



REPUBLIC OF KENYA



**Kirobon Farmers Co Limited v Kandie & 6 others; Sigei & another (Interested Parties)
(Civil Suit E016 of 2021) [2025] KEHC 597 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 597 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL SUIT E016 OF 2021
HI ONG'UDI, J
JANUARY 30, 2025**

BETWEEN

KIROBON FARMERS CO LIMITED PLAINTIFF

AND

DANIEL KANDIE 1ST DEFENDANT

CHRISTOPHER KOMEN 2ND DEFENDANT

PATRICK CHEPKWONY 3RD DEFENDANT

SUSAN RONO 4TH DEFENDANT

SIGILAI CHERUIYOT 5TH DEFENDANT

BETTY TOO 6TH DEFENDANT

STANLEY CHEMNGOREM 7TH DEFENDANT

AND

JACKSON SIGEI INTERESTED PARTY

KIBWABE ARAP BYOMNDO INTERESTED PARTY

RULING

1. In the Notice of motion dated 17th September 2024 the plaintiff herein prays for the following orders;
 - i. Spent.
 - ii. That the honourable Court be pleased to restrain the persons purporting to have been elected at the annual general meeting held on the 10th September, 2024 at Nakuru Agricultural Society of Kenya showground arena and registered by the Registrar of Companies on the company



CR12 form on the 12th September, 2024 as directors from taking over office and the conduct and operations of the company pending the hearing and determination of this application.

- iii. That the honourable Court be pleased to issue an order that the current directors in office elected on the 18th August, 2023 do continue running the affairs of the company pending the hearing and determination of this application.
 - iv. That the honourable Court be pleased to reject and nullify the persons purportedly elected at the annual general meeting on the 10th September, 2024 at Nakuru Agricultural Society of Kenya showground arena and registered by the Registrar of Companies on the company CR12 form on the 12th September, 2024.
 - v. That the honourable Court be pleased to order the plaintiffs to conduct another annual general meeting for elections of company directors under such terms as it may direct for the purpose of having lawful directors in office with the full mandate of the members and in the interest of justice and the company.
 - vi. That the costs of this application be provided for.
2. The application is premised on the grounds on its face as well as the affidavit of one Samuel K. Birir, a member and director of the plaintiff/applicant sworn on even date. He deponed that on 8th August, 2024 the Court issued orders to the effect that the plaintiff/applicant was to organize and hold an Annual General Meeting (AGM) on the 10th September 2024 at 10.00am at Nakuru Agricultural Showground in compliance with the consent orders earlier issued on the 5th July, 2021.
 3. Further, that in compliance with the said ruling and order the plaintiff/applicant prepared, wrote a letter to the company secretary inviting the Registrar of companies, sourced for permits and advertised for the AGM. That on the day of the said AGM at about 11.00am the area Assistant County Commissioner, the OCS Kaptembwa Police Station, two gentlemen and 50 armed police officers came into the arena. They called the gathering to order, informed them that they wanted to start the meeting and ordered all the people in attendance to get out of the arena.
 4. He deponed that as the members were still inquiring on why they should move out of the arena they were forcefully removed by the police officers. Once everybody was out of the arena the two gentlemen who claimed to have come from the office of the Attorney General said that they would start the meeting. From the list they had, about 70% of the persons were deceased and they therefore allowed a few who had letters of administration of the deceased persons on the list to enter the arena.
 5. He further deponed that over 400 persons had attended the meeting but the respondents and officers only allowed about 50 persons to enter the arena to participate in the meeting while the entire company membership from Keringet and over 200 persons from Ngata were locked out. They proceeded to select 15 persons who were present on the list and appointed the 1st respondent to be their leader and told him to proceed to select other directors amongst them.
 6. That the respondents and the officers realized that they could not get nine (9) directors from the fifteen (15) persons so they settled for five (5) plus and stated that they would incorporate others later. They also removed the company secretary and appointed one Benard Kiragu Kamau in his place. He added that the applicants and the members of the company have categorically rejected the exercise that was carried out on the 10th September, 2024, and the persons purportedly selected as directors and declare that the same persons were not their directors and do not have their approval or mandate.



