

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NYERI**  
**CIVIL SUIT NO. 13 OF 2016**

<b>HEZEKIAH</b>	<b>WANG'OMBE</b>	<b>GICHOHI</b>	<b>....</b>	<b>1<sup>ST</sup></b>
<b>PLAINTIFF/RESPONDENT</b>				
<b>HEZY</b>	<b>JOHN</b>	<b>LIMITED</b>	<b>.....</b>	<b>2<sup>ND</sup></b>
<b>PLAINTIFF/RESPONDENT</b>				
<b>ALLIMEX</b>	<b>LIMITED</b>	<b>.....</b>		<b>3<sup>RD</sup></b>
<b>PLAINTIFF/RESPONDENT</b>				
<b>HII</b>	<b>INVESTORS</b>	<b>LIMITED</b>	<b>.....</b>	<b>4<sup>TH</sup></b>
<b>PLAINTIFF/RESPONDENT</b>				
<b>CAROLINE</b>	<b>W.</b>	<b>KAMARU</b>	<b>.....</b>	<b>5<sup>TH</sup></b>
<b>PLAINTIFF/RESPONDENT</b>				
<b>VERSUS</b>				
<b>DAVID</b>	<b>N.</b>	<b>MUTHOGA</b>	<b>.....</b>	<b>1<sup>ST</sup></b>
<b>DEFENDANT/APPLICANT</b>				
<b>ANTHONY</b>	<b>WAGURA</b>	<b>IKIKI</b>	<b>.....</b>	<b>2<sup>ND</sup></b>
<b>DEFENDANT/APPLICANT</b>				
<b>PETER</b>	<b>GICHOHI</b>	<b>GITAU</b>	<b>.....</b>	<b>3<sup>RD</sup></b>
<b>DEFENDANT/APPLICANT</b>				
<b>UMOJA</b>	<b>SERVICE</b>	<b>STATIONS</b>	<b>LTD</b>	<b>.....4<sup>TH</sup></b>
<b>DEFENDANT/APPLICANT</b>				

**RULING**

1. Vide an order dated 11/2/2026, Muya J allowed the notice dated 3.2.2025 in terms of prayers 1, 2, and 3.
2. It was noted that the two main agenda will be:
  - a) Election of directors.
  - b) Resolution to dissolve the 4<sup>th</sup> defendants.
3. Parties have issued separate notices through the officials, that is:
  - (i) IBIS Hotel
  - (ii) Eland Safaris Hotel Ltd
4. I certified the matter as urgent and placed the same before me today for further orders. Mr. Gacheru Ng'ang'a agreed to the venue of Eland Safaris Hotel, but gave conditions including service among others.
5. My remit today was to settle the venue of the meeting, which has since been agreed upon. The rest of the meeting is in the hands of the Deputy Registrar of this court. The venue has been agreed. I do not have an application before me relating to the other conditions. In respect to the essence of pleadings, the Supreme Court of Kenya in its ruling on *inter alia* scrutiny in the case of **Raila Amolo Odinga & Another vs. IEBC & 2**

**others (2017) eKLR** found and held as follows in an election petition:

58. In the case of Arikala Narasa Reddy v Venkata Ram Reddy Reddygari & anr, Civil Appeal Nos 5710-5711 of 2012; [2014] 2 SCR the Supreme Court of India held that [paragraph 8]:

52. Further, the court went on and observed that:

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings. The court cannot exercise discretion of ordering recounting of ballots just to enable the election petitioner to indulge in a roving inquiry with a view to fish material for dealing the election to be void. The order of recounting can be passed only if the petitioner sets out his case with precision supported by averments of material facts.

6. The venue has been agreed upon hence the court's hands are tied. The court mandated annual general meeting shall be held

at Eland Safaris Hotel Ltd. This is further pursuant to the order of 11/2/2026. The court declines to deal with any other issue.

7. This leaves the issue of costs, which is governed by Section 27 of the Civil Procedure Act, which provides as follows:

**(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.**

**(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.**

8. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of **Rai & 3 others v Rai & 4 others** [2014] KESC 31 (KLR), as follows:

18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation

22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.

9. Too much has gone through the parties and under the bridge.

The respondents have graciously agreed. Therefore, in the

interest of harmony, however tenuous, each party shall bear its own costs.

Determination

10. The application dated 11.5.2026 is allowed to the extent that:

- a) The annual general meeting shall be held at Eland Safaris Hotel Ltd.
- b) All parties are barred from calling for an annual general meeting at IBIS Hotel Nyeri.
- c) Each party shall bear its own costs.

**DELIVERED, DATED and SIGNED** at **NYERI** on this **14<sup>th</sup>** day of **May, 2026**. Judgment delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**

**JUDGE**

**In the presence of: -**

Mr. Gacheru Ng'ang'a for the Plaintiffs

Mr. Muchiri Wa Gathoni for the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Defendants

Mr. Gaita for the 3<sup>rd</sup> Defendant

Court Assistant - Martin

ORIGINAL