



REPUBLIC OF KENYA



**Wanjohi v North Tetu Farmers Company Limited (Civil Appeal
E067 of 2022) [2025] KECA 171 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KECA 171 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E067 OF 2022
W KARANJA, J MOHAMMED & LK KIMARU, JJA
FEBRUARY 7, 2025**

BETWEEN

JOSEPH NDERITU WANJOHI APPELLANT

AND

NORTH TETU FARMERS COMPANY LIMITED RESPONDENT

*(Being an appeal from the judgment of the High Court of Kenya at
Nyeri (Njagi, J.) dated 6th May, 2022, in Civil Case No. 13 of 2014)*

JUDGMENT

1. The respondent, a public limited company incorporated under the *Companies Act*, instituted a civil suit against the appellant, before the High Court of Kenya at Nyeri, vide an amended plaint dated 10th July, 2018, seeking inter alia, a declaration that the appellant was not a director of the respondent's company, and that all his dealings as a purported director of the respondent's company were illegal; injunctive orders against the appellant and his agents restraining him from acting or representing himself as a director of the respondent's company.
2. It was the respondent's case that the appellant, purporting to be its director, had been illegally conducting the respondent's business, convening illegal meetings, and collecting money from shareholders and members in an illegal office situated in Nanyuki. The respondent averred that the appellant had been making unauthorized announcements to the respondent's shareholders and members of the public, in broadcasts made in Kikuyu vernacular radio stations such as Inooro and Kameme, urging the members to pay monies to him to enable him survey and issue title deeds. The respondent averred that the appellant was ousted as a director after new directors were elected in office in 2014, and annual returns filed with the Registrar of Companies. It was the respondent's case that the Registrar of Companies issued Form CR12 dated 26th March, 2014, confirming the newly elected directors, under the leadership of its chairman, Daniel Gatuguta Kingori. The chairperson, Daniel Gatuguta Kingori died in 2007 and was replaced by John Gaitho Gatuguta.



3. In response, the appellant filed a further amended statement of defence and counterclaim dated 25th July, 2018. The appellant stated that he was the founding director and chairman of the Board of Directors of the respondent's company, and that he was the only surviving director and shareholder of the said company. It was his contention that when the respondent's Annual General Meeting (AGM) was held on 29th November, 2013, the directors of the respondent's company included himself, John Mwangi Ngaruiya, Kingori Linus Gichuri, Rev. Duncan Ndegwa Wambugu, Elizabeth Wangui Kiragu, Joshua Ndirangu Wanjohi, Hassan Macharia Mwangi and Gispo Kamau Kimani. The appellant averred that the respondent had not convened any other general or special meeting since the said annual general meeting, and that no notice of change of particulars of directors had been lodged with the Registrar of Companies.
4. In the counterclaim, the appellant, prayed for inter alia, a declaration that John Gaitho Gatuguta, Loise Njoki Mathenge, Daniel Gitonga Mathenge, Charles Gichuhi Ngare, Daniel Murage Nguitui, Nancy Wangechi Maina, Eunice Muringi, Paul Wanyoike Njaari and Wang'onde Kariira, are not directors of the respondent's company, and that any representation and activities by them as purported directors was illegal; and further that a permanent injunction be issued against the named persons restraining them from representing themselves as directors or officials of the respondent's company.
5. The case was heard by way of viva voce evidence. John Gaitho Gatuguta (PW1) gave evidence on behalf of the respondent. It was his evidence that the respondent was a land buying company established in 1971, and that the appellant was its chairman since year 2011, working together with eight other directors. PW1 stated that no annual general meeting was held by the respondent in 2012 and 2013. That vide a letter dated 1st November 2013, the respondent wrote to the Registrar of Companies requesting for a go-ahead to hold an annual general meeting. That the Registrar, vide a letter dated 15th January 2014, gave the go-ahead for the AGM to be conducted. PW1 stated that the meeting was to be held on 24th April 2014, at the District Officer's office in Ruringu, and that the respective notices were sent to all members, including the appellant.
6. PW1 testified that one of the agenda items of the meeting was the election of new directors. That nine new directors were subsequently elected and Daniel Gatuguta Kingori was named as the new chairman, set to take over from the appellant. That the Registrar of Companies was duly informed through a notification of change of directors which PW1 produced in evidence. A fresh CR12 form was issued by the Registrar detailing the new company officials. That despite the change of officials, the appellant continued to present himself as the chairman of the respondent company, and illegally carry out official business of the company.
7. It was PW1's testimony that the appellant has been collecting money from members of the company and the public, applied for a consent from the Land Control Board on behalf of the respondent with respect to land parcel number Nanyuki/Marura/BlkV/195, and subsequently illegally transferred 60 acres of the said property to his wife, Agnes Nyambura Nderitu. That he continually disrupted meetings held by the respondent and that the respondent's directors resolved to sue the appellant as a result of his actions. PW1's testimony was echoed and reiterated in all material respects by PW3, Charles Gichui Ngari, a shareholder of the respondent's company, and one of the directors elected in 2014.
8. PW4, Alice Mwendwa, an assistant Registrar from the Registrar of Companies told the court that she issued the CR12 form dated 20th May, 2014, to the respondent, detailing the names of the newly elected officials of the company. She stated that the documents from the Registrar of Companies relied on by the respondent were authentic, and that the new directors of the respondent's company were properly in office.



