It was therefore averred that the alleged special AGM and the resolution passed thereon were illegal *ab initio* because there were no valid court order issued by this honourable court barring the same.

35. According to the interested party:

a. No extraordinary General Meeting was held to appoint a caretaker committee of Githunguri Constituency Ranching Company Limited and in any event an extra ordinary General meeting has its statutory procedure to be found in the **Companies Act** Chapter 486 laws of Kenya and none was followed.

b. The returns which are subject to this suit were filed on 19th August 2014, by then their case No. 30 of 2015 Thika as well the Kerugoya case HCC ELC 7 of 2015 was not yet filed.

c. It is misleading to quote the orders of HCC ELC 7 of 2015 Kerugoya given by a Deputy Registrar which were to lapse on 6th March 2015.

d. There is no way an election could have been held on 23rd May 2015 following the orders in CMCC ELC No. 30 of 2015 because the said orders had already been stayed by the same Court by Honourable D.N Ireri Principal Magistrate on 22nd May 2015.

e. There is no evidence that the Registrar of Companies either attended any meeting or that he/she wrote and informed parties to await outcome of J.R No. 245 of 2015, this was invented by Ahmed Chege's outfit.

f. Looking at ground No. (h) in JR 245/15 of the grounds supporting the Motion the ex-parte applicant confirms that the substantive Notice of Motion in J.R No. 245 of 2015 was filed out of time (outside the 21 days given) that is on 24th August 2015.

g. The ground No. (k) JR 245/15 has no relevance since no orders had barred the company from conducting its normal affairs that includes the holding of its Annual General Meeting.

h. The Registrar of Company's agent Dorris Githua did her official duty of supervising the Annual General Meeting which was called by the legally elected directors of the company and filing the returns with the office of the registrar of companies and the alleged court orders of Kerugoya HCC ELC No. 7 of 2015 had lapsed on 6th March 2015 and the same were not extended.

36. The totality of the foregoing, according to the interested party, points out to an attempt by non-shareholders and non-directors quest to disrupt the smooth running of the affairs of the company using all manner of unorthodox methods to perfect their quest and more so to expose shareholders to untold suffering and immense loss of the company assets and as a result we have filed ELC case no 42 of 2016 against **Henry Wainaina Kihoro** who is the mastermind of the troubles facing our company for recovering of over 200 plots, he illegally sold and others allocated to himself while he was a director.

37. To it, the pleadings in the judicial review Misc App No. 479 of 2016 is already overtaken by events because **Joseph Kamunya Kinuthia** wants to mislead the court as he is talking of a meeting purportedly held on 23rd may 2015 whereas the said meeting was overturned by the annual general meeting which was held on 17th December 2015 and directors elected. The issue of directorship of Githunguri Constituency Ranching Company limited was solved by the judgment delivered on 25th may 2016 by Korir, J in judicial review application No 512 of 2015; Ahmed Chege Gikera -vs- The Registrar of Companies. After the judgment was delivered by **Hon. Justice Korir** in JR No. 512 of 2015 the ex-party applicant who was **Mr. Ahmed Chege Gikera** was not happy with his application being dismissed and therefore filed an application seeking a review of the said judgment and the same was dismissed on 5th October 2016 by **Hon. Justice Aburili** for lack of merit, terming **Ahmed Chege Gikera** as vexatious litigant.

38. The interested party averred that the brains behind the notice of motion dated 20th March 2017 in JR. No. 479/2017 is **Henry Wainaina Kihoro** and **Ahmed Chege Gikera** after losing Jr. No. 512/2015. However, **Joseph Kamunya Kinuthia** is neither a director nor a shareholder of **Githunguri Constituency Ranching Company Limited** and therefore lacks *locus standi* to institute such a case which is intended to paralyse the operation of a company with over 5000 shareholders. Further, **Joseph Kamunya Kinuthia** has not established the shareholders he is representing in this suit.

39. In the interested party's view:

a. That at no point did this Court confirm the purported Sham elections purportedly held on 23rd May 2015 by the amorphous outfit so called caretaker Committee of Githunguri Constituency Ranching Company Limited.

b. That the Court did not issue any orders halting the company's Annual General Meeting which was held on 17th December 2015 where directors of Githunguri Constituency Ranching Company Limited were re-elected.

c. That the Court did not confirm the order issued on 18th may 2015 by Chief Magistrate Court at Thika in civil suit No 30 of 2015.

d. That by quashing the orders halting the scheduled sham elections of Githunguri Constituency Ranching Company Limited in judicial review civil application No. 245 of 2015 on 22nd January 2016 the court directed that the effect of quashing the impugned proceedings before the chief Magistrates Court Thika in civil suit No 30 of 2015 the Ex-parte applicant obtained the liberty to proceed with their meeting which means that the purported meeting scheduled to be held on 23rd May 2015 never took place.

