



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL SUIT NUMBER 87 OF 2013

NAKURU MATUKANIO FARMERS CO. LTD..... PLAINTIFF

VERSUS

MOSES NDUN'GU KAMAU.....1ST DEFENDANT

MATHENGE NDERITU.....2ND DEFENDANT

SAMSON MUCHIRI NDUATI.....3RD DEFENDANT

ABRAHAM MWAURA MWANGI.....4TH DEFENDANT

JOSEPH NGUGI MWANGI.....5TH DEFENDANT

DISTRICT COMMISSIONER (GILGIL DISTRICT).....6TH DEFENDANT

THE HON. ATTORNEY GENERAL.....7TH DEFENDANT

RULING

1.The Notice of Motion application dated 11th November 2016 was bought by the 1, 2nd, 3rd, 4th and 5th defendants against the plaintiff, Nakuru Matukanio Farmers Company Limited. They seek that the Annual General Meeting of the company held on the 20th March 2015 be adopted as part of the proceedings in this suit.

It is submitted that by an order of the court upon consent of all parties that the General Annual Meeting was to be held on the said 20th March 2015 and that parties complied and a report was compiled by the Secretary to the County Land Management Board, one Mr. Francis Ole Kibelekenya. This report is annexed to the supporting affidavit of Samson Muchiri Nduati, the 3rd Defendant.

2.The application is opposed and a Replying Affidavit sworn by Nelson Gakinya Chambi the Chairman of the plaintiff company on the 24th February 2017 and filed on same date.

He acknowledges the General Meeting held on the 20th March 2015, but avers that the company protested at the conduct of the meeting by the Arbitrator appointed by the Registrar of Companies and later by letters dated 23rd March 2015 and 2nd April 2015.

3.He further deposes that the Arbitration Report filed in court for adoption does not include the agenda

and matters discussed during the meeting of the 20th March 2015, and that the plaintiffs representatives were not participants nor does it have the rubber stamp or letterhead of the National Land Commission nor is it signed by both parties.

4.It is also stated that the report does not have the County Land Management Board Nakuru Branch Secretary's official names, and further that the chairman did not chair the meeting leading to the report dated 20th March 2016. Based on the above, the respondent company submits that a new arbitrator be appointed and a fresh arbitration session be conducted with all parties being represented.

5.I have considered the events prior to and after the plaintiffs Annual General Meeting held on the 20th March 2015 pursuant to a court order dated 5th March 2014.

I have also seen the court order dated 18th February 2015. It is a consent order. By the order, the report by the Registrar of Companies dated 22nd February 2015 was adopted as part of the proceedings.

The Company's Annual General meeting was ordered to be conducted on the 20th March 2015 among other orders, and it was so held.

6.After the Annual General meeting, a report was filed on the 27th April 2016 that included the Agenda of the meeting. This is the report annexed as "SMNS" in the supporting affidavit of Samson Muchiri Nduati. It is signed by an unnamed Nakuru County Land Management Board (CLMB) Secretary. It is not dated nor does it have an official stamp.

7.It is evident that even before the report was filed, the plaintiff had raised issues concerning the manner the court appointed arbitrator conducted the meeting. See the two letters dated 22nd September 2014 and 26th February 2015.

Serious issues of misconduct by the arbitrator were brought forth including interference by the provincial administration. Notwithstanding the objections, the arbitrator filed his report, but failed to date it nor indicate his name thereon.

8.I have considered the application before me.

It is stated that the Annual General Meeting was held on the 20th March 2016. This is the report that the applicant wants adopted by the court.

9.Though the court is enjoined by the **Constitution Article 159(2) (d)** not to give due regard to procedural technicalities, the above purported dates of the Annual General Meeting go into the body and merit of the application. Despite the errors pointed out by the Respondent in the Replying affidavit, the applicant found it not necessary to amend the same.

10.By their advocates submissions, the court has been asked to ignore the errors in dates as small errors. An error that brings out a different meaning and purport to a substantive order or direction or a material fact cannot be termed a small error to be ignored.

11.As a result, the respondent states that there are two reports filed by the arbitrator without regard to its complaints and objections.

Justice is justice to both parties to a suit. Notwithstanding what the applicant calls small errors, I am not persuaded that the Arbitration Report was procedurally arrived at more so in view of the objections stated in the two letters addressed to the Arbitrator before he prepared the report. The report is therefore suspicious.

12.The problems bedeviling the two parties were ordered to be resolved amicably and hence the consents

for the appointment of the arbitrator but the report does not reflect any consensus on the issues under discussion and investigation.

13.The court having adopted the report of the Registrar of Companies dated the 22nd September 2014 and that of the National Land Commission dated 26th February 2015, the spirit of amicable settlement of the companies disputes ought to be encouraged and upheld.

14.For those reasons, the report of the Annual General Meeting purportedly held on the 20th March 2016 cannot be adopted by the court as it is not only misleading but also seriously objected to by the company. I therefore disallow the application dated 11th November 2016.

15.I shall go further and direct that the parties hereto go back to the **court order dated the 17th January 2014 and within 30 days of this ruling agree** on a fresh arbitrator (See **Clause 2 of the Order**) failing which the court will appoint such arbitrator to assist the parties to resolve the long existing disputes in the shortest time possible.

16.Parties shall agree on a mention date after expiry of 30 days from the date of this ruling to take further directions as circumstances may dictate.

Dated, Signed and Delivered this 13th Day of July 2017.

J. N. MULWA

JUDGE