



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & TAX DIVISION**  
**CIVIL CASE NO. 100 OF 2016**

**YUSSUF ABDI ADAN.....1<sup>ST</sup> PLAINTIFF**  
**BLUE BIRD AVIATION LIMITED.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**HUSSEIN AHMED FARAH.....1<sup>ST</sup> DEFENDANT**  
**HUSSEIN UNSHUR MOHAMMED.....2<sup>ND</sup> DEFENDANT**  
**MOHAMMED ABDIKADIR ADAN.....3<sup>RD</sup> DEFENDANT**  
**MOHAMMED HASSAN.....INTERESTED PARTY**

**RULING**

1. This ruling relates to a Notice of Motion Application dated 6<sup>th</sup> of April 2016 and filed in Court on 7<sup>th</sup> April 2016. It is brought under Article 159 of the Constitution of Kenya, Section 1A, 1B, and 3A of the Civil Procedure Act (Cap 21), of the Laws of Kenya, the Companies Act, No. 17 of 2015, the Insolvency Act, No. 18 of 2015, the Inherent Jurisdiction of the Court and all the enabling provisions of the Law. The Applicant is seeking for orders that the Court be pleased to set aside or stay the ex parte orders issued on 31<sup>st</sup> March 2016, and strike out the 2<sup>nd</sup> Plaintiff from the Plaint dated 30<sup>th</sup> March 2016, and filed herein on the 31<sup>st</sup> March 2016.

2. The Application is based on the grounds on the face of it, and an Affidavit dated 6<sup>th</sup> April 2016 and sworn by Mohamed Abdikadir Adan, a Director and shareholder of the 2<sup>nd</sup> Plaintiff, Blue Bird Aviation Limited, (hereinafter “the Company”). The Applicant’s case is that, the 1<sup>st</sup> Plaintiff/Respondent, Yussuf Abdi Adan, instituted the suit herein on behalf of the Company without the requisite authority. That, prior to the commencement of the suit, the Company was required to pass a resolution authorizing the 1<sup>st</sup> Plaintiff/Respondent to institute the suit on its behalf. Similarly, such a resolution was required to be passed to authorize the firm of Messrs Ahmednasir, Abdikadir & Company to act for it. The Applicant argues that as the said resolutions were not passed as required, the Company should be struck out as a party to the suit. The Applicant averred that to the contrary, the only resolution passed by the Company was to authorize the firm of Kemboy & Company Advocates, to handle all matters pertaining to any alleged grievances that the 1<sup>st</sup> Plaintiff/Respondent may have against the Company.

3. The Applicant further stated that, the ex parte orders granted herein on 31<sup>st</sup> March 2016, allowing the suit to proceed were procured based on the face of non-disclosure and concealment of material facts and in particular that, the Parties herein were engaged in active litigation in Nairobi High Court winding up cause No. 7 of 2016, instituted by the 1<sup>st</sup> Plaintiff. Therefore, the said ex parte order should be set aside or stayed.

4. However, the Application was opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff /Respondent represented by the Law firm of Messrs Ahmednasir, Abdikadir & Company Advocates, on the grounds, *inter alia* that, it is grossly incompetent, an abuse of the Court process and designed to solely delay the expeditious determination of the suit herein. That, the issues raised are Res judicata as the same have been heard and determined by two Courts of competent and concurrent jurisdiction, rendering this Court to have no jurisdiction to entertain this matter. That, the Board of directors of the 2<sup>nd</sup> Plaintiff Company has not authorized the Applicant to challenge the suit herein, nor has it instructed the firm of Kemboy & Company Advocates to act for the 2<sup>nd</sup> Plaintiff Company. The purported authorization is fiction and a simple forgery. That, the three defendants have brought this Application to conceal their fraudulent theft of funds from the 2<sup>nd</sup> Plaintiff Company. That, the 1<sup>st</sup> Plaintiff instituted a derivative suit on behalf of the 2<sup>nd</sup> Plaintiff Company and does not require authority or concurrency in instituting the suit. That the Application seeking to strike out the plaint is thus over reaching. The averments in support of the same are scandalous.

