



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

MISC. CIVIL APPL. NO.35 OF 2018

JOHN NDERU MACHIRA

SAMUEL KARIMI.....APPLICANTS

V E R S U S

CYRUS MUNUHE MWANIKI &

8 OTHERS.....RESPONDENTS

R U L I N G

The applicants **John Nderitu Macharia** and **Samuel Karimi** filed this matter seeking leave of this court to prosecute a derivative action on behalf of **Muhotetu Farmers Company Ltd** and that the said leave do operate as stay. In the alternative, the applicants pray that the court grants an interim injunction restraining the Board of Directors from convening an Annual General Meeting on 5/10/2018. The court granted prayer 1 but asked the applicants to serve the application for hearing of the other prayers.

Today, some of the parties are before the court. So far, only the 1st, 2nd and 6th respondents have appeared. The other respondents are not yet served.

Because of time constraints, it is understandable why the respondents may not have been served. The court therefore directed that the court be addressed on the urgency of the matter only.

I have considered the issues raised.

The applicants contend that though the notice for the meeting of 5/10/2018 was issued on 6/9/2018, the applicants did not become aware of it till 27/9/2018. The applicants have not stated how they became aware of the notice so late in the day. Whatever the case, it seems the notice was issued in good time, well over 21 days before the meeting in accordance with the law and this court would have expected the applicants to move the court with speed if they felt aggrieved.

The other issue raised is that the respondents have not held any AGM since 2013, as required by the law. Mr. Nderitu has shown the court an affidavit sworn by one Ms. Koech, Company Registrar, annexure to the replying/affidavit, which indicates that the company has held AGMs and complied with the law. Unfortunately, the minutes of the said meetings are not annexed.

However, the question is why the applicants have waited for 5 years till 4 days before a scheduled AGM to come and stop the AGM. The applicants have rights as shareholders in which they can address such issues of failure to hold an AGM, but not wait till a scheduled AGM to come at the last minute to try and stop it.

As regards the issues of registration and membership, these are matters that should not have necessarily waited for an AGM to be raised.

Although the applicants raise pertinent issues, they had ample time from 2013 to address them. Alternatively, after issuance of the AGM notice, they should have moved with speed to the court to address them but not wait till 5 days before the AGM so that pressure is put on the court to issue an order of stay/injunction.

The court declines to grant an order stopping the holding of the Annual General Meeting.

The applicants should proceed to prosecute this action against them.

Court:

Derivative action be filed within 21 days.

Dated, Signed and Delivered at NYAHURURU this 4th day of October, 2018.

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R.P.V. Wendoh

JUDGE

PRESENT:

Mr. Muhoro for applicants and Wamalwa

Mr. Nderitu for respondent

Soi – Court Assistant