



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muchina & 2 others v Mathenge & 6 others (Civil Case E030 of 2022)  
[2026] KEHC 4021 (KLR) (17 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4021 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL CASE E030 OF 2022  
DO CHEPKWONY, J  
MARCH 17, 2026**

**BETWEEN**

**PAULINE WANGARI MUCHINA ..... 1<sup>ST</sup> PLAINTIFF  
ANTHONY MWAURA WAWERU ..... 2<sup>ND</sup> PLAINTIFF  
DAVID MBUGUA NDICHU ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**THUO MATHENGE ..... 1<sup>ST</sup> DEFENDANT  
JOSEPH KIMANI KANGETHE ..... 2<sup>ND</sup> DEFENDANT  
RAPHAEL MUCHIRI NDUATI ..... 3<sup>RD</sup> DEFENDANT  
MBOI KAMITI FARMERS CO. LTD ..... 4<sup>TH</sup> DEFENDANT  
REGISTRAR OF COMPANIES ..... 5<sup>TH</sup> DEFENDANT**

**AND**

**ELUID MUCHAI KIMANI ..... 1<sup>ST</sup> INTERESTED PARTY  
JAMES NDEGWA GITAU ..... 2<sup>ND</sup> INTERESTED PARTY**

**JUDGMENT**

**A. Introduction**

1. This dispute concerns the governance of the 4<sup>th</sup> Defendant, Mbo-I-Kamiti Farmers Company Limited, a Company whose affairs, if the evidence presented is anything to go by or is to be believed, have been frozen in a long season of internal wrangles, disputed records, contested Directorship, and prolonged failure to hold an Annual General Meeting(AGM).



2. The central complaint by the Plaintiffs, and later supported by the Interested Parties, is that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have continued to hold themselves out as Directors of the 4<sup>th</sup> Defendant Company on the strength of a contentious Annual General Meeting said to have been held on 16<sup>th</sup> March, 2010, notwithstanding that the Registrar of Companies later invalidated the outcome of that meeting, withdrew the resulting CR12 entries, and directed that the status quo ante be maintained. The Plaintiffs contend that since then, no valid Annual General Meeting (AGM) has been convened, with the result that the Company has remained outside the discipline of both its Articles of Association and the *Companies Act*. Thus, what this court has gathered and heard the Plaintiffs say all through the hearing and in their Plaint dated 9<sup>th</sup> December, 2022 is “We simply want a General Meeting to be held”.
3. The Plaint further pleaded that the Plaintiffs were members of the 4<sup>th</sup> Defendant Company with paid-up shares and were qualified to vote at General Meetings; that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were elected in a contentious Annual General Meeting held on 16<sup>th</sup> March, 2010 which Annual General Meeting was later invalidated by the 5<sup>th</sup> Defendant and since then, no lawful Annual General Meeting had since been held and therefore the 4<sup>th</sup> Defendant Company was in violation of the requirement in the *Companies Act* that a Company should convene a General Meeting annually.
4. However, for avoidance of doubt, the Plaintiffs are specifically seeking the following orders:-
  - a. That the court be pleased to grant a permanent injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant/Respondents by themselves, their agents and or servants or anyone acting on their behalf from interfering, taking over management and/or purporting to act as Directors of Mbo-I-Kamiti Farmers Company Limited until an Annual General Meeting is convened for election of officials of the latter.
  - b. That the court be pleased to grant a permanent injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant/Respondent by themselves, their employees/agents and or servants or anyone acting on their behalf from registering any transfers on assets, changing official records and or interfering with the affairs of Mbo-I-Kamiti Farmers Company Limited.
  - c. That MBO-I-Kamiti Farmers Company Limited Does Convene An Annual General Meeting, at a place, time and manner the Court considers appropriate.
  - d. Cost of this suit together with interest.
  - e. Any other relief this Honourable court deems just and fit to grant.

### **The Defence**

5. The 1<sup>st</sup> and 4<sup>th</sup> Defendants resist that case and have raised a jurisdictional objection based on the Doctrine of Exhaustion and the provisions under Sections 277, 279 and 280 all of the *Companies Act*. They further deny that the Plaintiffs are members of the 4<sup>th</sup> Defendant Company, assert that the 4<sup>th</sup> Defendant has held Annual General Meetings, and maintain that the suit is premature and incompetent.
6. The 1<sup>st</sup> and 4<sup>th</sup> Defendants filed a statement of defence dated 4<sup>th</sup> June 2025. Their case is two-pronged. Firstly, they have pleaded that the suit is incompetent and that this Court lacks jurisdiction because the Plaintiffs have failed to invoke the internal statutory mechanisms available under the *Companies Act*. In particular, they have relied on Sections 277, 279 and 280 of the *Companies Act*, contending that the Plaintiffs ought to have first formally requisitioned the Directors to convene a meeting and, upon failure, proceeded to convene the meeting at the Company’s expense before coming to court. On that footing, they have argued that the suit is premature, misconceived, and an abuse of process.



7. Secondly, in the alternative, they have denied the substance of the Plaintiffs' case. They have denied that the Plaintiffs were members of the 4<sup>th</sup> Defendant Company, denied that they hold paid-up shares, denied that they were qualified to vote, and averred that the Plaintiffs' names did not appear in the Company's Register of Members. They have also denied the allegations relating to invalid Directorship and failure to hold Annual General Meetings.
8. The other Defendants did not file or place any substantive defence before the Court.