9. The appellant testified as DW1. It was his evidence that he has served as the Chairman of the Board of Directors of the respondent's company for forty-two years upto the time he testified in court. That he was not aware of the purported AGM held on 24th January, 2014, and that no court order was served upon him restricting or restraining him from serving as the chairman of the board.
10. After hearing the parties, Njagi J. allowed the respondent's suit and found that the appellant was voted out as a director and chairman of the respondent's company vide the AGM held on 24th January 2014, and that his continued passing off as the chairman of the respondent's company was unlawful. The appellant's counter-claim was dismissed.
11. Aggrieved by this decision, the appellant lodged an appeal before this Court. In summary, the appellant faulted the learned Judge: for delivering a judgment on a matter that he did not preside over during the trial; for finding that Daniel Murage Nguitui held the requisite legal requirements to requisition for a general meeting of the respondent, when he held no shares and had less than one tenth of such paid up capital, in contravention of section 132(1) of the repealed *Companies Act*, Cap 486; for disregarding the respondent's Memorandum and Articles of Association with respect to the procedure of voting and holding of meetings; for failing to find that only a member of the company could requisition a meeting and not a sitting director of the company; for finding that the meeting of the respondent's company held on 29th November, 2013, was not held in accordance with the law, while that held on 24th January, 2014 was legally convened; and for making a finding that was not supported by the evidence on record and the law.
12. The appeal was canvassed by way of written submissions.

Counsel for the appellant submitted that the hearing was substantially before A. Mshila J., who took the evidence of all the witnesses, but the impugned judgment was delivered by Njagi J., in contravention of the provisions of Order 21 Rules 2 and 3 of the Civil Procedure Rules. Counsel submitted that the impugned judgment was a nullity as the parties were not given an opportunity to elect how to proceed after the new Judge took over the proceedings from the previous Judge who handled the case. Learned Counsel was of the view that the notice dated 1st November, 2013, notifying members of the Annual General Meeting, failed to comply with section 132 of the *Companies Act* (now repealed) as the convener of the meeting, Daniel Murage Nguitui, did not hold any shares at the respondent's company and, therefore, lacked the requisite capacity to call for the said meeting. The appellant faulted the respondent for failing to produce a register of its members to confirm the members entitled to vote as at 24th January, 2014. It was his submission that the said AGM was not presided over by a certified public secretary as required by section 178A of the *Companies Act*, and as such, it was null and void. He maintained that the appellant was illegally removed from office, and that newly elected directors were not legally in office.
13. In rebuttal, it was the respondent's submission that when the matter came up for mention 15th November 2021, Njagi J. had taken over conduct over the matter, and that counsel for the appellant went ahead to request for a judgment date. The respondent pointed out that the appellant and his counsel did not raise any objection to Njagi J. taking over the proceedings at that point, and that doing so in this appeal was an afterthought. On whether the respondent's AGM held on 24th January, 2014, was properly convened, the respondent submitted that the section 132(1) of the now repealed *Companies Act*, relied on by the appellant, was in respect of Extra-Ordinary General Meetings and not AGMs. The respondent asserted that the procedure set out under section 131(2) of the said *Companies Act* relating to convening of AGMs was duly followed by the respondent, as the Registrar of Companies received an application by a member of the company and approved the holding of the AGM.



