



REPUBLIC OF KENYA



**Kedong' Ng'ombe Ranch Ltd v Kisorio & another (Land Case E014 of 2024)
[2024] KEELC 6062 (KLR) (Environment and Land) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6062 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
LAND CASE E014 OF 2024
MC OUNDO, J
SEPTEMBER 19, 2024**

BETWEEN

KEDONG' NG'OMBE RANCH LTD PLAINTIFF

AND

JOHN KIBEREN KISORIO 1ST DEFENDANT

JACKSON KIPKEMOI KOSKEIL 2ND DEFENDANT

RULING

1. This ruling raises out of competing allegations by the firm of M/s Njeru Nyaga & Company Advocates and the firm of M/s Anyango Opiyo & Company Advocates who both claim that they had been instructed by the Plaintiff to represent them in the instant matter. Indeed whereas the firm of M/s Anyango Opiyo & Company Advocates filed their Notice of Appointment dated 27th May 2024 to act for the Plaintiff's, claiming that they had not been aware of the suit, Mr. Njeru Advocate of M/s Njeru, Nyaga & Company Advocates had on the 29th May 2024 informed the court that having filed suit on behalf of the Plaintiff they had not been served with the Notice of Change by Counsel. There was therefore contestation in regard to representation of the Plaintiff wherein both Counsel had argued that they had been instructed accordingly. To this effect the court had directed Counsel to file their respective authority to act, which forms the basis of this ruling.
2. In an affidavit sworn by Mr. Njeru Advocate on the 8th July 2024, he had annexed the minutes of a meeting of the board of Directors/Shareholders of the Plaintiff Company held on the 25th January 2016 in which the agenda for the day had been the sale of the Company's land being LR No, 8395 measuring 4,500 acres situate in Kedong Valley Nakuru District wherein a resolution had been passed that the firm of M/s Njeru, Nyaga & Company Advocates represents the Company and that the sale proceeds be deposited into the firm's account.



3. On the other hand, the firm of M/s Anyango Opiyo & Company Advocates through an affidavit of 19th June 2024 sworn by one Mr. Daniel Ochieng Ogolla, the Plaintiff's Company secretary annexed an extract of the minutes of a meeting of the Board of Directors of the Plaintiff Company held on the 14th May 2024 wherein it had resolved that the firm of Njeru, Nyaga & Company Advocates had not been authorized and/or instructed by the company to file the said suit on its behalf and they were acting on the sole behest of Peter Maina as a shareholder of the company.
4. A limited liability company is a separate legal entity capable of suing and being sued in its own right. It similarly has the right to appeal where it deems such action appropriate; and where such action is anticipated, the company ordinarily gives its authority through its board of directors or the shareholders which rationale was explicated in *Affordable Homes Africa Ltd v Henderson & 2 Others* [2004] eKLR.
5. Indeed initially, courts had relied on the decision in the Ugandan Court of Appeal in the case of *Bugerere Coffee Growers Ltd v Sebaduka & Another* [1970] 1 EA 147 to hold that when companies authorize the commencement of legal proceedings, a resolution or resolutions had to be passed either at a Company or Board of Directors' meeting and recorded in the minutes. However, the principle enunciated in the Bugerere case has since been overruled by the Uganda Supreme court in the case of *Tatu Naiga & Emporium v Virjee Brothers Ltd* Civil Appeal No 8 of 2000 where the Court endorsed the decision of the Court of Appeal that the decision in the Bugerere case was no longer good law as it had been overturned in the case of *United Assurance Co. Ltd v Attorney General*: SCCA No1 of 1998. The latter case restated the law as follows:-

“.... it was now settled, as the law, that, it does not require a board of directors, or even the general meeting of members, to sit and resolve to instruct Counsel to file proceedings on behalf and in the names of the Company. Any director, who is authorized to act on behalf of the company, unless the contrary is shown, has the powers of the board to act on behalf of that Company.”
6. The decision has since been applied in Kenyan courts, for example, in *Fubeco China Fushun v Naitposha Company Limited & 11 others* [2014] eKLR (which is persuasive in nature) wherein it is apparent that there is no requirement for a company to present a resolution of a company indicating that a company has authorized the filing of a suit or has authorized the swearing of an affidavit on its behalf nor, for that matter, confirming it has authorized an advocate to represent it. It suffices that any director, who is authorized to act on behalf of the Company, unless the contrary is shown, has the powers of the Board to act on behalf of that Company or to authorize an Advocate to commence suit.
7. However where like in this case where there is controversy as to who is authorized, then the court in its discretion should call for evidence of demonstration of such authority to satisfy itself of the legitimacy of the pleadings before it.
8. It is clear from the extract of the minutes of the meeting held on the 25th January 2016, the resolution had been limited to the effect that the firm of M/s Njeru, Nyaga & Company Advocates represents the Plaintiff only in regard to sale of the Company's LR No, 8395 measuring 4,500 acres situate in Kedong Valley Nakuru District which had been the Agenda of the day. There being no other evidence depicting authorization of the said law firm to institute suit on behalf of the Plaintiff, I find that the firm of M/s Njeru, Nyaga & Company Advocates had no requisite authority to institute the instant suit against the Defendants.



9. Secondly, despite the court having ordered that the parties file their respective authority to act for the Plaintiff, the firm of M/s Anyango Opiyo & Company Advocates did not comply, there being no evidence of authorization to file their Notice of Appointment dated 27th May 2024, to act for the Plaintiff.
10. In the end, I find that the suit before me is unmeritorious, that the same is an abuse of the process of the Court and is herein struck out with costs to be awarded to the 1st and 2nd Defendants, which costs shall be borne by the firm of M/s Njeru, Nyaga & Company Advocates.

DATED AND DELIVERED VIA TEAMS MICROSOFT AT NAIVASHA THIS 19TH DAY OF SEPTEMBER 2024.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