### **The Interested Parties**

9. Later, upon applications that were allowed, several Interested Parties were joined to the proceedings. Their witness statements and submissions show that they came to court in support of the Plaintiffs' position while asserting that they were also Shareholders of the 4<sup>th</sup> Defendant Company who are entitled to participate in the governance of the Company, but had been prejudiced by the failure by the 4<sup>th</sup> Defendant to hold Annual General Meetings and by the continued grip of the existing leadership over the affairs of the Company. They added that they held Share Certificates, had paid survey fees, and complained that the Company had been run without Annual General Meetings, or accountability, and in a manner that excluded ordinary members.

### **The Evidence of the Case**

#### **The Plaintiffs' Evidence**

10. The Plaintiffs called one witness, David Mbugua Ndichu, who testified on the 9<sup>th</sup> September, 2025 and stated that he and the other Plaintiffs were shareholders of the 4<sup>th</sup> Defendant Company with paid-up shares and were entitled to vote at general meetings. He testified that the 4<sup>th</sup> Defendant Company had not held an Annual General Meeting for more than twelve(12) years; that after disputes following an Annual General Meeting held on 24<sup>th</sup> March, 2009, Wendoh J in Nairobi High Court Miscellaneous Application No. 258 of 2009 ordered on 19<sup>th</sup> February, 2010 that the 4<sup>th</sup> Defendant holds a proper Annual General Meeting so that new Directors could be elected; that thereafter an Annual General Meeting was convened in March, 2010 by one faction led by the 1<sup>st</sup> Defendant without proper notice or compliance with the *Companies Act* and the Company's Articles of Association whereby a CR12 dated 16<sup>th</sup> March, 2010 was initially issued following that meeting but was later withdrawn by the 5<sup>th</sup> Defendant, the Registrar of Companies after he recognized the defects in the meeting and the failure to comply with Wendoh, J's order. He added that the Registrar directed that the status quo ante would prevail.
11. Despite the foregoing, the Plaintiff stated that the Company records later reflected inconsistent names of unknown Directors and a Secretary, thereby suggesting that the records were illegally altered and manipulated. He maintained that from March, 2010 to date, no Annual General Meeting had been convened. In essence, the Plaintiffs' witnesses, both in examination-in-chief and cross-examination, painted a picture of a Company whose governance train left the tracks in 2010 and has never returned to the station properly.

#### **The 1<sup>st</sup> and 4<sup>th</sup> Defendants' Evidence**

12. The 1<sup>st</sup> Defendant, Thuo Mathenge, in his testimony before the court described himself as the Chairman of Mbo-I-Kamiti Farmers Company Limited, the 4<sup>th</sup> Defendant Company and stated that the Company was regulated by its Memorandum and Articles of Association, under which he as the Chairman convened Annual General Meetings while the Annual General Meeting remained the



final decision-making organ. He asserted that the Plaintiffs were not members of the 4<sup>th</sup> Defendant Company because their names do not appear in the certified register of members. He further stated that the Company had over the years been riddled with fraudulent activities by persons claiming to be officials and issuing “shares” in the Company’s name. Generally, from the tenor of his statement, his position was that the present claim had been brought by persons who had no proven membership and who had bypassed the statutory mechanisms of dispute resolution provided under the Companies Act.

13. However, notably when cross-examined, the 1<sup>st</sup> Defendant’s evidence, did not decisively answer the complaints relating to the invalidation of the March, 2010 Annual General Meeting by the Registrar, nor did it furnish a coherent and authenticated evidentiary chain showing that valid Annual General Meetings were held annually thereafter in accordance with the Act and the Articles of Association.

### **The Interested Parties’ Evidence**

14. The 1<sup>st</sup> Interested Party, Eliud Muchai Kimani, testified that he was a shareholder of the 4<sup>th</sup> Defendant Company as a Shareholder with paid-up shares, he was entitled to vote at Annual General Meetings. He also stated that from 16<sup>th</sup> March, 2010 to date, no Annual General Meeting had been convened and that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had turned the management of the Company into a dictatorship in that they had failed to call Annual General Meetings despite protests and requests from members and they had begun disposing of the assets of the Company to non-members. He further stated that he had been issued with a share certificate and had paid survey fees of Kshs.10,000/= but had not been issued with a title deed.
15. The 2<sup>nd</sup> Interested Party, James Ndegwa Gitau, gave similar testimony. He stated that he was a Shareholder of the 4<sup>th</sup> Defendant Company hence he was entitled to vote at Annual General Meetings but no Annual General Meeting had been held since 16<sup>th</sup> March, 2010. He also testified that the Company had been run by the Defendants as their personal affair. That he too, had been issued with a Share Certificate and had paid survey fees but had not received title to his parcel of land.
16. The 3<sup>rd</sup> Interested Party, Gicharu Mugo Mboche, stated that he was a Shareholder and former employee of the Company. He testified that as at the time the suit was filed there were seven (7) Directors, three (3) of whom were deceased. He stated that the last Annual General Meeting was held on 15<sup>th</sup> March, 2010 although the resultant CR12 was later cancelled and since then, no valid Annual General Meeting had been held. He added that one James Kamau Ngunjiri, who died on 6<sup>th</sup> September, 2017, still appeared on the CR12 together with Stephen Kimani Mehiu, who died on 1<sup>st</sup> April, 2021. According to him, both deceased persons were still reflected in the records allegedly showing attendance at an Annual General Meeting held on 10<sup>th</sup> April, 2021, an indication and that the present leadership and records were not regular. He further contended that Mbo-I-Kamiti was a Public Company and was legally required to be managed by not less than seven Directors.
17. The 6<sup>th</sup> Interested Party, Joseph Muhia Kanyeki, likewise testified that he was a shareholder of the 4<sup>th</sup> Defendant Company and was entitled to vote although no Annual General Meeting had been held since 16<sup>th</sup> March, 2010. In his view, the Defendants had converted the Company’s governance into a personal regime and resorted to disposing the Company’s assets to non-members. He further decried that although he had a share certificate and had paid survey fees, he had not been issued with title.
18. The 7<sup>th</sup> Interested Party, Mwaura K. Geoffrey, echoed substantially the same matters stating that he was a Shareholder, and no Annual General Meeting had been convened since 2010. He also stated that the Defendants had run the Company as their personal affair. He told court that he also had paid survey fees but had not received title.