5. The 1<sup>st</sup> Plaintiff/Respondent also relied on a Replying Affidavit, he swore on his own behalf and on behalf of the Company dated 22<sup>nd</sup> June 2016 arguing that, he has been authorized to depose to matters in the Affidavit in support of the Application he has filed herein. He reiterated that the suit herein being a derivative suit, the consent or approval of the Board of Directors of the Company is not required to institute it. He denied knowledge of the Board of Directors meeting authorizing the appointment of the Law firm of Messrs Kemboy & Company Advocates, to represent the Company in this matter. He also denied the allegation that he has not disclosed the existence of the winding up cause No. 7 of 2016, and stated that he has disclosed the same at paragraph 80 of the Plaint. That, he has pleaded in this suit with crystal specificities of breach, misappropriation of monies belonging to the 2<sup>nd</sup> Plaintiff by the three Defendants. He maintained that the Application herein is *Res judicata*.

6. The 3<sup>rd</sup> Defendant supported the Application and the averments therein, by filing a Replying Affidavit dated 11<sup>th</sup> July 2016, sworn by Mohamed Abdikadir Adan. He supported the Applicant's averments that, the Law firm of Messrs Kemboy and Company Advocates was appointed vide a resolution of the Company dated 3<sup>rd</sup> February 2016, passed during an extra ordinary board meeting of the Company, held on 30<sup>th</sup> January 2016. That, the 1<sup>st</sup> Plaintiff was given due notice thereof and one of the agenda set down for the meeting was the appointment of Advocates for the Company to handle any litigation that may likely arise. It was then resolved that the Law firm of Messrs Kemboy & Company Advocates be so appointed to represent the 2<sup>nd</sup> Plaintiff. The 3<sup>rd</sup> Defendant deposed that, the 1<sup>st</sup> Plaintiff is seeking for personal relief as against the Defendants in the Plaint and therefore that disqualifies this matter being a derivative suit. As such the 1<sup>st</sup> Plaintiff requires authorization from the 2<sup>nd</sup> Plaintiff Company to institute this suit on behalf of the Company. Yet, the authority was never obtained, thus justifying the striking out of the Plaint herein, for being an abuse of the Court process.

7. The Court heard oral address by the Parties. The Learned Counsel for the Applicant reiterated the matters deposed in the Affidavit in support of the Application, to the effect that the Company has not consented to the filing of the suit and did not instruct the Law firm of Messrs Ahmednassir, Abdikadir & Company Advocates to represent it, as conceded at paragraph 2, of the 1<sup>st</sup> Plaintiff/ Respondent Affidavit. That, instead, it was resolved the firm of Kemboy & Co. Advocates represent the 2<sup>nd</sup> Plaintiff; and the 3<sup>rd</sup> Defendant was authorized to swear the Affidavit on behalf of the Company. The Learned Counsel, Mr. Kemboy further submitted that, the verifying Affidavit accompanying the Plaint was sworn by the 1<sup>st</sup> Plaintiff on his own behalf, and there is no verifying Affidavit sworn by the 2<sup>nd</sup> Plaintiff to support the suit. He made reference to several legal authorities to buttress the position that, there is a prohibition in

law to commence a suit in the name of the Company without express authority from the Company. Some of the cases referred to are:

- ***Danish Mercantile & Co Ltd Vs Beaumont & others (1951) ALL ER 925;***
- ***Airways Ltd Vs Bowen & Another----- and***
- ***Commercial and Industrial Bank Vs Lecamptoir Di Escomptede Moulhouse & others (1924) ALL ER 381.***

8. The Learned Counsel Ms Jani Mohammed who represents the 1<sup>st</sup> Defendant associated herself with the submissions made by Mr. Kemboy on behalf of the Applicant. The Learned Counsel Mr. Birik, representing the 2<sup>nd</sup> Defendant, submitted that, the suit herein was filed under Section 238 of the Companies Act, and by a member on behalf of a Company. Therefore, it is not a suit by the Company as provided for under Section 240 of the Companies Act No. 17 of 2015. That, if the Court has to determine the issue herein, it has to hear from the Company as to whether it can pursue the claim or not and whether the action complained of was ratified by the Company. That the Court should consider whether there are other remedies available for the personal claims. He submitted that, the 1<sup>st</sup> Plaintiff/ Respondent filed a winding up cause No. 7 of 2016 which was struck out, although there is a Notice of Appeal. He argued that, no one wants to be defended by a Party that wants to “kill it”. Therefore, the Company should have an independent legal representative from that representing the 1<sup>st</sup> Plaintiff/Respondent.

