

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 40 OF 2014

KIROBON FARMERS CO. LTD..... PLAINTIFF/APPLICANT

VERSUS

BENJAMIN CHESULUT..... DEFENDANT/RESPONDENT

RULING

By a Notice of Motion dated 16th June 2014, the applicant seeks for orders to restrain the respondent by himself, his servants, employees and/ or agents from calling for, advertising and broadcasting for an Annual General Meeting (AGM) for Kirobon Farmers Co. Ltd on 20/06/2014 at Molo Social Hall or elsewhere, calling for, advertising or broadcasting for any such meetings for Kirobon Farmers Co. Ltd. or any such other position pending and hearing and determination of the suit.

The applicants are directors of the plaintiff company, while the respondent is a member and a former chairman. The respondent called for and advertised on radio an Annual General Meeting for 20/06/2014 and his actions are described as wrongful, unlawful and illegal as he has no capacity to call for an AGM. The applicant tried to dissuade the respondent, but he was adamant and his actions will prejudice the applicant and may lead to chaos, confusion, confrontation and violence.

The plaintiff is a land buying company which purchased land in Ngata, Subukia and Keringet, for the purpose of settling its members. The land has been sub-divided and members settled on their parcels of land. What is left is preparation and issuance of title documents. The respondent is a former director and chair of the plaintiff who was removed from office and there are new elected directors. Despite this, the respondent continues to claim that he is the plaintiff's chairman and has declined to return the items belonging to the company, including the company seal, members register, maps, and rubber stamp. The respondent had earlier secretly procured a new map and was collecting money from members, with a view to issuing title deeds to them based on the new map, yet he had no capacity to act thus. Consequently the new directors filed HCCC No.353 of 2008 (Nakuru) against the respondent and obtained an injunction against the respondent.

Despite all this, the applicant has been calling meetings, allocating plots, collecting money, writing letters and generally issuing directions in his purported capacity as chairman. This has interfered with the duties of the new directors as the respondent's actions amount to running a parallel illegal company office. The company is said to have conducted its Annual General Meeting in November 2013, so calling for another AGM will cause confusion. There was no response in this application, although at the hearing of the application the counsel suggested that there was scanty information that the AGM had been held. This is not deposed in an affidavit. From the annexed documents, the respondent had actually sent out minutes for the Annual General Meeting set for 20/06/2014. I think the issue for calling for or advertising for meeting on that day may already have been overtaken by events as the invitation was already sent out.

Apparently the respondent had in the past conducted a separate AGM without the applicant's knowledge and had wanted to file returns with the Registrar of Companies who upon realizing that there were two camps - advised the applicant to organise another AGM. They intended to hold an AGM in November 2014. This means the meeting called for on 20th June is intended to circumvent the one set for November 2014. I think there can be only AGM and separate meetings will otherwise lead to confusion both to

members and at the company's registry.

It is therefore prudent that the meeting be halted in terms of prayer 3 of the Notice of Motion. Costs of this application shall be borne by the respondent.

Delivered and dated this 11th day of July 2014 at Nakuru.

H. A. OMONDI

JUDGE