19. After all the parties closed their respective cases, the court directed that they all file and exchange written submission in summing up their respective cases. Each party filed their submissions as follows:-

### **The Parties' Submissions**

#### **The Plaintiffs' Submissions**

20. The Plaintiffs submitted that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were elected as Directors during the Annual General Meeting held on 16<sup>th</sup> March, 2010, but later, the legality of that meeting was successfully impugned. They relied heavily on the letter dated 14<sup>th</sup> July, 2010 from the Registrar of Companies, which, according to them, expressly withdrew the CR12 entries issued on 16<sup>th</sup> March, 2010 and 23<sup>rd</sup> March, 2010 on the grounds that the meeting which resulted in those changes had not been preceded by a proper notice and was not inclusive of all relevant stakeholders. In the Plaintiffs' view, that letter was central to the dispute because it stripped the 2010 meeting of legal validity and thereby undermined the legitimacy of the Directorship claimed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. They emphasized that, although the 1<sup>st</sup> Defendant denied knowledge of the Registrar's letter, he did not deny that his appointment and that of the other Defendants flowed from the impugned 2010 Annual General Meeting.
21. The Plaintiffs further submitted that, after the Registrar withdrew the CR12 arising from the March, 2010 Annual General Meeting, the Company records were never properly regularised so as to reflect the status quo ante. They argued that the 1<sup>st</sup> Defendant himself admitted in evidence that the CR12 on record did not reflect the true state of the Company's Directorship because there had allegedly been subsequent changes which, despite returns being filed in the prescribed forms, were never captured by the Registrar. The Plaintiffs seized on that admission and argued that it was unsafe for the Court to treat the CR12 as an accurate or complete record of the Company's Directorship. In their submission, the Plaintiff maintain the fact that three of the six Directors reflected in the CR12 were deceased further demonstrate that the Company records were unreliable, stale, and internally inconsistent. They therefore invited the Court not to base its decision on that CR12 as though it were a faithful record of the Company's governance history.
22. The Plaintiffs' principal factual position was that no valid Annual General Meeting had been held since 16<sup>th</sup> March, 2010. They submitted that the Company had, since that date, existed in a prolonged state of governance paralysis, during which the 1<sup>st</sup> Defendant and those aligned to him continued to act as Directors without a lawful mandate renewed through annual general meetings. According to the Plaintiffs, this was a direct violation of the [Companies Act](#) and the Company's Articles of Association.
23. In addressing the defence case, the Plaintiffs took issue with the statement of defence and other documents filed by the 1<sup>st</sup> Defendant purportedly on behalf of the 4<sup>th</sup> Defendant Company. They submitted that those documents were not properly served on them in advance of the hearing, and that they only accessed them later through the court system. In their view, the defence case was largely technical and evasive, attacking the Plaintiffs' standing and the Court's jurisdiction without meaningfully answering the central question, which is: whether the Company had been conducting lawful Annual General Meetings and whether the persons currently in office were there on the basis of valid elections. They argued that the defence allegation that the Company had held several Annual General Meetings and complied with the [Companies Act](#) was unsupported by credible evidence and ought to be rejected.
24. As regards the 1<sup>st</sup> Defendant argument that the Court lacked jurisdiction unless the Plaintiffs complied with the provisions of Sections 275, 277, and 280 of the [Companies Act](#) No. 17 of 2015, the Plaintiffs in



response urged that the Court ought to read those provisions holistically. They submitted that Section 275 requires resolutions at general meetings to be passed only where notice is given and the meeting is held and conducted in accordance with the Act and the Company's Articles of Association; that Section 275A obliges every Company to convene a general meeting once each year; that Section 277 permits members to require Directors to convene a general meeting; and that Section 280 empowers the Court, either on its own motion or upon application by a Director or a member entitled to vote, to order that a meeting be convened, held and conducted in such manner as the Court deems fit where it is impracticable to do so in the ordinary way.

25. Building on those provisions, the Plaintiffs submitted that the Court's power under Section 280 is broad, practical, and intended precisely for situations like the present one, where the Company's governance machinery has broken down. They argued that the Court is entitled to examine the history, conduct of the parties, and the status of the Company's affairs in order to determine whether it has become impracticable to hold a lawful Annual General Meeting through ordinary internal mechanisms. In their view, the 4th Defendant, a Company established in the 1970s, had been marred by Directorship wrangles since 2010 and the last peaceful and generally accepted AGM was in 2008. That the 2010 Annual General Meeting, though initially treated as an effort to regularize governance, was later invalidated hence the Court is entitled to conclude that it had become impracticable for the Company to convene a lawful AGM without judicial intervention.
26. To reinforce that submission, the Plaintiffs relied on the case of *Washer vs- Negawatt Limited; Maina (Interested Party)* [2024] KEHC 751 (KLR), where the Court approved the position that Section 280 of the *Companies Act* is meant to provide an inexpensive and speedy procedural remedy to overcome technical difficulties in convening, holding, or conducting a Company meeting. They further cited the case of *Radio Frequency Systems (EA) Limited & Another –vs- Simon Horner & 2 Others* [2020] eKLR, where Tuiyott J. observed that the overarching purpose of Section 280 is to ensure that Company business which needs to be conducted at a general meeting can proceed notwithstanding technical obstacles. The Plaintiffs also relied on English and Jersey authorities cited in those decisions, including *In Re El Sombrero Limited* [1958] 3 WLR 900, *In Re H.R. Paul & Son Limited* (1974) 118 SJ 166, *In Re Opera Photographic Ltd* [1989] 1 WLR 634, and *In the Matter of Inter-Channel Pharmaceuticals Ltd* [2002] JRC 116A, all of which were invoked for the proposition that quorum or procedural provisions should not be weaponized by a minority or a faction in order to frustrate the legitimate governance of a Company. According to the Plaintiffs, those decisions demonstrated that once the Court finds it impracticable to hold a meeting in the ordinary way, it may fashion a workable remedy and direct that the meeting proceed in a manner it considers appropriate.
27. The Plaintiffs further relied on the case of *Seruji Limited –vs- Savannah Cement Limited; Savannah Heights Ltd (Interested Party)* (Miscellaneous Application E445 of 2021), where Mabeya J. emphasized that Section 280 was enacted to ensure that Company business is not brought to a standstill merely because of practical impediments in convening or conducting a general meeting. The Plaintiffs used that authority to argue that, in the present matter, the Court should not allow a long-running leadership dispute to paralyze the Company indefinitely. Rather, it should intervene so that the Company can return to lawful governance through an Annual General Meeting supervised in a neutral and credible manner.
28. On the issue of membership, the Plaintiffs submitted that the 1<sup>st</sup> Defendant's bare allegation that they were not members of the 4th Defendant Company was unsupported by evidence. They argued that the 1st Defendant referred to a Register of Members marked as "DW2," yet that register was neither properly attached to the defence documents nor served on them. They thus submitted that the defence had failed to discharge the burden of proof under Section 107 of the *Evidence Act*, because it made



serious allegations, including that the Plaintiffs' share certificates were forgeries, without presenting documentary proof or expert evidence to support such allegations. In the Plaintiffs' view, where share certificates, receipts, and register extracts are produced and no credible rebuttal is provided, the Court ought to find that the Plaintiffs have sufficiently demonstrated membership and that the Defendants be estopped from denying it.

29. The Plaintiffs also pointed out that the 1st Defendant had previously raised a Notice of Preliminary Objection dated 8<sup>th</sup> February, 2023 contending that the Court lacked jurisdiction for want of compliance with provisions of Sections 275, 277 and 280, all of the *Companies Act*. They submitted that this objection had already been considered and dismissed by the Court on 20<sup>th</sup> September, 2024, which decision was neither appealed nor reviewed. Accordingly, the Plaintiffs have argued that the issue had already been decided upon and could not properly be reintroduced through the defence. In substance, their position is that the 1st Defendant is attempting to re-litigate the same jurisdictional objection through the back door, and that such an attempt offend the doctrines of *functus officio* and *res judicata*.
30. In that context, the Plaintiffs cited the case of *Nitin Properties Ltd –vs- Jagjit S. Kalsi & Another [1995] KECA 146 (KLR)*, in which the Court of Appeal reiterated that striking out is a drastic remedy that should be resorted to only in plain and obvious cases. They also invoked the famous dicta in the case of *DT Dobie & Company (Kenya) Ltd –vs- Muchina*, where Madan JA warned that courts should aim at sustaining rather than terminating suits summarily. The Plaintiffs relied on those authorities to submit that the present suit was plainly not hopeless, and that the Court should determine it on its merits instead of allowing technical objections to smother it at the threshold.
31. The Plaintiffs then turned to the question of whether the 4<sup>th</sup> Defendant Company had in fact held Annual General Meetings after 2010, as claimed by the 1st Defendant. They submitted that the Company's Articles of Association, particularly Articles 83, 84, 85 and 86, require notices of general meetings to be served personally on members or sent through their postal addresses if within Kenya. They contend that the Defendants had not demonstrated compliance with those provisions. Instead, the documents produced by the 1<sup>st</sup> Defendant shows a different and irregular mode of communication, chiefly through local media advertisements, without evidence of personal or postal service on members. According to the Plaintiffs, the Defendants did not produce any Company resolution authorizing departure from the mandatory notice requirements in the Articles of Association.
32. The Plaintiffs then undertook a detailed attack on the documents produced by the 1<sup>st</sup> Defendant to prove the Annual General Meetings were allegedly held in 2021, 2019, 2018, 2017, 2016 and 2014. Their submission was that the documents were inconsistent, incomplete, and in several instances, contradictory, revealing not a genuine history of corporate governance but a later effort to construct the appearance of lawful Annual General Meetings. Regarding the alleged 2021 AGM, they argued that there was no list of attendees to show quorum and no CR2 or other evidence to show that any valid changes were effected following the meeting.
33. As to the alleged 2019 AGM, the Plaintiffs highlighted what they described as glaring inconsistencies. The notice referred to an Annual General Meeting on 5<sup>th</sup> October, 2019, yet the agenda mentioned confirmation of the last Annual General Meeting held on 16<sup>th</sup> October, 2019, a date later than the meeting itself. The 2021 notice, however, referred to an Annual General Meeting held on 25<sup>th</sup> October, 2019. Meanwhile, the newspaper advertisement for 2019 was dated 8<sup>th</sup> October, 2019 and showed publication on 17<sup>th</sup> October, 2019, which was twelve days after the purported Annual General Meeting date of 5<sup>th</sup> October, 2019. According to the Plaintiffs, these inconsistencies suggested that either two Annual General Meetings were allegedly held in 2019 without explanation, or the documentation had



been assembled in a careless and contradictory fashion. They urged the Court to see in this pattern not innocent clerical error, but a “trail of deception.”

34. With respect to the alleged 2018 Annual General Meeting, the Plaintiffs noted that the standard group order was dated 20<sup>th</sup> October, 2018 for advertisement on 22<sup>nd</sup> October, 2018, while the Annual General Meeting was allegedly to be held on 26<sup>th</sup> October, 2018. They submitted that this meant the advertisement was made only four days before the meeting, thereby violating the 21-days notice requirement under Section 281 of the Companies Act. They added that there was no list of attendees or CR2 form produced to prove quorum or compliance with filing requirements.
35. On the alleged 2017 Annual General Meeting, the Plaintiffs pointed to documents showing a request for police permission dated 2<sup>nd</sup> October, 2017 for a meeting to be held on 6<sup>th</sup> October, 2017, with a newspaper advertisement order dated 27<sup>th</sup> September, 2017 for publication on 28<sup>th</sup> September, 2017. They submitted that this meant the advertisement preceded the meeting by only eight days, again in blatant breach of the Statutory 21-days Notice rule under Section 281 of the Companies Act.
36. Regarding the alleged 2016 Annual General Meeting, the Plaintiffs that there was a notice for a meeting on 4<sup>th</sup> August, 2016, a police permit for that date, and a request for a permit dated 13<sup>th</sup> July, 2016, but there was no advertisement and no other documentation showing the meeting was lawfully convened and conducted. The documentary trail was therefore incomplete.
37. As for the alleged 2014 AGM, the Plaintiffs observed that the Annual General Meeting notice was for 15<sup>th</sup> May, 2014, yet the only media receipt produced was dated 4<sup>th</sup> March, 2015, which did not coherently support the alleged meeting. In the Plaintiffs’ submission, all this documentation taken together is riddled with contradictions and fails to satisfy even the minimum evidentiary burden required to prove that Annual General Meetings had in fact been held.
38. The Plaintiffs have argued that the 1<sup>st</sup> Defendant had therefore failed to discharge the burden imposed by Section 108 of the Evidence Act, since no CR2 forms, no lists of attendees, and no credible documentary trail were produced to demonstrate valid Annual General Meetings or lawful changes of Directorship. They have submitted that the continuing appearance of deceased persons in the Company records lent even greater weight to their case that no valid Annual General Meetings had taken place and that the receipts and notices produced by the 1<sup>st</sup> Defendant were part of an effort to hoodwink the Court into believing that the Company had complied with the law.
39. The Plaintiffs further submitted that an Annual General Meeting is not a ceremonial nicety but a statutory requirement and the principal forum through which members exercise their right to choose Directors and hold management accountable. In support of that proposition, they have relied on the case of *Muguga Investment Company Limited & 2 Others –vs- Nicholas Kabucho Murimi & 7 Others* [2020] KEHC 4594 (KLR), where Tuiyott J., quoting with approval the Court of Appeal in the same matter, underscored that an Annual General Meeting is a normal and indeed statutory function of a Company, and that holding an Annual General Meeting cannot hurt anybody because it is the forum where all parties may express their views and exercise their right to choose Directors. The Plaintiffs cited that authority to argue that the present Court should, like the courts in the Muguga litigation, compel the convening of an Annual General Meeting and restore corporate democracy in the 4<sup>th</sup> Defendant Company.
40. The Plaintiffs have also submitted that they have established a sufficient case to merit the reliefs sought in the plaint. They invoked the case of *Mrao Ltd –vs- First American Bank of Kenya Ltd & 2 Others* [2003] KECA 175 (KLR) for the definition of a prima facie case, which was then described as a case in which the material presented shows an apparent infringement of a right



calling for an explanation or rebuttal. Applying that standard, the Plaintiffs have argued that they had shown an apparent violation of their rights as members, including the right to participate in annual general meetings, to vote for Directors, and to have the Company governed in accordance with statute and its Articles of Association. They have added that the 1<sup>st</sup> Defendant had also become unfit to hold office by reason of an alleged act of bankruptcy, which, according to them, further undermines his claim to continued leadership.

41. In urging the Court on the appropriate remedy, the Plaintiffs have once again relied on the case of *Muguga Investment Company Limited & 2 Others –vs-Nicholas Kabucho Murimi & 7 Others* [2020] KEHC 4594 (KLR). They have pointed out that, in that matter, the Court directed the Registrar General to convene an Annual General Meeting at the Company’s expense within a set period, to supervise and conduct the election of Directors, and to regulate the register of members entitled to vote. They have submitted that a similar approach is warranted here because of the deep acrimony among the factions in the 4<sup>th</sup> Defendant Company. According to the Plaintiffs, it would not be fair or practical to leave the convening and management of the Annual General Meeting in the hands of the same Defendants whose legitimacy was being questioned and whose conduct had allegedly contributed to the present crisis. They therefore have urged the Court to direct that the Annual General Meeting be convened and managed by the Registrar General or another independent public officer so as to secure substantive and procedural justice.
42. Finally, the Plaintiffs have urged the Court to approach the matter as one concerning the welfare of the Company as a whole rather than a contest of individual victory and defeat. They have submitted that the 4<sup>th</sup> Defendant Company had been excessively personalized; that major decisions were being made without Company resolutions or shareholder sanction; and that such conduct was unprofessional, dismissive, arrogant, and contrary to both court orders and good corporate governance. In their view, the Court should not reward or condone that conduct by leaving the Defendants at the centre of the process of calling and managing an Annual General Meeting. Instead, the Court should intervene decisively, restore the Company to lawful order, and grant the orders sought in the *Plaint*.

