



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISCILLEANOUS CASE NO. 30 OF 2015

FRED CHUMA MUMIA.....1ST APPLICANT

PATRICK WAFULA MAKOKHA.....2ND APPLICANT

ALFRED SINDANI WANOYNYI.....3RD APPLICANT

VURSUS

THE REGISTRAR OF COMPANIES.....RESPONDENT

AND

BENSON BARASA MATUMBAI.....1ST INTERSTED PARTY

CHARLES WAFULA MASINDE.....2ND INTERSTED PARTY

ABRAHAM RICHARD EYAUMA.....3RD INTERSTED PARTY

ANTONINA NAFULA MUNIALO.....4TH INTERESTED PARTY

TAWAI LIMITED.....5TH INTERESTED PARTY

J U D G M E N T

By their notice of Motion dated 20th July 2015 the exparte applicants pray for the following reliefs.

1) An order of Ceriorari to bring into this Honourable Court and quash the decision of the Respondent made on or about the 10th April 2015 purporting to endorse the illegal elections of and subsequently making changes to the Register of the 6th interested Party and in particulars by registering BENSON BARASA MATUMBAI, CHARLES WAFULA MASINDE, DAVID JUMA, ABRAHAM RICHARD EYAUMA and ANTONINA NAFULA MUNIALO (herein after referred to as the 1st to the 5th Interested Parties') as the purported new directors of the 6th interested party.

2. An order of Certiorari to bring into this Honourable Court and quash the decision of the Respondent made on or about the 10th April, 2015 of registering BENSON BARASA MATUMBAI, CHARLES WAFULA MASINDE, DAVID JUMA , ABRAHAM RICHARD EYAUMA and ANTONINA NAFULA MUNIALO as the new directors of the 6th Interest Party.

3. An order of Mandamus compelling the Respondent to forthwith reinstate FRED CHUMA MUMIA, PATRICK WAFULA MAKOKHA and ALFRED SINDANI WANYONYI (the applicants herein) as Directors of the 6th Interested Party.

4. An order of Mandamus compelling the Respondent to produce and make available for Public perusal by the applicants the 6th Interested Party's file and any such documents related to the 6th Interested Party and filed therein and being in the custody of the Respondent; and

5. Costs of this application.

The same is supported by the sworn affidavit of Patrick Wafula Makokha on his behalf and that of his co-applicants, the statutory statement and the verifying affidavit.

The 3 applicants were directors of the 6th Interested Party. A Special General Meeting was convened by the Respondent on 10th April 2015 to which among other agendas did elections where new directors, the 1st – 5th Interested Parties were elected.

Previously the applicants had been the directors. The applicants have faulted the action of the respondent claiming that the 1st – 5th interested Parties have never been shareholders of the company, that the notice convening the meeting was inadequate and the venue was shifted on the material day. They further content that there was heavy security deployed which was uncalled for.

The Interested Parties through the replying affidavit of Charles Wafula Masinde has attacked the applicants conduct especially their leadership of the 6th defendant for the last 9 years.

He argued that they have overseen the raping of the companies properties through dubious means and that this was the only chance to get the affairs of the company organised. He argued that the applicants had numerous court cases both criminal and civil against them bordering on fraud and other related complains.

They have attached several annexures including the relevant notices by the respondent calling for the meeting.

As regards the respondent although there is a mention of a replying affidavit in the further affidavit of Patrick Wafula Makokha, I was unable to find the replying affidavit of Colleta Maweu on record.

Analysis and Determiantion

The issue at hand is fairly clear and straight forward. It appears that the 6th Interested Party has had its share of controversies. The applicants, it is not disputed have been at the helm as directors for about 9 years. As contended by the applicants ordinarily the Compan'S Act expects that there ought to be an AGM Periodically for purposes of election of office bearers. From the pleadings on record it appears that the same had not been done.

This therefore called for the respondent who is the custodian of the 6th Interested Party to call for the meeting.

Its trite law that the province of Judicial review is not necessarily to look into the merits or demerits of the decision but whether the procedure followed in arriving at the decisions meets the expectations of the rules of natural justice. In effect this court would not be asking itself whether the fraud allegations or the myriad of litigations against the applicants are relevant for purposes of this adjudication.

It appears that there was advertisement for the meeting in the 'Daily Nation' Newspaper of 14th March

2015.

There followed a notice from the respondent dated 13/11/12 as well as the notice to the police by the Interested Parties. A meeting was then convened at the Kiminini Catholic Church Parish and elections conducted. Its further not contested that announcements were done in the local radio stations.

Is it possible that the applicants were not made aware of the meeting? I do not think so. The replying affidavit of Patrick Wafula Makokha does clearly suggest that they were in the picture. He depones in paragraph 10 thereof that he got to know the existence of the meeting” through informers and indeed on the material day though some of the police officers at the venue of the Annual General Meeting.”

He further complains that the venue was changed from Kiungani area to Kiminini Parish. Surely these people were well aware of the meeting. Its not true therefore that any action taken by the shareholders under the tutelage of the respondent was not with the applicants knowledge. In any event how did they know that there was heavy security deployed if they were not at the venue.

In light of the above observations I do not think that what the respondent did was ultra vires. The duty of the respondent is to monitor and supervise companies. This court cannot take away such statutory right unless of course its not done within the confines of the law.

As correctly submitted by the respondent and the interested parties, the applicants though appear to be aggrieved have not lost anything. Their removal from office was purely a democratic exercise done annually by the 6th Interested Party. It goes therefore without any doubt that since the elections were done more that one year has elapsed and to grant the prayer sought in the motion would be superfluous. The same has been overtaken by events. Perhaps the 6th Interested Party would be planning another election by now assuming that it is complying with the Companies Act.

In the premises I do not find the application meritorious. The same has not demonstrated that the respondent breached any rules of natural justice.

The applicants were well in the picture of the Annual General Meeting and they choose not to ventilate their issues or for that matter defend their seats.

The application is hereby dismissed with costs.

Delivered this **5th day of October 2016.**

H.K. CHEMITEI

JUDGE

In the presence of;

No appearance for Applicants

NO appearance for Respondents

Kirong – Court Assistant