



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 55 OF 2013

1. WILL M. OMIDO

2. JANET A. OMIDO.....PLAINTIFFS

VERSUS

TAWAI LIMITE.....DEFENDANT

R U L I N G

1. The two applicants Joseph Masinde Masabule and George M. Malanga filed an application dated 7th May, 2014 in which they seek leave of court to represent the shareholders of the Defendant Tawai Limited. The applicants are shareholders of Tawai Limited. The applicants also seek to be enjoined in this suit as defendants.

2. The applicants contend that the directors of Tawai Limited are not acting in the best interest of the company and as such they are seeking to be brought on board so as to safeguard the interest of the shareholders.

3. The applicants application is opposed by the plaintiff/Respondents based on grounds of opposition filed in court on 3/7/2014 as well as replying affidavit sworn by one of the respondents Will M. Omido on 30th June 2014. The respondents contend that the applicants cannot purport to represent the interests of shareholders who are adequately represented by directors of the company. They respondents also contend that granting the prayers sought by the applicants will be an exercise in futility as the applicants are not seeking to set aside the consent judgement entered herein.

4. The respondent contend that the applicants should have applied to be enjoined in Kitale HCCC NO. 18 of 2008 between Eldoret Express Ltd and Tawai Limited.

5. I have carefully considered the application herein as well as the opposition to the same by the plaintiff Respondents. It is important to note that Tawai Limited did not oppose the applicants application. The issue in contention is sale of 55 acres belonging to the company which were sold to the Plaintiff/Respondents. The Plaintiff/Respondents filed a suit against the company seeking orders of specific performance. One of the Plaintiff/Respondents testified and when it came to cross – examination, the chairman of the company disowned their lawyer on record arguing that the company did not instruct him. The case was then adjourned pending settlement of the issue of representation.

6. The Plaintiff/Respondents came and entered into a consent with the company compromising the entire suit. Some directors of the company filed an application in court seeking to be enjoined as parties but this

application was dismissed after it turned that one of them had directly benefited from money paid by the plaintiff/Respondents which went into his personal account.

7. It is clear from the evidence adduced before court by one of the plaintiff/Applicants that he paid all the monies to individual accounts of directors including some non members. It therefore follows that the shareholders have a genuine concern in seeking to be enjoined in this suit. It cannot be argued that the actions of the directors are binding on the shareholders and that the directors are taking care of the interests of the shareholders. A court of law cannot allow directors to benefit as individuals and then commit the company. I find that the applicants application is well founded. The two applicants are allowed to represent the shareholders in this case. They are hereby enjoined to this suit as defendants. The applicants shall have costs of the suit. The plaint should be amended accordingly to incorporate them.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of July, 2014.

E. OBAGA

JUDGE

In the presence of Mr Olewe for respondent and Mr Ingosi for interested parties. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

30/7/2014