9. The Learned Counsel Mr. Sagana holding brief for Mr. Daud for the 3<sup>rd</sup> Defendant supported the Application and relied on the resolution annexed to the Replying Affidavit sworn by the 3<sup>rd</sup> Defendant. He submitted that, the firm of Messrs Ahmednassir, Abdikadir and Co. Advocates has no authority to represent the 2<sup>nd</sup> Plaintiff Company herein. That the provisions of Section 238 to 241 are clear that the Company must have its own independent representative. Thus, the lawyer for the 1<sup>st</sup> Plaintiff cannot purport to be acting for the 2<sup>nd</sup> Plaintiff. Finally, the Learned Senior Counsel, Mr. Fred Ojiambo representing the Interested Party, associated himself with all submissions made by the aforesaid lawyers in relation to institution of suits involving a Company and in particular a derivative suit.

10. The Learned Senior Counsel Ahmednassir, submitted that the Learned Counsel Mr. Kemboy and the other Learned Counsels representing the Defendants and the Interested Party have conspired to defeat the 1<sup>st</sup> Plaintiff’s claim. That, whether the suit is derivative or representative is not an issue. That the 2<sup>nd</sup> Plaintiff did not authorize the Learned Counsel Mr. Kemboy to file this Application. It is actually the Defendants who instructed him to act as herein. He referred the Court to paragraphs 67-69 of the Plaintiff which makes reference to letters sent to the Defendants in their individual capacity and not in a corporate form. He submitted that, the authority to act for the Company allegedly given to the law firm of Kemboy & Company Advocates was to authorize him to act for the Company in the winding up cause, and when the same was struck out, that matter came to an end. Therefore, there is absolutely no evidence that the firm of Kemboy & Company Advocates were authorized to act in this matter and make a challenge.

11. The Counsel argued that, the averments by the 3<sup>rd</sup> Defendant that, the firm of Kemboy and Company Advocates were appointed during the extra ordinary Board meeting lacks evidence in support thereof. He questioned the whereabouts of the minutes of the extra ordinary meeting and termed the alleged resolution document as a “cooked document”. He further submitted that, a look at the alleged extract of the minutes of the meeting held on 30<sup>th</sup> January 2016, annexed to the Affidavit sworn by 3<sup>rd</sup> Defendant, reveals that the name of the Company Secretary is not disclosed and questioned the non-disclosure, if there is a valid Company Secretary. He invited the Court to consider the veracity of the said document and read Paragraph 54 of the Plaintiff to ascertain the averments made specifically against the Applicant. He argued that, the issue is whether the 2<sup>nd</sup> Plaintiff is properly as a Party in this matter. He conceded that the Applicant’s Counsel cited good legal authorities in support of the proposition that a person cannot sue in the name of the Company without a Board of the Directors resolution, although in law the Company can remedy that position when it comes to know of it.

12. The Learned Counsel further submitted that, in this matter the difference is that, the suit herein is not

a suit by Blue Bird Aviation Ltd, it is a suit where the Plaintiff is a Shareholder, with 25% of the shareholding of the Company and comes to Court to sue the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as Company Directors for breach, and abuse of office against the 2<sup>nd</sup> Plaintiff Company. He referred to the case of **Foss Vs Harbottle (1843) 2 Harne 461** and submitted that, although the rule in Foss, may have been rendered redundant due to the codification of the exceptions thereto, it is a general principle of law that a wrong against the Company can only be brought in the Company's name. He argued that, in the instant case, the cause of action belongs to Blue Bird Aviation Ltd, and it is wronged by the three Defendants who are not just majority shareholders but in management. That, the 1<sup>st</sup> Defendant is the Company's Chief Executive Officer cum Chairman, and the 2<sup>nd</sup> Defendant, it's Managing Director, positions held for over 25 years, therefore in total control. As such, the Defendants cannot sue themselves; neither can they pass a resolution to sue themselves. He maintained that this is a derivative suit, as the Defendant will not give authority to institute it against their actions.

