



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI
MISC CIVIL APPLICATION NO.245 OF 2017

ANNA WANJIKU KINYUA.....APPLICANT

VERSUS

ELIUD KARANI MURIMI.....DEFENDANT

RULING

This is a ruling on application dated 30th may 2017 brought under section 238 of the companies Act 2015. The applicant seeks the following orders:-

1. Leave to bring these proceedings and /or a separate suit as derivative action.
2. that the respondent be restrained from taking and making decisions, giving instructions, writing and signing letters, notices, forms, deed, minutes, resolutions, returns and any other documents in the name and on behalf of the company VINEYARD VALUERS LIMITED without consent or concurrence of the applicant
3. that the respondent by himself, his agents, servants or otherwise be restrained from accessing and operating bank accounts operated by VINEYARD VALUERS LTD listed in prayer 4
4. that the respondent be directed to account to the applicant all monies received into and withdrawn from all the accounts operated by VINEYARD VALUERS LTD as listed in prayer 5

Grounds on the face of the application are that the applicant is the wife and legal representative of the estate of GORDON ODHIAMBO NYABANDE who died on 5th October 2014; that VINEYARD VALUERS LTD was incorporated on 15th October 2004 with the deceased as majority shareholder with 8,300 shares and the respondent having 1000 shares. That the deceased's shares have been transferred or transmitted to the applicant herein by operation of law under section 238 of the companies Act. That the respondent is operating as director without consulting the applicant and the company is in danger of being run down.

The application is supported by the affidavit sworn by the applicant herein on 30th may 2017. She attached Grant of letters of administration confirming that applicant together with Kennedy O.A. Hongo are legal administrators of the estate of **GORDON ODHIAMBO NYAMBANDE**.

I have also perused the letter dated 21st September 2015 from Assistant registrar of companies which confirm that the deceased had 8,300 shares and the respondent and one Geoffrey Rono Kiplangat had 600

and 400 shares respectively. Attached to the affidavit is unsigned transfer of shares by the said Geoffrey Rono Kiplangat and release letter from the company dated 24th may 2014.

The applicant has annexed letters dated 2/2/2017, 9/1/2017&3/5/2017 indicating rent arrears and service charge. Default notice from KRA dated 11/9/2016, 31/10/2016, 30/11/2016, 10/2/2017, 10/3/2017, 10/4/2017 & report showing amount due as 481,110.76 are also attached.

Counsel for the applicant indicated that the respondent was served on 8/6/2017. Affidavit of service filed the same day confirmed that the respondent was served with the present application. The respondent has not entered appearance nor file response to the application.

From the documents attached herein, it is evident that the deceased **GORDON ODHIAMBO NYABANDE** owned majority shares in **VINEYARD VALUERS LTD**. Letters of administration also confirm that the **APPLICANT** herein and one **KENNEDDY O.A.HONGO** are administrators of the deceased's estate. Documents attached also confirm the company is in arrears in payment of rent and tax. The above has not been controverted. Memorandum and articles of association is attached to the application herein. **Article 38** provide for transmission in event of death. it recognizes of the administrators of the estate of the deceased. it is evident that the company is not running well. The applicant has the capacity and reason to bring this proceedings as derivative action but that should be done together with her co-administrator of the estate of the deceased one Kennedy O.A.Hongo.

I also find that sufficient reasons have been given to restrain the respondent from solely carrying dealings that relate to the company enumerated in prayer 3 and accessing or operating accounts listed in prayer 4. The above to be carried out in consultation with the applicant herein and the said Kennedy O.A.Hongo.

I further direct the respondent to give an account of monies received and withdrawn from accounts listed in prayer 5 to the applicant and the said Kennedy O.A.Hongo.

Costs to the applicant.

Dated and Delivered this...14THday of.....JULY 2017

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

.....COURT ASSISTANT

.....COUNSEL FOR APPLICANT

.....RESPONDENT