40. The interested party lamented that if the orders sought are granted the company will suffer irreparable loss /damage hence the notice of motion dated 20th March 2017 should be dismissed with costs.

Determinations

41. I have considered the issues raised in this matter.

42. What is rather unusual is that the applicant herein in his rather brief affidavit has not indicated what his driving motive is in seeking the orders he seeks. He has for example not disclosed what his relationship with **Githunguri Constituency Ranching Company Limited** is. He has not disclosed why the people for whose benefit he brings the application are unable to do so themselves.

43. Whereas it is true that the issue of locus standi has been expanded, even in constitutional petitions where the *locus standi* is very wide, the Constitution itself gives guidance in Article 258 as to who can bring an action on behalf of others. In other words the applicant ought to show that he has sufficient interest in instituting an action for redressal of public wrong or public injury and that he is not a mere busybody or a meddlesome interloper. See **Ms. Priscilla Nyokabi Kanyua vs. Attorney General & Interim Independent Electoral Commission Nairobi HCCP No. 1 of 2010.**

44. In this case, the applicant's ground for seeking the orders of mandamus is that the Respondent has not acted on their application to be registered as officers of **Githunguri Constituency Ranching Company Limited**.

45. As was held in **Kenya National Examination Council vs. Republic, Exparte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No. 266 of 1996 [1997] eKLR** where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to be carried out in a specific way. In my view the Respondent is under an obligation to consider an application to register a document and the failure to do so amounts to abuse of discretion. However, this Court cannot by way of an order of *mandamus* compel the Respondent to register the alleged officials as such but can only compel the Respondent to consider the same and make a decision one way or the other. However the Respondent is obliged under Article 47(2) to furnish the applicant with written reasons after considering the application where the decision is likely to adversely affect the applicant. Where no reasons are given and the decision arrived at adversely affects the applicants the Court would as well be entitled to conclude that there were no good reasons for exercising the discretion in the manner it was exercised. This position is clearly legislated in section 6(4) of the ***Fair Administrative Action Act, 2015*** which provides that:

Subject to subsection (5), if an administrator fails to furnish the applicant with the reasons for the administrative decision or action, the administrative action or decision shall, in any proceedings for review of such action or decision and in the absence of proof to the contrary, be presumed to have been taken without good reason.

46. This was the jurisprudence prevailing before the enactment of the above statute and enunciated in **Re Hardial Singh and Others [1979] KLR 18; [1976-80] 1 KLR 1090.** where the Court expressed itself as follows:

“In the ordinary way and particularly in cases, which affect life, liberty or property, a Minister should give reasons and if he gives none the court may infer that he had no good reasons...It is clear that the reasons given in the order for sale illustrate that the Minister had asked himself the wrong question; it being a question not enjoined upon him by the Act. He had therefore misdirected himself in law and that order is null and void.”

47. Before concluding this matter, it is clear that the instant Company is bedevilled with multiple litigation revolving around its leadership. It is high time the members of **Githunguri Constituency Ranching Company Limited** realised that the courts are loathe to interfere with the internal management of such entities since limited liability companies ought to be managed according to their constitute documents as opposed to court orders. Where it becomes clear that wrangling within the management of the company is detrimental to proper management thereof and is not in the interest of the members, the only alternative is to dissolve the entity concerned, and I am afraid that from the way the opposing sides are conducting themselves in this matter, they are dangerously on the brink of such action.

Order

48. Accordingly the order which commends itself to me and which I hereby grant is an order of *mandamus* compelling the Respondent to consider the applicant's application for registration of the list of the officials/directors of **Githunguri Constituency Ranching Company Limited** as presented by the applicants based on the elections held on 23rd May, 2015 and furnish the applicant with reasons therefor if his decision is adverse to the interest of the applicant within 30 days from the date of service of this order.

49. There will be no order as to costs.

G V ODUNGA

JUDGE

Delivered at Nairobi this 9th day of April, 2018

P NYAMWEYA

JUDGE

In the presence of: