



**Migwi v Mwangi & 9 others (Petition E012 of 2024)
[2025] KEHC 3965 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3965 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA**

PETITION E012 OF 2024

EM MURIITHI, J

MARCH 27, 2025

BETWEEN

PETER MWAI MIGWI PETITIONER

AND

LUCY WAMBUI MWANGI 1ST RESPONDENT

JAMES A. MAINGI MURIITHI 2ND RESPONDENT

JULIUS MUGO DAVID 3RD RESPONDENT

EZEKIEL GITHINJI MUGERA 4TH RESPONDENT

DANIEL BUNDI KINYUA 5TH RESPONDENT

WACHIRA KIBANYA 6TH RESPONDENT

BOARD OF DIRECTORS KANGAITA TEA FACTORY 7TH RESPONDENT

KANGAITA TEA FACTORY 8TH RESPONDENT

TEA BOARD OF KENYA 9TH RESPONDENT

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 10TH
RESPONDENT**

JUDGMENT

1. The petitioner filed this petition dated 22nd August,2024 seeking the following orders:
 1. A declaratory order does issue declaring the Petitioner as a duly elected director of Kangaita Tea Factory Company Limited for Kariko South West electoral area.



2. A declaratory order does issue declaring the Petitioner as a duly confirmed director of Kangaita Tea Factory Company Limited for Kariko South West electoral area.
 3. An Order Compelling the Respondent to allow the Petitioner assume office and perform his duties as a duly elected and confirmed director of Kangaita Tea Factory Company Limited for Kariko South West Electoral area.
 4. An Order that the Officer Commanding Station, Karaini Police Station does supervise compliance with Order (c) hereinabove.
 5. An Order Compelling the Respondents to supply the Petitioner with copies of all minutes of sittings held in his absentia.
 6. An award of exemplary damages to the Petitioner for violation and breach of his constitutional rights and fundamental freedoms.
 7. An Order for payment of costs of this Petition.
2. The petition is based on the grounds on the face of the petition and the supporting affidavit of the petitioner setting out the facts relied on that the High Court in Nairobi, Constitutional and Human Rights Division entered Judgement by adopting consents presented by the parties therein in Petition number E254 of 2020 (Consolidated with Petitions No. E243 of 2020 and No. 083 of 2020) on 11 04 2024 and consequently issued a decree dated 22/04/2024. That the said Judgement had been entered pursuant to a consent recorded out of mediation that had been done between the parties after a protracted legal battle and was meant to permanently end leadership wrangles that had rocked the parties and the tea industry then. That the terms of the Consents entered into were therefore well thought and meant to be complied with in toto upon having the same adopted as the Judgement of the Court and that all parties were bound by the said Consent then and after its adoption in court. That the High Court in Nairobi, Constitutional and Human Rights Division entered Judgement by adopting consents presented by the parties therein in Petition number E254 of 2020 (Consolidated with Petitions No. E243 of 2020 and No. 083 of 2020) on 11 04 2024 and consequently issued a decree dated 22/04/2024. That the Smallholder Tea Factory Companies' Directors elections were indeed held by the 8th Respondent under the supervision of the 9 Respondent (Tea Board of Kenya) which nominated the Independent Electoral and Boundaries Commission to conduct the elections whereupon he was duly elected as a Director of Kangaita Tea Factory in Kariko South West electoral area and issued with a certificate of Election on the same day of the elections, that is, on 29/06/2024. That the Certificate of Election issued to me on the said 29/06/2024 confirming my election as a Director was marked as Form TEF/10, IEBC/O001 and was executed by the Returning officer by the name Christine Njambi Kariuki.
3. That in line with the decree of Petition number E254 of 2020 (Consolidated with Petitions No. E243 of 2020 and No. 083 of 2020). more particularly clause and/or paragraph 12 thereof, the 8th Respondent through its Company Secretary who is the 6th Respondent herein issued a Notice of a Special General Meeting of Reference number KN/CS/AGM/ELEC/24 dated 01/07/2024. That he avers that he physically attended the said meeting and that he was called upon for confirmation where he was proposed and seconded just as the other directors had been proposed and seconded and thus confirmed. That sadly after the said Special General Meeting held and our confirmation as directors, his co - directors being the 1st to 5th Respondents herein acting in collusion with the 6 Respondent who is the company secretary have proceeded to hold meetings and transact the business of the factory to his exclusion in total disregard of my election and subsequent confirmation. That his requests and/or demands to be supplied with a copy of the minutes of the various sittings that have been conducted in



his absence have been completely ignored in violation of his right to access to information as stipulated in *the Constitution* of Kenya, 2010 and as such, he is in total darkness with regard to the business and/or affairs of the 8th Respondent which business and/or affairs he is legally and rightfully supposed to be a part of by virtue of his election as director and subsequent confirmation. That the actions by the 1st to 6th Respondents are out rightly discriminatory in nature as he is the only director left out of the said meetings and who is equally not invited into the said meetings by the 6th Respondent who is the Company secretary which actions are not only illegal but also unlawful and in contravention of his Constitutionally guaranteed right not to be discriminated against on any grounds whatsoever.

