



No. 199/2014

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**MISC CIVIL CASE NO. 268 OF 2013**

**1. LAWRENCE THIONG'O KAGICHA**

**2. EPHARUS WANJIRU MBURU**

**3. CHARLES MURIUNGI**

**KARIAKI.....APPLICANTS**

**VERSUS**

**1. THE REGISTRAR OF COMPANIES**

**2. THE ATTORNEY GENERAL**

**3. HERBERT NJUGUNA MWANGI**

**4. JOHN MWANGI MWAURA**

**5. SIMON M. MACHARIA**

**6. MARY WANJIRU NDUN'GU**

**7. LUCY M UTHONI MAINA**

**8. EPHANTUS KARUNGE NJUGUNA**

**9. AGNES NJERI MUKUNDA**

**10. JOSEPH MUITHE**

**CHEGE .....RESPONDENTS**

**RULING**

1. The Application for leave to apply for orders of *certiorari* directed to the Registrar of Companies to quash the proceedings of the Annual General Meeting and results of the elections of **28<sup>th</sup> June, 2013** and consequences/orders thereof, namely change of Directors filed thereafter has been made *ex parte* pursuant to the provisions of **Order 53 and (2) of the Civil Procedure Rules.**
2. It is premised on grounds that :-

- i. The purported Annual General Meeting of **28<sup>th</sup> June, 2013** was *void ab initio, ultra vires* contrary to the law and in particular the provisions of the **Companies Act**, having been called only **two months** after the previous Annual General Meeting of the Company.
  - ii. The Registrar of Companies, by her conduct or otherwise, was biased against the *ex parte* applicants, as they were not given an opportunity to participate, contribute or otherwise be part of the proceedings and the subsequent elections held on **28<sup>th</sup> June, 2013**.
  - iii. The said meeting was held in private residence of one of the interested parties who was actually elected as the Chairman of the Company.
3. Further, in support of the application is a Statutory Statement made by the applicants and the affidavit verifying facts stated.
  4. Proceedings of the meeting and the consequential notice of change of directors took place on the **28<sup>th</sup> June, 2013**. The application herein was filed on the **15<sup>th</sup> November 2013**. **Six months** had not lapsed from the time the proceedings were conducted. Consequently, the application is meritorious. I therefore grant leave sought as prayed.

**DATED, SIGNED and DELIVERED at MACHAKOS this 12<sup>TH</sup> day of FEBRUARY, 2014.**

**L.N. MUTENDE**

**JUDGE**