7. In conclusion, he deponed that the members urged the Court to intervene, reject and nullify the said elections and allow the directors elected on the 18th August, 2023 to continue running the company as the Court issues fresh orders and directions on a new A.G.M.
8. In response, the defendants/respondents filed a replying affidavit dated 30th September 2024 and sworn by Stanley Chemngorem the 7th defendant/respondent. He averred that contrary to the assertion by the plaintiff/applicant, the Registrar of companies was indeed represented at the A.G.M held on 10th September, 2024 by one Kelvin Okumu a certified official from the said office.
9. Further, that in the conduct of the said A.G.M the Registrar of companies used the list of members that was held by the office as the agreed list of members. That the said list had never been altered through a valid resolution contrary to the assertion of the plaintiff/applicant. In addition, that the list of over the 600 alleged members had never been submitted to the Registrar of companies and the same could not therefore be lawfully used for purposes of the elections held on the said date.
10. He averred that based on the legality of the elections held on 10th September, 2024 the Registrar of companies had since registered the lawfully elected directors into office. Further, that the company search certificate annexed in their affidavit effectively recognized the said officials as rightful directors of the company who were lawfully in office and had the legal capacity and right to appoint an advocate to best represent the interests of the company. He added that the present application was incompetent and should be struck out of the court record for the plaintiff/applicant's lack of legal capacity to authorize representation of the company.
11. In further response, Hiram Gachugi the deputy Registrar of companies equally filed a replying affidavit dated 17th October 2024. He averred that they were served with two court orders dated 5th July 2021 and 12th August 2024. That the court directed the Registrar of companies to preside over the plaintiff/applicant's A.G.M. They retrieved the plaintiff/applicant's records and obtained a list of members of the company as at 3rd August 1978 which had 211 members/shareholders of the company.
12. He deposed further that the Registrar of companies was represented by two members of staff being Kevin Okumu-deputy director legal compliance and himself. They travelled to Nakuru ASK show grounds with a view of ensuring compliance with the order and in accordance with the *Companies Act*. He further averred that their office acted lawfully, diligently and in good faith in exercising its mandate under the *Companies Act*. Thus, the application herein lacked merit and the same ought to be dismissed with costs to allow the company to flourish and function.
13. The interested party in response equally filed a replying affidavit dated 30th September 2024 and which was sworn by Jackson Sigei the 1st interested party. He averred that their participation in this suit as interested parties and/or shareholders/members of Kirobon Farmers Company Limited had never been contested by either the plaintiff/applicant and/or the defendants/ respondents herein. Further, that the AGM election of 10th September 2024 was not held in compliance with the consent order dated 5th July, 2021 and orders of 8th August 2024. He added that the election of the new directors did not meet the threshold of two-third participation of total membership of the shareholders as per the plaintiff/applicant's Articles of Association.
14. The plaintiff/applicant further filed three (3) affidavits dated 27th September 2024, 29th October 2024, and 8th November 2024 sworn by its directors. They reiterated the contents of the affidavit in support of their application.
15. The 7th defendant/respondent filed a supplementary affidavit dated 30th October 2024. He averred that the firm of Ochieng Gai & Co. Advocates were not properly on record since the plaintiff/applicant had



no authority to instruct it as its advocates. That the firm of Kipruto Gitau & Co. Advocates should be allowed to continue representing it.

16. The application was disposed of by way of written submissions.

Plaintiff/applicant's submissions

17. These are dated 8th November, 2024 and were filed by M/s Ochieng' Gai & company advocates. Counsel gave a brief background of the case and submitted that the plaintiff/ applicant's A.G.M attended and presided over by the Registrar of companies and its representatives was the worst ever general meeting in the history of the company. That the same did not amount to an election and should not be condoned and upheld by the court. He urged the court to allow their application and proceed to allow the plaintiff/applicant's directors to carry on with their duties with proper directions on holding of fresh elections.