#### **The 1st and 4th Defendants’ Submissions**

43. The 1<sup>st</sup> and 4<sup>th</sup> Defendants have submitted that the Plaintiffs and Interested Parties have failed to discharge the burden of proof under Sections 107 and 108 of the *Evidence Act*. They have argued that the Plaintiffs have not proved membership because the 3<sup>rd</sup> Plaintiff did not produce a share certificate; the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs did not testify; the list of members produced by the Plaintiffs was of doubtful evidentiary value; and no certified register of members was produced from the Registrar as contemplated by Section 93 of the *Companies Act* and the *Evidence Act* provisions on public documents. They further submitted that rights to challenge governance of the Company in this context are rights belonging to members, and that before Sections 277 to 280 can be invoked, the claimant must first prove membership and voting entitlement. They have also pressed on the doctrine of exhaustion where relying on the case of *Geoffrey Muthinja & Another –vs- Samuel Muguna Henry & 1756 Others*. In that view, they contend that the Plaintiffs ought to have first requisitioned a meeting and, failing action by Directors, convened it at the Company’s expense.

#### **The Interested Parties’ Submissions**

44. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties have submitted that they were shareholders of the 4<sup>th</sup> Defendant Company having been issued with Share Certificates numbered 8256 and 0993. They have relied on Section 495 of the *Companies Act*, which provides that a duly executed share certificate is, in the absence of proof to the contrary, evidence of the member’s title to the shares. They have submitted



that the 1st and 4th Defendants had not rebutted their membership; that allegations of fake share certificates could not defeat their rights in the absence of specific pleading and proof of fraud; and that the Company's continued failure to convene Annual General Meetings violated Section 275A of the *Companies Act*. They have urged the Court to compel an Annual General Meeting and restore shareholder participation in the affairs of the 4<sup>th</sup> Defendant.

### **Analysis and Determination**

45. Having considered the pleadings, evidence and submissions presented by parties, the issues that arise for determination are as follows: -
- a. Whether this Court has jurisdiction to entertain the suit, or whether the suit is barred by the doctrine of exhaustion.
  - b. Whether the Plaintiffs and/or the Interested Parties proved sufficient membership or voting interest in the 4<sup>th</sup> Defendant Company to maintain the present proceedings and seek relief under the *Companies Act*.
  - c. Whether it was proved that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have continued to act as Directors on the strength of an invalid or disputed process and without valid annual renewal through Annual General Meetings.
  - d. Whether it was proved that the 4<sup>th</sup> Defendant failed to convene Annual General Meetings as required by law.
  - e. Whether the reliefs sought in the plaint should issue, and if so, in what form.

### **Jurisdiction and the Doctrine of Exhaustion**

46. The 1<sup>st</sup> and 4<sup>th</sup> Defendants' first shield is jurisdiction. They argue that the Plaintiffs rushed to court without first invoking the provisions of Sections 277 and 279 of the *Companies Act*. Indeed, Sections 277 and 279 provide for a statutory pathway by which members may require Directors to convene a general meeting and, upon default, may themselves convene it at the Company's expense. Section 280, however, separately empowers the Court to intervene where it is impracticable to convene or conduct a meeting in the manner required by the Company's Articles of Association or the Act. Under Section 275A, every Company must convene a general meeting once a year. Sections 277 to 280 of the *Companies Act* thus establishes a step-by-step framework for a Company's decision-making. Firstly, members may requisition a meeting, the Directors may default in calling it, the members may then convene the meeting themselves, and where practical difficulties still make that impossible, the Court may step in and give appropriate directions.
47. The doctrine of exhaustion as reiterated in the case of *Muthinja & Another –vs- Henry & 1756 Others* [2015] KECA 304 (KLR), the Court of Appeal affirmed that where a dispute resolution mechanism exists outside the courts, it generally ought to be exhausted first, because courts are fora of last resort and not the first port of call. But the same decision was equally clear that internal mechanisms do not oust the jurisdiction of the courts; they merely postpone recourse to the courts, and only where those mechanisms are real, available, and capable of addressing the dispute.
48. Likewise, the *Companies Act* itself recognizes that there are circumstances where internal mechanisms become impracticable and that is precisely why Section 280 exists. In the case of *Seruji Limited –vs- Savannah Cement Limited; Savannah Heights Ltd (Interested Party)* [2021] KEHC 26 (KLR), the High Court explained that Section 280 is intended to provide an inexpensive and speedy procedural remedy to overcome technical or practical difficulties in convening, holding, or conducting a meeting,



and that the Court may make an appropriate order where Company business is imperiled by such impediments.

49. In the present matter, the dispute is not a simple complaint by an impatient shareholder who failed to write a requisition letter and then sprinted to court. It is a deeper governance and leadership dispute. The evidence that was placed before the Court alleges that the 2010 Annual General Meeting was contentious and later invalidated; that Company records are contradictory; that several persons reflected as Directors are deceased; that the Registrar of Companies, who would have been expected to clarify the authentic state of affairs, neither filed a defence nor offered testimony; and that no valid Annual General Meeting has been held for more than twelve years.
50. In such a setting, to insist that the Plaintiffs had to first tread the ordinary steps as provided for under Sections 277 and 279 as though the corporate machinery were functioning normally would be to demand that they open a locked door with a key to a room that may no longer exist.
51. This Court is therefore unable to agree that this suit is barred by exhaustion and the circumstances disclosed by the evidence brings the case within the ambit of Section 280. As such, the Court's jurisdiction is not ousted. It is properly invoked.