13. The Learned Senior Counsel Mr. Ahmednassir, further submitted that there is no harm if the Court was to rule that, the 2<sup>nd</sup> Plaintiff become a 4<sup>th</sup> nominal Defendant. However, if that is so ordered, it should not appoint a lawyer under the Control of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants, but should be a passive party. He referred the Court to part 9, of Rules and Practice Directions, Civil Procedure Rules of England to buttress the point that, nothing turns on the fact that the 2<sup>nd</sup> Plaintiff Company herein can be a Plaintiff or a nominal Defendant. He referred to the case of **Nyali Limited Vs Attorney General (1955) I ALL ER 646**, to argue that the Court has the power to decide whether this Company will be a Plaintiff or nominal Defendant. He further referred to the case of **Amin Akberali Manji & 2 others Vs Altaf Abdulrasul Dadani & Another (2015) eKLR**. That, even then leave can be sought before instituting the suit or be obtained to continue with the suit. He relied on the case of **Edwards & Another Vs Halliwell & others (1950) 2 all er 1064**. He further relied on the case of **Wallersteiner vs Moir (No 2) (1975) I ALL ER 849**, to submit that, it is a common law principle that when a Company is wronged by an insider, the Company is the only one which can sue. He submitted that, in the instant case the Company is merely a nominal Plaintiff as it seeks no orders, and it will be so if made a nominal Defendant. He relied on the case of **Tatu City Ltd and 3 others Vs Stephen Jennings & 6 others eKLR**. In conclusion he argued that, if the 2<sup>nd</sup> Plaintiff is struck out, then the suit will not proceed as the 1<sup>st</sup> Plaintiff cannot be allowed to continue alone. He prayed for the dismissal of the Application.

14. Mr. Kemboy, the Learned Counsel, in response to the submissions by the Senior Learned Counsel, Mr. Ahmednassir, submitted that since the 1<sup>st</sup> Plaintiff has conceded that, the 2<sup>nd</sup> Plaintiff/Company did not give authority for the suit to be commenced in its name, the 1<sup>st</sup> Plaintiff's objection should be dismissed. He argued that for the Application to succeed, the only issue the Court has to consider is whether the 2<sup>nd</sup> Plaintiff gave authority for the suit to be commenced in its name. That, where there is no authority, the law allows the Company to ratify the act but without such ratification, the suit cannot be maintained in name of the Company. Mr. Kemboy invited the Court to disregard the elaborate submissions made on whether leave was sought to commence a derivative suit, as there are other Applications herein relating to the same. He referred to the case of, **Airways Ltd vs Bowen & Reid (1985) BCL 335, Kerr L.J** where the Court struck out proceedings with indemnity costs, which were brought in the name of the company without authority to use the Company's name. Mr Kemboy refuted the submissions by the 1<sup>st</sup> Plaintiff's counsel that, if the 2<sup>nd</sup> Plaintiff name is struck out, the suit will come to an end. He argued that, the suit is in the name of a shareholder, and with leave to sue on behalf of the Company, not in the name of the Company. He told the Court that, the 2<sup>nd</sup> Plaintiff has not sought to be made a nominal Defendant. That, there are no rules in Kenya to make a Company a Defendant, He relied on the case of Amin Manji (supra) to affirm the position. He argued that the exceptions in **Foss vs Harbottle** (supra) is good law as affirmed by the decision in Moir's case (supra) to the effect that litigation belongs to the Company. He refuted the allegation that, the Plaintiffs is a joy rider and argued that, from the Plaint, it is evident that the Plaintiffs are seeking for substantive orders against the Company. He distinguished the Tatu case (supra) on the ground that it dealt with the issue of leave to bring the derivative suit. He sought that prayer 3 of the Application be allowed, and costs of this suit be borne by the Counsel on record representing the 1<sup>st</sup> Plaintiff.

15. At the conclusion of the oral submissions by the respective Learned Counsels, I have considered the Application, the grounds thereto, the Affidavits sworn in support, and in opposition. I note that the Applicant is seeking for mainly two prayers, an order to set aside or stay the ex parte orders issued on 31<sup>st</sup> March 2016, and an order to strike out the 2<sup>nd</sup> Plaintiff from the suit. However, I take cognizance of the fact that there are other pending Applications by the other Defendants herein, relating to the said orders of 31<sup>st</sup> March 2016. In that regard, I shall only deal with issue as whether, the 2<sup>nd</sup> Plaintiff should be struck out of the suit.

