



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENTAL AND LAND DIVISION

ELC MISC. APPLICATION NO. 12 OF 2014

HENRY WAINAINA KIHORO.....1ST APPLICANT

ELIJAH NGUGI NJOROGE..... 2ND APPLICANT

GITHUNGURI CONSTITUENCY RANCHING CO. LIMITED RUIRU...3RD APPLICANT

VERSUS

JOHN MAINA MBURU.....1ST DEFENDANT/RESPONDENT

BOARD OF DIRECTORS GITHUNGURI CONSTITUENCY

RANCHING CO. LIMITED RUIRU.....2ND DEFENDANT/RESPONDENT

RULING

The plaintiff by a Notice of Motion application dated 15th January 2014 sought an order staying the conveying and holding of the annual general meeting of Githunguri Constituency Ranching Company Ltd on 18th January 2014 conveyed by the Defendants herein at Matopeni High School pending the interpartes hearing of the application. The order was granted at the exparte stage and the substantive prayers that remained to be determined by the court are prayers **(d)** and **(e)** of the Notice of Motion where the plaintiff respectively sought the following orders:

(d) A declaration that the 1st Defendant is not a bonafide and/or elected Chairman of the 3rd Applicant, and the board of directors of the 3rd Applicant chaired by the 1st defendant is illegal and the 1st and 2nd defendants herein lack the requisite legal capacity to convene and annual general meeting of the 3rd Applicant.

(e) That the Registrar of companies supervises the reconstruction of the register of shareholders and to convene the annual General Meeting for 3rd Applicant.

The plaintiffs based their application on the grounds set out on the face of the application and on the supporting affidavits sworn by **Henry Wainaina Kihoro** and **Elijah Ngugi Njoro**. Inter alia the Applicants claim that the 1st and 2nd Defendants are not bonafide directors of the 3rd Applicant. The Applicants further claim no register of members exists and thus no annual general meeting can be convened and no business can be transacted and/or any elections conducted.

The Defendants/Respondents filed a Notice of Motion dated 17th January 2014 seeking the setting aside of the interim order suspending the convening of the Annual General Meeting on 18/1/2014. The Defendants in the application also sought an order of security for costs in the sum of **Kshs.4,000,000/-** against the 1st and 2nd Applicants. The Defendants wished the scheduled AGM scheduled on 18/1/2014 to proceed and the same to be supervised by the Registrar of companies and appropriate security to be provided by the OCS Ruiru police station during the meeting.

I have perused the two applications and the annexures thereto and it is quite evident that there are wrangles concerning the running and management of Githunguri Constituency Ranching Company Ltd named as the 3rd Applicant and whereof the 1st Defendant is stated and shown to be the Chairman of the Board of directors of the company. The Annual General Meeting of the company scheduled to be held on 18/1/2014 having been stopped and/or suspended by the court on 15/1/2014 there is really no further substratum of the suit left. A company is by law obligated to hold an annual general meeting once in every year. Section 131(1) of the companies Act Cap 486 Laws of Kenya provides:-

131(1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

“In case there is default to hold an annual general meeting as provided in section 131 (1) of the Act, the Registrar of Companies may, on the application of any member of the company, call or direct the calling of a general meeting on such directions as he thinks fit”

The court may further under section 135 order the company to hold the meeting.

Section 135 of the Act provides:-

135(1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in a manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

The Applicants contend that the 1st Defendant and the 2nd Defendant (**Board members**) were not validly elected as directors of the 3rd Defendant. As per the records from the Registrar of companies (**see letter dated 14th September 2009**) the following persons were elected as directors at an extra ordinary general meeting held on 12th September 2009.

John Maina Mburu

Elijah Ngugi Njoroge

Esther Waithera Kinyanjui

George Ngochi Mbugua

Peter Mwangi Muturi

John Githinji Mwangi

Grace Wachinga Muchai

Henry Wainaina Kihoro

Paul Mbugua Ngochi

Stephen Maina Mwangi

John Waweru Wanjohi

The company's filed returns dated 31/12/2012 as per the letter dated 28th January 2014 from the Registrar of Companies show the following as the company's directors:-

John Maina Mburu

John Githinji Mwangi

Henry Wainaina Kihoro

Peter Mwangi Muturi

Grace Wachinga Muchai

John Waweru Wanjohi

Esther Waithera Kinyanjui

As was held by **Mabeya, J.** in the case of **China Young Engineering Ltd –vs- L.G. Mwacharo Associates & Another. (2012) eKLR** that where there is a dispute as to directorship and shareholding of a company, the best evidence to be relied on is the updated records from the Registrar of companies, I equally hold the same view. In the present case the 1st Defendant and his board of directors are shown to have been elected into office on 12th September 2009 and the Registrar of companies accepted the notification of changes and registered them. My view is that for as long as they are shown in the records as the duly elected directors of the company they remain the valid office bearers of the company and as long as the specific annual general meeting or extra ordinary general meeting that voted them into office was never annulled they remain the validly elected directors of the company. If it was to be otherwise the record held and maintained by the Registrar of Companies would be rendered worthless as any person could always fault them. My view therefore is that those records could only be changed by filing of a fresh notification of change of directors following a regular or extra ordinary general meeting at which new directors are elected. I therefore cannot hold that the Defendants were not validly and legally elected. At any rate in this suit it is not the election of the Defendants that is in issue but rather whether the company's annual General meeting should be held.

In the premises it is my view that the Respondents as the directors of the company as evidenced by the records held at the Registrar of Companies office had the mandate to call and convene the Annual General Meeting of the Company. The Applicants, provided they are members of the company would be entitled to participate at such meeting and even offer themselves for election as directors of the company at the meeting. The company's articles of association clauses 84 and 85 provide for the retirement of all the directors at the annual general meeting and the election of new directors respectively. Thus it is clear that at every annual general meeting of the company the shareholders elect new directors although serving directors are eligible for re election meaning the Respondents would be free to offer themselves for re-election to the company's board of directors.

It is an obligation on the part of the company to hold an annual general meeting and as both the applicants and the respondents are not opposed to an annual general meeting being held I direct and order as follows:-

1. **The Defendants/Respondents shall arrange to have an annual general meeting of the company held within the next 90 days from the date of this ruling.**
2. **An officer and/or representative from the Registrar General's Office shall superintend at the meeting and will be the returning officer during the conduct of the elections to elect the directors of the company.**
3. **That the OCS Ruiru police station and the Kiambu County Commissioner are directed to provide adequate security during the elections of Githunguri Constituency Ranching Co. Ltd at the Matopeni Primary School grounds.**
4. **That the representative of the Registrar General will in consultation with the Respondents certify the shareholders register to be used during the elections at the annual general meeting.**
5. **Matter to be mentioned on 18th February 2015 for further orders/directions.**

6. **Each party to bear their own costs of the application.**

Ruling dated signed and delivered this **6th** day of **November** 2014.

J. M. MUTUNGI

JUDGE

In presence of:

Mr. Kiama..... for the Applicants

Mr. Njenga..... for the Respondents