The Plaintiff's (new directors) submissions

18. These are dated 18th November, 2024 and were filed by Kipruto Gitau & company advocates. Counsel gave a brief background of the case and identified three issues for determination.
19. The first issue is whether there was proper, lawful and valid company general meeting on 10th September 2024. She submitted in the affirmative and added that the new directors were lawfully in office. On the second issue on whether the directors as per the CR 12 form dated 12th September 2024 should be allowed to take over the affairs and operations of the plaintiff/applicant company, she submitted that the elections were lawful and valid thus the current directors should be allowed to run the company.
20. On whether the present application ought to be dismissed with costs, she submitted in the affirmative. She added that the firm of Ochieng Gai should be stopped from further representing the plaintiff and in its place, the firm of Kipruto Gitau & co. advocates be allowed to continue with its representation.

Defendant/respondents' submissions

21. These are dated 18th November, 2024 and were filed by GKL Advocates LLP. Counsel gave a brief background of the case and identified one issue for determination which is whether the applicants should be granted the orders sought. Counsel submitted that any actions carried out by the Registrar of companies representatives complied with the court orders as well as section 280 of the *Companies Act*. Further, that Article 82 of the Kirobon Farmers Association Articles of Association clearly stated that for one to qualify as a director of the company he/she must be a shareholder.
22. He further submitted that according to Article 70 of the plaintiff/applicant's Articles of Association only bonafide shareholders of the company could vote in an election for directors, while Article 50 stated that the number of directors shall not be more than nine or less than five. He added that the plaintiff/applicant had not established sufficient cause for the court to interfere with the elections of 10th September 2024. He placed reliance on the decision in *Zaburi Musa Hamisi & 3 others v Ishmael Hillos & 4 others* [2015] eKLR and urged the court to dismiss the applicant's application.

Interested party's submissions

23. These are dated 14th November, 2024 and were filed by Odhiambo Opar & company advocates. Counsel gave a brief background of the application and identified two issues for determination.



24. The first issue is whether the AGM/election held on the 10th September 2024 was in compliance with the orders of this court issued on 5th July, 2021 and 8th August 2024. Counsel submitted that the defendant/respondents did not contest and/or successfully challenge the said list of membership comprising of 616 members forwarded by the plaintiff/applicant. Thus, it remained as the agreed list which the Registrar of companies ought to have used in presiding over the elections of the new board of directors.
25. He further submitted that the said list which had been retrieved from its record as at 3rd August 1978 was not the agreed list and therefore the elections held on the 10th September, 2024 were not in compliance with the orders of the 5th July 2021. He added that the election of the new board of directors required at least 2/3 vote of the shareholders. Thus, the Registrar of companies by only allowing 16 out of 616 members to participate in the election denied the majority to participate in electing their preferred directors. He therefore urged the court to allow the application.

Analysis and determination

26. Having carefully considered the application, affidavits and the submissions by both parties, I opine that the issue for determination is whether the application dated 17th September 2024 is merited.
27. It is important to note that the issue raised in the aforementioned application is not new to this court. Vide the ruling delivered on 23rd June 2022, this court issued orders setting aside all the resolutions of the plaintiff/applicant's AGM held on 29th December 2022 for reasons that the orders issued on 5th July 2021 arising from the consent dated 5th July 2021 were not complied with. Further, in the ruling delivered on 8th August 2024 this court directed that the plaintiff/applicant's AGM be conducted on 10th September 2024 at Nakuru Agricultural Show ground and that the rest of the terms of the consent order issued on 5th July 2021 were to remain intact.
28. It is not in dispute that the AGM took place on 10th September 2024. What is disputed is the manner in which the directors were elected. It is the plaintiff/applicant's case that the members of the company categorically have rejected the exercise that was carried out on the 10th September, 2024, and the persons purportedly elected as directors. Further, that the defendant/respondents and the officers at the AGM did not follow the court orders on how the same was to proceed so they forced their own decrees and directions on the members. The interested parties are in support of this position.
29. The defendant/respondents are of a contrary view and contend that any actions carried out by the representatives of the Registrar of companies complied with the court orders as well as section 280 of the Companies Act. Counsel for the plaintiff/applicant's new directors is in support of this position.
30. The Registrar of companies argued that from the plaintiff/applicant's records they obtained a list of members of the company as at 3rd August 1978 which had 211 members/shareholders of the company. Further that the office was represented by two members of staff who acted lawfully, diligently and in good faith in exercising its mandate under the Companies Act.
31. I have considered the arguments by the parties herein and that of the Registrar of companies. I also take note of the report dated 8th October 2024 filed by the representatives of the Registrar of companies. The said report confirms compliance with the court orders in conducting the AGM and that despite 159 people responding to the names called out, only 16 shareholders were present in person, (the list is provided under clause c at page 2 of the report).
32. According to the report it was only the sixteen (16) shareholders who had the legal capacity to participate in the AGM. This was because the other people who had letters from the area chief