16. The issue to determine is therefore whether the 2<sup>nd</sup> Plaintiff is properly joined in this matter. The other associated issues for determination are the manner in which both the law firms of Messrs Ahmednassir, Abdikadir & Company Advocates and Kemboy & Company Advocates were appointed to represent the 2<sup>nd</sup> Plaintiff herein and whether, if the 2<sup>nd</sup> Plaintiff is struck out as such, it should remain in this suit as a nominal 4<sup>th</sup> Defendant, and if so, whether, it will continue to be represented by the Law firm of Kemboy & Company Advocates.

17. In the instant case, the issue that has arisen is therefore whether the 1<sup>st</sup> Plaintiff has authority to sue in the name of or on behalf of the 2<sup>nd</sup> Plaintiff Company. In that regard, I have noted from the verifying Affidavit sworn by the 1<sup>st</sup> Plaintiff dated 30<sup>th</sup> March 2016, he deposes as follows;

***“I am a male adult of sound mind and disposing mind, the Plaintiff herein fully conversant with the facts of this case thus competent to swear this affidavit.***

***That I have read the contents of the Plaint and do verify that the averments contained therein are correct”. (emphasis mine).***

18. However, I also note that at Paragraph 9 and 10 of the said Plaint, he states:

***“The 1<sup>st</sup> Plaintiff on behalf of the 2<sup>nd</sup> Plaintiff Company seeks redress against the Defendants jointly and severally for breaches of duty, breach of care, conversion .....”***

19. And at paragraph 10 he states that:

***“Further, the 2<sup>nd</sup> Plaintiff cannot bring this suit as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who exercise total and monopolistic control over the 2<sup>nd</sup> Plaintiff will not sanction such a damaging and revealing case against them....” (emphasis mine).***

20. Finally, at paragraph 17 of the Plaint he states that;

***“The Plaintiffs avers that unless this Honourable Court intervenes, authorizes and allows the institution of the suit herein as a derivative suit for and on behalf of the 2<sup>nd</sup> Plaintiff”(emphasis mine).***

21. It is therefore clear from the foregoing paragraphs of the pleadings that the 1<sup>st</sup> Plaintiff instituted this suit on his own, and on behalf of the 2<sup>nd</sup> Plaintiff. The question is this: Did he have authority to institute this suit on behalf of the 2<sup>nd</sup> Plaintiff?. The general principles of Company Law are well established that, a Company is an association of persons formed for the purpose of some business or undertaking which has a legal personality separate from that of its members. That legal personality of a limited liability company is that it acquires its own property, rights and liabilities separate from its members upon incorporation. The centuries-old case of ***Salomon Vs. Salomon Company Limited [1895-99] All ER 33*** laid that principle to rest. While Companies are owned by their members, the shareholders, they are managed by a Board of directors. The duties owed by the Board are fiduciary in nature and are owed to the Company rather than the shareholders. There is also no argument that the proper plaintiff in any proceedings or action in respect of a wrong done to the Company is the company itself. That was

established over 100 years ago in *Foss vs. Harbottle (1843) 67 ER 189 (the Foss case)*, popularly referred to in company law as “*the rule in Foss Vs. Harbottle*”. The rule was restated by Jenkins L. J. in the case of *Edwards Vs. Halliwell (1950) All ER 1064* as follows:-

***“The rule in Foss-Vs.-Harbottle, as I understand it, comes to no more than this. First, the proper Plaintiff in an action in respect of a wrong alleged to be done to a company or association of persons is prima facie to the company or the association of persons itself. Secondly, where the alleged wrong is a transaction which might be made binding on the company or association and on all its members by a simple majority of the members, no individual member of the company is allowed to maintain an action in respect of that matter for the simple reason that if a mere majority of the members of the company or association is in favour of what has been done, then cadit quastio; or if the simple majority challenges the transaction, there is no valid reason why the company should not sue.”***

22. The *Halsbury’s Laws of England/Fourth Edition* at page 429 stipulates that;

***“A company, not being a physical person, can only act either by resolution of its members in general meeting, or by its agents. It is not the agent of its member and a member as such is not the agent of the company, the company being a separate entity or legal person apart from its members, who are not even collectively, the company”.***

