



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI (NAIROBI)**

**COMMERCIAL AND TAX DIVISION**

**CIVIL SUIT NO.168 OF 2017**

**CHALBI GARDENS LIMITED.....PLAINTIFF/APPLICANT**

**VERSUS**

**JOSEPH MWANIKI KIARAHO.....1<sup>ST</sup> RESPONDENT**

**MARGARET MUTHONI MWANIKI.....2<sup>ND</sup> RESPONDENT**

**PAULINE NJERI KAMAU.....3<sup>RD</sup> RESPONDENT**

**WILLIAM THIGANI MUNGA.....4<sup>TH</sup> RESPONDENT**

**JEDIDAH WAMBUI THIGANI MUNGA.....5<sup>TH</sup> RESPONDENT**

**ROBERT MUGENDI NJAGI.....6<sup>TH</sup> RESPONDENT**

**REGISTRAR OF COMPANIES.....7<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Plaintiff/Applicant through an originating summons dated 20<sup>th</sup> April 2017, filed on 21<sup>st</sup> April 2017 against the Respondents seeks the following orders:-

- 1. The Respondents herein be restrained by the honourable court from conducting any business on behalf of the Plaintiff herein pending the hearing and determination of this application *inter-partes*.**
- 2. The Defendant/Respondent herein be removed from the list of directors and shareholders herein.**
- 3. Costs of this application be paid by the Respondents.**

2. The originating summons is supported by annexed affidavit of **JEMIMAH NYAMBURA NJUGUNA** and grounds on face of the application *inter alia*:-

- a. That the Respondents have without any colour of right invaded the Plaintiff's company herein without any consultation.**
- b. That the Respondents have enjoined themselves as directors of the Plaintiff/Applicant herein without any resolutions nor any letter of consent from the Applicant herein.**
- c. That the Applicant was the one who together with her late husband incorporated the said company.**
- d. That the Applicant has never at any one time been consulted for the enjoinder of the Respondents as directors and shareholders.**
- e. That unless the Respondents are not restrained they may continue to make unilateral decisions which will affect the Plaintiffs herein.**

**f. That it is fair and just in the circumstances to issue restraining orders to enable the Honourable court to determine the issues herein for the interest of justice and fairness.**

3. The Applicant relies on her supporting affidavit and verifying affidavit all dated 20<sup>th</sup> April 2017, to which the Applicant has annexed a copy of memorandum of Articles of Association marked "JNN 1", copy of the list of other directors marked "JNN 2"; who the Applicant terms as total strangers and which fact shocked her; and who she has deponed she does not know, how they were enjoined and how they acquired their shareholding in the company and prays for their removal as they never followed any known rules under the companies Act Cap 486. The Applicant further depones since the passing of her husband, herein referred to the other director, no meeting known as Annual General Meeting was held to deliberate on the issues whether of directorship or of shareholdings. She averred that the injunction was done without her blessing and as such the act is criminal in nature and the purported list of directors should be removed from the list till the laid down procedures and rules are properly followed.

4. The Applicant further depones the interference with the company has brought many other issues which need to be addressed as no returns have ever been filed nor meetings held. She further states the so called directors have assumed the running of the company without consultation with her as the director who incorporated the company and that the issues of shareholding should have been agreed before any steps were taken.

5. The Respondents were duly served with the Originating Summons but they did not file any response nor did they bother to appear save the 7<sup>th</sup> Respondent; thus the Registrar of Companies, who filed a Replying affidavit dated 3<sup>rd</sup> July 2017.

6. On 22<sup>nd</sup> December 2018 the Honourable late Justice J.L. Onguto, gave directions that this matter be determined by way of *viva voce* evidence; however when the matter came up for hearing on 5<sup>th</sup> July 2018; Mr. Osoro Juma, learned Advocate and Mr. Odhiambo, learned State Counsel, appearing for the 7<sup>th</sup> Respondent, moved the court to set aside the directions given by the court and order the case be determined by way of affidavits as already filed.

7. I have very carefully considered the counsel's request for hearing and determination of this originating summons by way of affidavits as already filed and considering that the party who had filed a response was not objecting to directions sought, and that the 1<sup>st</sup> to 6<sup>th</sup> Respondents did not bother to file response and though served were absent, I direct the matter be determined by way of affidavits.

8. I have heard both counsel in their respective submissions. The 7<sup>th</sup> Respondent, the Registrar of Companies, in her Replying Affidavit under paragraph 4, 6,7 and 8 has stated:-

**"4. THAT as at time of Registration the following were the subscribers and directors:-**

**i. David Nganga Njuguna 1 Share**

**ii. Jemimah Nyambura Njuguna 1 Share**

**(Annexed and Marked MB2 is the Memorandum and Articles of Association).**

5. ....

**6. THAT, however upon perusal of our Register, there is no Form 203A appointing the above cited Directors. In the absence of Form 203A, then their appearance in the Annual Return as Directors is invalid.**

**7. THAT, however upon perusal of our Register, there is no Form 203A appointing the above cited Directors. In the absence of Form 203A, then their appearance in the Annual Return as Directors is invalid.**

**8. THAT, in the light of the foregoing and the allegations contained in the Application and Supporting Affidavit of Jemimah Nyambura Njuguna, Mr. Robert Mugendi Njagi CPS. No.1622 who filed the changes, should be put to task to explain whether a meeting passing the resolutions took place and who instructed him to effect the changes."**

9. I have very carefully considered the submissions by the Advocates, the unopposed supporting affidavit of the Applicant and the Replying affidavit by State counsel; and note the Registrar of Companies is not opposed to the removal of the parties who are not properly on record and whose presence is not supported in Form 203A appointing them and Directors. In absence of Form 203A as observed by the Registrar of Companies, their appearance in the Annual Returns as Directors is null and void. It is invalid as there is nothing to change that position as found by the Respondent. The management of the company can only be regularized by the surviving Director, thus the Applicant together with the Registrar of Companies.

10. In view of the above I am satisfied the Plaintiff's/Applicant's originating summons ought to be granted. I accordingly grant the following orders:-

**a. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents be and are HEREBY restrained from performing any functions as directors and shareholders or company security and in any official functions in that matter and are HEREBY removed from the list of the Plaintiff's/Applicant company forthwith.**

**b. The serving Director of the company; JEMIMAH NYAMBURA NJUGUNA is at liberty to proceed to regularize the**

management of the company CHALBI GARDENS LIMITED together with the Registrar of Company, the 7<sup>th</sup> Respondent herein.

c. The Plaintiff/Applicant is awarded costs of the originating summons against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents.

Dated, signed and delivered at Nairobi this 12<sup>th</sup> day of July, 2018.

.....

J .A. MAKAU

JUDGE.