14. It was the respondent's submission that section 131 of the said *Companies Act* did not make it mandatory for a member of the company to be a shareholder. The respondent urged that the issue of whether the AGM was presided over by a certified public secretary was not pleaded before the trial court. With regards to the meeting held on 13th November 2013, the respondent maintained that the appellant did not contest the fact that he received a letter from the Registrar of Companies dated 6th March 2014, which contained the decision of the Registrar that the said meeting was not convened in accordance with the law. It was the respondent's submission that the appellant never challenged this decision of the Registrar by way of Judicial Review. In the premises, the respondent urged us to dismiss the appeal for lack of merit.
15. This being a first appeal, our duty was well stated in *Abok James Odera T/A A.J. Odera & Associates v. John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, where this Court held:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”
16. We have carefully considered the facts of this case, the pleadings, the proceedings and the submissions. We reevaluated the evidence and considered the grounds of appeal put forward by the appellant. In the present appeal certain issues are not in dispute. It is not disputed the appellant is a member and shareholder of the respondent's company. It is further not disputed that the appellant was a director of the respondent for many years until 2013. It was apparent from the evidence adduced before the trial court that the point of divergence between the appellant and the other members of the respondent's company related to the manner in which the appellant proposed to subdivide a parcel of land owned by the respondent without the approval of the members of the respondent. This resulted in two Annual General Meetings being requisitioned resulting in the election of two sets of directors being elected, hence, the suit before the trial court.
17. The first issue for determination is who as between the officials led by the appellants and the ones led by Daniel Gatuguta Kingori are legally in office. The appellant was aggrieved that the trial court upheld the election of Daniel Gatuguta Kingori and his team yet he was legally in office at the time. According to PW1, the annual general meeting of the respondent was called for 24th April 2014. In compliance with the Rules, the respondent wrote to the Registrar of Companies vide a letter dated 1st November 2013 notifying him of the intention to hold the said annual general meeting. The Registrar of companies acknowledged receipt of the said letter in a response dated 15th January 2014 and gave the go ahead for the meeting to be held. It was in this meeting that the new officials were elected ousting the appellant and his group. PW4 an assistant Registrar of Companies confirmed that indeed the annual general meeting was lawfully requisitioned and convened and that the new office bearers elected on that day were later registered as the directors of the respondent. The CR12 form confirmed that indeed the new office bearers were legally in office. It was on the basis of this evidence that the trial court upheld the said election.
18. Having re-considered the said evidence in light of the submissions made on this appeal, we are unable to disagree with the finding reached by the trial court. It was based on both oral and documentary evidence that was adduced in court. The claim by the appellant that he and others had been elected as directors in an annual general meeting held on 29th November 2013 was not supported by cogent evidence. The legal custodian of the records of who are the directors of the companies in general and the respondent in particular in Kenya are the Registrar of Companies. In the present appeal, the official



records indicate that the new officials led by Daniel Gatuguta Kingori are legally in office and we so hold.

19. The appellant complained the learned Judge who wrote and delivered the judgment did so without the benefit of having heard the evidence. The appellant argued that the learned Judge did not seek his concurrence before he took over the proceedings. Order 18 Rule 8 of the Civil Procedure Rules provides that:

“Where a judge is prevented by death, transfer, or other cause from concluding the trial of a suit or the hearing of any application, his successor may deal with any evidence taken down by him or under his direction under the said rules, and may proceed with the suit or application from the stage that his predecessor left it.”

20. In the present appeal, it is common ground that the evidence in the hearing before the trial court was substantially taken by A. Mshila, J. before she ceased having jurisdiction upon her transfer. Njagi J took over the proceedings. We have perused the record of the trial court and note that the appellant did not express and reservations or objection to Njagi, J. writing the judgment on the basis of proceedings taken before his predecessor. We agree with the submission made by the respondent that the appellant’s challenge of the judgment in that regard was an afterthought and has no legal basis.

21. It is clear from the foregoing that this appeal lacks merit and is for dismissal. We cannot find any reason to fault the decision of the trial court. The appeal is hereby dismissed with costs.

DATED AND DELIVERED AT NYERI THIS 7TH DAY OF FEBRUARY, 2025.

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

W. KARANJA

..... **JUDGED OF APPEAL**

JAMILLA MOHAMMED

..... **JUDGE OF APPEAL**

L. KIMARU

..... **JUDGE OF APPEAL**