23. Lord Denning MR summed up the law in *Moir Vs. Wallersteiner [1975] 1 ALL ER 849* at p. 857, as follows:

***“It is a fundamental principle of our law that a company is a legal person with its own corporate identity, separate from the directors or shareholders and with its own property rights and interests to which alone it is entitled. If it is defrauded by a wrong doer, the company itself is the one person to sue for the damage. Such is the rule in *Foss V. Harbottle [1843] 2 Hane 461*. The rule is easy enough to apply when the company is defrauded by outsiders. The company itself is the only one who can sue. Likewise, when it is defrauded by insiders of the minor kind, once again the company is the only person who can sue”.***

24. The principle in **Salomon Vs Salomon & Co. Limited** is embodied in Section 19 of the Companies Act No 17 of 2015 which provides that;

***“From the date of incorporation mentioned in the Certificate of Incorporation, the subscribers to the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company, with power to hold land and having perpetual succession and a common seal, but with such liability on the part of the company in the event of its being wound up as is mentioned in this Act”.***

25. The Section 18(4) of the Companies Act No 17 of 2015 Laws of Kenya states;

***“A Certificate of Incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the association is a company authorized to be registered and duly registered under this Act”.***

26. In the case of *Airways Ltd Vs Bowen & Another (Supra)* the Court held that:

***“Once it is clear, as it was by these concessions, that the action was improperly constituted, this action could not be allowed to proceed..... It then follows on the authorities and was not indispute that the solicitors who brought the proceedings without authority will themselves be liable to pay the costs thereby incurred”.***

27. The Court went on to state:

***“There could not be a clearer case than the present, once it had been conceded that the action was and remained improperly constituted and brought without authority. In those circumstances the Judge should have granted this Application at once, with the effect that the action would necessarily have come to an end. Nothing else was open to him on the facts of this case”.***

28. The authority in Tatu Naiga & Emporium Vs. Virjee Brothers Ltd Civil Appeal No. 8 of 2000, restated the law as follows:-

***“... it was now settled, as the law, that, it does not require a board of directors, or even the general meeting of members, to sit and resolve to instruct Counsel to file proceedings on behalf and in the names of the Company. Any director, who is authorized to act on behalf of the company, unless the contrary is shown, has the powers of the board to act on behalf of that Company.” (emphasis mine).***

The decision has since been applied in Kenyan courts, for example, in Fubeco China Fushun Vs Naiposha Company Limited & 11 others [2014] eKLR.

29. It is therefore a cardinal principle in company law that, it is for the company and not the individual shareholder to enforce rights of action vested in the company and sue for wrongs done to it. When companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or Board of Directors’ meeting and recorded in the minutes, but no resolution had been passed authorizing the proceedings in this case. Both parties have conceded that the company did not pass a resolution authorizing the 1<sup>st</sup> Plaintiff to institute the suit in the name of the company, and/or on behalf of the company. The 1<sup>st</sup> Plaintiff explains that such a resolution would not be possible as the Defendants Directors cannot give authority to sue themselves for illegality and fraudulent activities against the company. In the same vein, the authority to the two law firms representing the company is in dispute.

30. My findings based on the legal principles cited above is that, in the absence of authority by the Board of Directors of the 2<sup>nd</sup> Plaintiff Company authorizing the 1<sup>st</sup> Plaintiff to institute the suit in it’s name, the 2<sup>nd</sup> Plaintiff cannot remain as a Party to this proceedings. I therefore order that the 2<sup>nd</sup> Plaintiff be struck out from the Plaint dated 30<sup>th</sup> March 2016, and filed herein on the 31<sup>st</sup> March 2016.

31. The issue relating to the representation of the 2<sup>nd</sup> Plaintiff by the two law firms has been overtaken by the orders above. The issue as to whether the 2<sup>nd</sup> Plaintiff will be made a 4<sup>th</sup> Nominal Defendant will be dealt with alongside the issue relating to the setting aside or stay the ex parte orders issued on 31<sup>st</sup> March 2016.

32. Those then are the Orders of the Court.

Dated, Signed and delivered on this 16<sup>th</sup> day of February 2017 at Nairobi.

**G. L. NZIOKA**

**JUDGE**

**In Open Court in the presence of:**

Ms. Hannah for Mr. Ahmednasir for the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiff

Mr. Jan Mohammed for the 1<sup>st</sup> Defendant

Mr. Sagana for the 2<sup>nd</sup> Defendant

Mr. Daud for the 3<sup>rd</sup> Defendant

Mr. Jelle for Mr. Fred Ojiambo for the Interested Party

Ms. Teresia Court Assistant