christened “proxy forms” did not comply with the provisions of the Articles of Association of Kirobon Farmers Company limited and the *Companies Act*. Further, that the people who had grants of letters of administration or confirmed grants had not lodged them with the Registrar of companies for the shares of the deceased to be formally transmitted to them. That they needed to do that so that their names could properly be reflected on the record as beneficiaries/administrators of the 143 persons they sought to represent.

33. The plaintiff/applicant in its supporting affidavit deponed that they sent an invitation to the Registrar of companies and they annexed copies of the court order, ruling and agreed members list. I have perused the said letter of invitation and indeed it indicated that the agreed members list had been attached. However, in the said list only the names and shares of the new members was indicated. No supporting documents were attached to justify their membership in order for the Registrar of Companies to list them as the new shareholders in place of the ones who were deceased. It’s the Registrar’s argument that the documents presented by the members present at the AGM did not comply with the plaintiff/applicant’s Articles of Association or the *Companies Act*. The plaintiff/applicant failed to adduce any evidence to the contrary.

34. A look at the plaintiff/applicant’s Articles of Association which is the document it relies on to run its affairs, this court notes that Article 40 provides as follows;

“The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.”

35. Article 58 provides as follows;

“No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided two members present in person shall be a quorum.”

36. Article 80 provides as follows;

“The number of Directors shall not be more than nine or less than five and the first Directors shall be appointed by the subscribe to these Articles.”

37. Article 82 provides as follows;

“The qualification of a Director shall be the holding of shares in the Company to the nominal value of Kenya Shillings One Hundred (K. Shs, 100/-). A Director may act before acquiring his qualification, but must acquire the same within two months after his appointment or election.”

38. It is not disputed that the sixteen (16) members who participated in the election during the AGM were shareholders of the plaintiff/applicant in accordance with the above cited provisions of the Articles of Association. There was quorum and they were the only ones who could vote or be appointed as directors so long as the number did not exceed nine (9) or was less than five (5). This court issued orders on 8th August 2024 and the Registrar of companies was served with the same, and her representatives were present at the AGM. This is despite the plaintiff/applicant’s argument that it was not sure if the two individuals were representatives from the Registrar of companies’s office. He who alleges a fact has the burden to prove it. (See section 107 – 109 of the *Evidence Act*. The plaintiff/ applicant failed to prove that the two individuals were not from the office of the Registrar of companies.



39. The representative from the Registrar of companies' office filed a report on the turn of the AGM, the resolutions passed and the CR 12 form indicating the registration of the directors elected during the AGM. There is no doubt that pursuant to the provisions of Article 40 the members in the list forwarded to the Registrar of companies by the plaintiff/applicant could not participate in the AGM since they had not been registered as shareholders. The plaintiff/applicant must learn to act in line with its own constitution.
40. In view of the foregoing and having considered the arguments by the parties herein and the court record, I find that the AGM of 10th September 2024 was not held in contravention of the court orders issued on 8th August 2024 arising from the consent order of 5th July 2021.
41. The above being the finding of this court it follows that the advocates who are to represent the plaintiff/applicant is the firm of Kipruto Gitau & company advocates who were duly appointed by the lawfully elected directors. It is however noted that the Articles of Association is silent on the appointment of representation. Further, the firm of Ochieng Gai and Ogola Kipkoech advocates were to enlighten the court in their submissions as to why they were acting on opposite sides in Nakuru HCC No. 73 of 2016, and this particular file. They however failed to do so.
42. The upshot is that the application dated 17th September 2024 lacks merit and the same is hereby dismissed.
43. The plaintiff/applicant is given 30 days to decide whether it still wishes to pursue the plaint herein or not. Mention on 4th March, 2025 to confirm the position.
44. Costs shall be in the cause.
45. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 30TH DAY OF JANUARY, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

