



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NUMBER 18 OF 2015

SOLAI RUIYOBELI FARM LIMITED.....PLAINTIFF

VERSUS

PHILLIP S. CHEPTUMO.....1ST DEFENDANT

SIMON KIPCHUMBA KANDIE.....2ND DEFENDANT

RULING

The Plaintiff is a Public Limited Liability Company while the first defendant is a shareholder of the plaintiff and second defendant a non member of the plaintiff.

By its application dated 19th March 2015, the plaintiff and applicant approached the court under the provisions of **Order 40, 51 of the Civil Procedure Rules and Sections 1A, 1B, and 63 of the Civil Procedure Act**. For orders:

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3-- That the court be pleased to grant an interim injunctive order directed upon the defendants by themselves, servants/agents restraining them from advertising, further advertising, holding and/or purporting to hold the proposed illegal Annual General Meeting scheduled for the 23rd March 2015 at Ruiyobei Chief's camp and/or any other place in the Republic of Kenya and/or purporting to hold any other meeting on behalf pending hearing and final determinations of the suit.

The application is based on the grounds appearing on the face of the application and an affidavit sworn by Charles Olare Chebet, the Chairman of the plaintiff company and a supplementary affidavit sworn on the 9th April 2015.

On the 19th March 2015, the court issued and granted the applicant an interim injunctive order in terms of Prayer 2 restraining the holding from holding any Annual General Meeting on the 23rd March 2015, or any another time pending hearing of the application interpartes.

The application is opposed by a replying affidavit sworn on the 3rd June 2015 by Simon Kipchumba Kandie.

The applicant's case giving rise to the application as may be deduced from the affidavit in support and

submissions tendered is that the respondents forged company documents purporting that they were directors of the plaintiff company and fraudulently appointed a firm of Advocates as Company Secretary and instructed the said firm to call for an Annual General Meeting for the 23rd March 2015 and proceeded to advertise and place Radio announcements for the said meeting. It was alleged that the scheduled meeting called by the respondents would cause chaos and blood shed to the 942 members of the plaintiff who were not involved or consulted. It was upon such circumstances that the application for injunction was filed.

It was submitted that the Respondents were illegally holding themselves as directors of the plaintiff and using the company seal and documents without authority. It was further submitted and demonstrated by documents from the Registrar of Companies that the lawful Directors of the Company were Charles Olare Chebet as Chairman, Richardson Kipkoech Bundotich as Secretary and Joseph Kipyegon Lenginah as Treasurer. The Court was thus urged to stop all purported meetings and Annual General Meetings that may be called by others parties other than the *bonafide* officials of the company.

In their responses vide their filed replying affidavits and documents, the respondents depositions were that the alleged *bonafide* directors were not such directors and that documents purportedly obtained from the Registrar of Companies were forgeries including minutes dated 18th July 2012 which indicated that the previous directors resigned and transferred their shares. They alleged fraud by use of names of dead persons and forgery of documents and misrepresentation of material facts.

In their oral submissions through their Advocates it was urged that the purported directors are not *bonafide* directors and all the officials were -purportedly elected using forged minutes that were registered with the Registrar of Companies.

It was further urged that the application was overtaken by events (as at date of arguments on the 31st July 2015) and therefore the application ought to be dismissed.

The court has considered the arguments tendered in court and the affidavit evidence on record. The application in its main prayer sought an injunction to restrain the defendants/Respondents from holding an Annual General Meeting then scheduled for the 23rd March 2015 and on any other time pending hearing and determination of this suit.

From the analysis, it is clear that both parties purport to have had officials of the company fraudulently elected using false documents and filing fraudulently obtained minutes with the Registrar of Companies.

There are counter accusations for and against both parties. The court is unable to determine, at this stage, who the *bonafide* Directors, Chairman, Secretary and Treasurer of the company are. In the circumstances, none of the officials of the applicant or the Respondents would be legally authorised to perform duties of the company use of the company seal or documents or purport to be the legally elected officials as that would perpetuate the alleged illegalities, fraud misrepresentation.

It is this court's considered view that the dispute in the matter can only be finally adjudicated upon in a full hearing where each party would be accorded an opportunity to prove the alleged fraud, forgeries and false documents against each other.

Having made the above observation the court finds that an order of injunction in terms of Prayer 3 of the application dated 19th March 2015 is appropriate. The interim order of injunction issued on the 19th March 2015 is confirmed.

The court has perused the court file and finds that the Respondents/defendants are yet to file their statements of defence. It is directed that the plaintiff and applicant do serve the defendants with the necessary pleadings to facilitate filing of the defences by the Respondents.

It is further directed that, in view of the order of injunction, and the possibility of the hostility between the

parties that may paralyse the operations of the plaintiff company, the suit be set down for hearing within the next ninety days from the date of this ruling.

The circumstances of the application dated 19th March 2016 demands that each party bears it own costs of the application.

Dated, signed and delivered in open court this 4th day of February 2016

JANET MULWA

JUDGE