



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL CASE NO. 13 OF 2016

HEZEKIAH WANG'OMBE GICHOHI.....1ST PLAINTIFF
HEZY JOHN LIMITED.....2ND PLAINTIFF
ALLIMEX LIMITED.....3RD PLAINTIFF
HII INVESTORS LIMITED.....4TH PLAINTIFF
CAROLINE W. KAMARU ABOUR.....5TH PLAINTIFF

VERSUS

DAVID N. MUTHOGA..... 1ST DEFENDANT
ANTONY WAGURA IKIKI.....2ND DEFENDANT
PETER GICHOHI GITAU.....3RD DEFENDANT
UMOJA SERVICE STATIONS LIMITED.....4TH DEFENDANT

RULING

1. The application is dated the 5th September, 2016 and is brought under a Certificate of Urgency and under the provisions of Order 40 Rules 1 and 10 of the Civil Procedure Rules and Sections 3 and 3A of the Civil Procedure Act; the applicants seek the following orders;

(i) Spent

(ii) An order restraining the Respondents herein, their servants and or agents from making/altering or changing the officers of the Company at the Registrar of Companies office as at 31.12.2015 and or changing the signatories to the company's bank accounts as at 31.12.2015 pending the hearing and determination of the application;

(iii) An order as in (ii) above to remain in force pending the hearing and determination of the suit herein;

(iv) That the costs of this application be provided for.

2. The applicants place reliance on the grounds on the face of the application and on the Supporting

Affidavit made on the same date by **HEZEKIAH WANGOMBE GICHOHI** who depones that he is a Director and a minority shareholder in the 4th Respondent company and is conversant with the matters herein and is duly authorized to make the affidavit on behalf of the other applicants.

FACTS

3. A short preview of the facts is that pursuant to a Special Extra Ordinary Meeting held on the 27/11/2015 the 1st Plaintiff/ Applicant was named into the office of the Board of Directors of the 4th Defendant/ Respondent Company; thereafter the Respondents have sidelined the 1st Applicant and kept him out of the mainstream running of the company; the applicants are now apprehensive that the respondents are likely to alter records at the Companies Registry as well as the bank signatories which action will prejudice the applicants and other members of the Company; and therefore seek orders from this court restraining the applicants from altering or making any changes to the particulars of the company at the Companies Registry and also from making any changes to the signatories of all the company's bank accounts pending the hearing and determination of the main suit.

ISSUES FOR DETERMINATION

4. After hearing the submissions made by both Counsels for the applicants and the respondents the only issue framed by this court for determination is;

(i) whether this is a suitable case for this court to exercise its discretionary powers and to grant the applicants the injunctive orders sought;

ANALYSIS

5. The salient points of law for injunctive orders to which the applicants have to comply with are laid down in the renowned case of **Giella vs Cassman Brown & Co. Ltd (1973) EA 358**; the decision outlines three conditions which are;

(i) That a prima facie case has been made out with probability of success;

(ii) The applicant will suffer irreparable harm that cannot be compensated with damages;

(iii) If in doubt, then a balance of convenience;

6. The applicants have deponed that the respondents have arrogated themselves certain powers and made it difficult to run the company professionally; The 1st applicant avers that the respondents want to eliminate him from being a shareholder and have also irregularly ousted him from the board of directors; and once done that he will be greatly prejudiced and there is no remedy in damages;

7. This court has had the occasion to peruse the 1st Applicants Supporting Affidavit at length and in particular paragraphs 10 and 13 and the contents read as follows;

“10. That in the said meeting though irregularly, the entire Board of the Company was dissolved. Again, although it was not an agenda of the said meeting, irregular elections were conducted in which I and respondents here in and two other persons were appointed to the board of directors.

13. That in the interest of order and the exigencies of the time, I and the applicants decided to fore bear the changes to await the regularization of the proper changes in the Company's Annual General Meeting.”

8. From the material placed before this court it is noted that both the 1st applicant and the 2nd respondent are beneficiaries of an irregular elective process and continue to be so; and that there is no rebuttal of this

wrong doing in the response made by the respondents; from these averments which are not controverted this court is satisfied that the applicants have made out a prima facie case with overwhelming chances of success;

9. The maxim “ *equity does not assist rule breakers*” and it goes without saying that this court cannot assist wrong doers and an injunction must therefore issue to prevent the respondents from validating the wrong doings in altering the records at the Companies Registry; the applicants and members of the respondent company will also be greatly prejudiced if the records are altered and that such changes will occasion irreparable loss that cannot be adequately compensated by way of damages.

FINDINGS AND DETERMINATION

10. In the light of the foregoing this court is satisfied that this is a suitable case in which it can exercise its discretion in favour of the applicants.

11. The application is found to be meritorious and is hereby allowed.

12. The respondents herein, their servants and or agents are hereby restrained from making/altering or changing the officers of the Company at the office of the Registrar of Companies pending the hearing and determination of this suit.

13. The applicants are directed to list this matter for early hearing and determination within the next three (3) months; in default the respondents are at liberty to apply for the discharge of the injunctive order herein.

14. The costs shall be in the cause.

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 2nd day of March, 2017.

HON. A. MSHILA

JUDGE