### **Whether membership was sufficiently proved**

52. The 1st and 4th Defendants have argued with some force that the Plaintiffs did not sufficiently prove membership. In deed the 3<sup>rd</sup> Plaintiff's own testimony did not place before the Court his personal share certificate nor those of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs. Ordinarily, that would weaken the Plaintiffs' case on personal standing since the register of members under Sections 92 and 93 of the *Companies Act* remains the primary formal record of membership. A Company is required to keep such a register showing the names and addresses of members, the date each became a member, and, where it has a share capital, the shares held and the amount paid.
53. That said, the matter does not end with the Plaintiffs' evidence alone. The Interested Parties, who were duly joined to the proceedings also came before the Court asserting membership. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties specifically stated that they held Share Certificates numbered 8256 and 0993. Their evidence was that they were shareholders, had paid survey fees, and were entitled to vote at Annual General Meetings. The 6<sup>th</sup> and 7<sup>th</sup> Interested Parties gave similar testimony. Contrary to the threshold required. The Company's answer was not to produce a clear, complete, current, and reliable register from the Registrar or a coherent evidentiary chain disproving their membership. Instead, it broadly alleged a history of fraudulent issuance of "shares" by impostors.
54. However, the Court cannot ignore the legal effect of a share certificate since Section 495 of the *Companies Act* provides that a certificate duly executed in accordance with Section 37 specifying any shares held by a member is, in the absence of proof to the contrary, evidence of the member's title to the shares. That is not conclusive proof in every case, but it is significant prima facie evidence.
55. This Court must also consider the peculiar circumstances of this case. The Plaintiffs' witness spoke of manipulated CR12 records while the 3<sup>rd</sup> Interested Party testified that deceased persons continued to appear in Company records as Directors. The 5<sup>th</sup> Defendant, the Registrar of Companies, though sued, did not participate in these proceedings to clarify the authentic register, the authentic returns, or the true history of Directorship. In the *Seruji Limited –vs- Savannah Cement Limited* case (supra), the Court observed, with approval, that updated records from the Registrar are ordinarily the best evidence where there is a dispute as to shareholding and Directorship. Here, that stabilizing anchor was missing, not because it was irrelevant, but because the 5<sup>th</sup> Defendant offered no assistance to this court.



56. In those circumstances, this court is satisfied that, even if the Plaintiffs' own proof of personal membership was not presented, there were before the Court, members or persons who sufficiently demonstrated a voting stake in the Company through the Interested Parties' evidence. The 1<sup>st</sup> and 4<sup>th</sup> Defendants did not rebut that evidence with cogent, records kept by the Company sufficient to displace it. Hence, for purposes of the principal relief seeking the convening of an Annual General Meeting and restoration of lawful Directors, this Court finds that there were persons properly before the Court with standing to seek relief under Section 280.

**Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are lawfully in office.**

57. The Plaintiffs' case was that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were elected at the contentious Annual General Meeting of March 2010 which process the Registrar of Companies later invalidated and withdrew the CR12 entries arising from it. However, despite that invalidation, they continued to act as Directors. The 3rd Plaintiff gave direct testimony to that effect. The 3rd Interested Party added that the current composition of the board was deeply problematic, with deceased persons continuing to appear on Company records. The 1<sup>st</sup> Defendant's response was largely to deny impropriety, challenge membership, and assert the Company's internal governance structure. However, in cross-examination, he conceded that he assumed office upon election in the contentious Annual General Meeting of March, 2010 which was later rescinded.

58. This Court is conscious that disputes over Company Directorship often sit on shifting sand, particularly where records are contested. Therefore, this Court ought to approach this issue cautiously. It does not think the evidence before permits a final and exhaustive pronouncement on every historical change in Directorship since 2010 as the record is not as complete as one would wish, and the absence of assistance from the Registrar compounds the problem.

59. But there is a narrower, and more decisive, point. Even on the 1st Defendant's own case, there is no satisfactory evidence before this Court to show that the 4<sup>th</sup> Defendant Company has been governed through regular, annual, properly noticed general meetings in compliance with the *Companies Act* and its Articles of Association. Section 275 of the Act requires resolutions at general meetings to be validly passed only where notice is given and the meeting is held and conducted in accordance with the Act and the Company's Articles of Association. Section 275A imposes the obligation to convene a general meeting once a year. Sections 281 to 285 regulate notice, manner of notice, persons entitled to receive notice, and contents of notice. It further provides that proceedings of a meeting that do not comply with the notice requirements are void.

60. No persuasive evidentiary trail was placed before this Court by the 1<sup>st</sup> and 4<sup>th</sup> Defendants to demonstrate a lawful cycle of Annual General Meetings and valid renewal of Directors' office in terms of the Company's articles. On the contrary, the weight of the evidence suggests a long rupture in proper corporate governance and in that setting, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants cannot successfully insist that they continue to hold democratic legitimacy as Directors merely because they have remained in practical control. The office of Director is not preserved by mere passage of time or continued occupation; it must be grounded in compliance with the law and the procedures laid down by the Company.

61. Therefore, this Court find that the Plaintiffs and the Interested Parties have proved, on a balance of probabilities proved that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have not demonstrated that their continued occupation of office as Directors of the 4<sup>th</sup> Defendant Company is founded on a clear, lawful, and current mandate obtained through valid Annual General Meetings. That finding only reinforces the necessity of convening a lawful General Meeting, so that the members of the 4<sup>th</sup> Defendant Company



may exercise their statutory and corporate right to choose their leadership and restore the Company to proper governance.

#### **Whether the 4<sup>th</sup> Defendant failed to convene AGMs**

62. On this issue, the evidence is lopsided. The Plaintiffs' witness stated there had been no Annual General Meeting since March, 2010. The Interested Parties repeated the same. The 3<sup>rd</sup> Interested Party tied that failure to irregular Company records. The 1<sup>st</sup> Defendant on the other hand asserted governance and challenged membership, but the evidence before Court does not satisfactorily demonstrate compliance with the provisions of Section 275A on annual meeting requirement.
63. The obligation under Section 275A is not optional. It requires every Company, other than a single-member Company, to convene a general meeting once a year. The provision was introduced to ensure that corporate management remains accountable to members and that leadership is periodically subjected to the will of the shareholders or members. A Company that goes more than a decade without an Annual General Meeting ceases to look like a Company governed by law and begins to resemble a private estate fenced off from its owners.
64. This Court therefore finds as a fact that the 4<sup>th</sup> Defendant Company has failed to convene annual general meetings as required by law.

#### **Whether the reliefs sought should issue.**

65. The first two prayers in the plaint seek permanent injunctive relief against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The third prayer seeks an order compelling the 4<sup>th</sup> Defendant to convene an Annual General Meeting at a place, time and manner the Court considers appropriate.
66. In this Court's view, the most important remedy in this matter should not be punitive but should be restorative. The Company must be returned to lawful corporate governance and that requires an Annual General Meeting. The governance paralysis and the contested state of the records make this a proper case for judicial intervention under Section 280 and this Court is expressly empowered to order that a meeting be convened, held and conducted in any manner it considers appropriate, and to give ancillary or consequential directions.
67. At the same time, this Court does not think it would be prudent to issue a blanket order that entirely immobilizes the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from every interaction with the 4<sup>th</sup> Defendant Company pending the Annual General Meeting. Companies are living legal persons and they cannot be left headless in a legal waiting room. What justice requires is to restrain the impugned Defendants from acting as though they hold an unassailable democratic mandate, and from altering Company assets or records in a way that could prejudice members before the Annual General Meeting.
68. Accordingly, Judgment is hereby entered in favour of the Plaintiffs in the following terms:-
  - a. Pursuant to Section 280 of the *Companies Act*, the 4<sup>th</sup> Defendant Company shall convene and hold an Annual General Meeting (AGM) within ninety (90) days from the date of this Judgment, at a venue within Kiambu County, and on such date and time as shall be specified in the notice convening the meeting.
  - b. The said Annual General Meeting shall be convened and conducted in accordance with the *Companies Act* and the Articles of Association of the 4<sup>th</sup> Defendant Company, save to the extent varied by the directions contained in this Judgment.



- c. The Annual General Meeting shall be supervised by the Registrar of Companies or by a neutral officer appointed by the Registrar of Companies for that purpose, so as to ensure transparency, legality, and fairness in the conduct of the meeting.
- d. The 5th Defendant, the Registrar of Companies, shall, within thirty (30) days from the date of this Judgment, avail to the 4<sup>th</sup> Defendant Company and to all parties the current Company records, and records as at 16<sup>th</sup> March, 2010, held by that office relating to the 4<sup>th</sup> Defendant Company, including the latest filed returns relating to its members and Directors, for purposes of facilitating the convening of the Annual General Meeting and the issuance of notice to all persons entitled thereto.
- e. Notice of the Annual General Meeting shall be issued to all members appearing in the Company records, and to such other persons as may, on the face of the records and documents reasonably available, be entitled to notice under the Companies Act and the Articles of Association of the 4<sup>th</sup> Defendant Company.
- f. The agenda of the said Annual General Meeting shall include, at a minimum:
  - i. Confirmation of the members entitled to participate and vote;
  - ii. Election of the officials and Directors of the 4<sup>th</sup> Defendant Company in accordance with the law and the Company's Articles of Association;
  - iii. Consideration of the Company's governance records; and
  - iv. Such other lawful business as may properly be transacted at an Annual General Meeting.
- g. That Pending the holding and conclusion of the Annual General Meeting directed herein, an order of injunction is hereby issued restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, whether by themselves, their servants, agents, or any person acting on their behalf, from purporting to act as duly and validly elected Directors of the 4<sup>th</sup> Defendant Company on the basis of any disputed, stale, or unregularised mandate predating the Annual General Meeting to be convened pursuant to this Judgment.
- h. Pending the holding and conclusion of the said Annual General Meeting, a an order of injunction is hereby issued restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, whether by themselves, their servants, agents, or any person acting on their behalf, from registering any transfers of the assets of the 4<sup>th</sup> Defendant Company, altering or changing its official records, or otherwise interfering with the affairs of the 4<sup>th</sup> Defendant in any manner that is not strictly necessary for the preservation of the Company and for the facilitation of compliance with this Judgment.
- i. For the avoidance of doubt, this Court has not in this judgment made a final determination on every historical controversy touching on past Directorship or on every disputed entry in the records of the 4<sup>th</sup> Defendant Company. What the Court has determined is that the present state of governance of the 4<sup>th</sup> Defendant Company is unlawful, irregular, and unsustainable, and that the proper remedy lies in returning the Company to its lawful forum of accountability, through a properly convened and lawfully conducted Annual General Meeting.
- j. The costs of this suit shall be borne by the Defendants jointly and severally.

It is so ordered.



**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 17<sup>TH</sup> DAY OF MARCH, 2026.**

**D. O. CHEPKWONY**

**JUDGE**