4. The 1st – 8th & 10th respondents on 16th September, 2024 opposed the Petition through the following grounds of opposition:
5. The matter relates to the election and confirmation of directors in an Annual General Meeting pursuant to the provisions of the *Companies Act* and has no Constitutional element.
6. The Petitioner ought to have filed a Civil Suit rather than a Constitutional Petition.
7. The Political rights referred to under Article 38 of *the Constitution* are in relation to rights of elections and elections to state offices and have nothing to do with election of directors to limited liability companies.
8. The confirmation of the Petitioner as a director of Kangaita Tea Factory Company Ltd is the prerogative and an absolute discretion of the General Meeting of the said Tea Factory Ltd.
9. The subject General Meeting did not confirm the Petitioner as a Director and he has not taken oath of office yet.
10. The 1st – 7th & 10th respondents on 16th September, 2024 filed Replying affidavit indicating that after the nomination of directors in all electoral areas, a Special General Meeting was indeed held on 17th July, 2024 for the sole purpose of Confirmation of Directors of Kangaita Tea Factory Company Ltd. Annexed hereto and marked as Exhibit LWM 3 is a true copy of the Minutes of the SGM and a letter dated 13th August, 2024 from the Company Secretary (6th Respondent) to the Tea Board of Kenya. That as is evident in the minutes, the confirmation of Ezekiel Githinji Mugeru was deferred during the SGM of 17th July, 2024 because of the injunctive orders of this court in HCC Comm E001 of 2024 George Kariu Vs. Kangaita Tea Factory Company Ltd. That the Confirmation of himself, the 2nd, 3rd, 4th and 5th Respondents was conducted by unanimous acclamation and all those confirmed proceeded to the high table, signed a Letter of acceptance and took an oath which was administered publicly by a Commissioner of Oaths. That as for the Petitioner, the shareholders by loud acclamation declined to confirm his election as a director for reasons only known to themselves and arising from that, pandemonium broke out in the venue and all efforts to restore calm failed whereupon the Police intervened, escorted the Petitioner out of the venue for his own safety and the meeting closed. That in the circumstances, the Petitioner was not confirmed as a Director, did not sign any acceptance letter and did not take an oath of office. That as matters stand, the Petitioner is not yet a Director of the Kangaita Tea Factory Company Ltd and until he is confirmed in a General Meeting, he cannot take part in the proceedings of the board.
11. The 9th Respondent on 9th April, 2024 deposed to Replying Affidavit that the 9th Respondent received a letter dated 23rd August 2024 from Wachira Kibanya, the 8th Respondent's company Secretary and who is also the 6th Respondent herein, on behalf of the 8th Respondent communicating that the Petitioner despite being elected was not confirmed at the 8th Respondent's special General Meeting that was held on 17th July 2024, and as such, has not been confirmed and appointed as director. The 6th Respondent



through the said letter sought guidance from the 9th Respondent. That the 9th Respondent responded to the 6th Respondent vide a letter dated 19th August, 2024 advising that the 9th Respondent's role was limited to overseeing the election which role lapsed upon declaration of the results and therefore he should proceed according to Kangaita Tea Factory Company Limited's Memorandum and Articles of Association.

12. The petitioner on 29th October, 2024 deposed to further affidavit that the petitioner was actually proposed and seconded as a director of the 8th Respondent herein as was required for confirmation during the Special General Meeting held on 17/07/2024 just as the other directors had been proposed and seconded. That more specifically, he was proposed and seconded by the following tea growers who are members of the 8th Respondent herein:
 - i. Stanley Kinyua Njogu — Proposer — IDNo: 21350226 — Member Number: Kno220211
 - ii. Andrew Mwenja — Seconder — IDNo: 22460597 ~ Member Number: Kn0o230123
13. That the issue of his proposal and secondment is admitted by the 1st – 7th & 10th respondents Respondent's own Replying Affidavit in their Paragraph 9 thereof and in their own annexure marked as Exhibit LWM 3 being a true copy of the Minutes of the Special General Meeting. That the 8th Respondent's Memorandum and Articles of Association do not provide and/or outline the manner in which confirmation is done but only provide that the same is done.

Petitioner submissions

14. The petitioner submits that the Respondents did not produce an evidence indicating. that the Petitioner's election had been challenged in any forum whatsoever and they did not equally provide proof of procedure for confirmation as the same did not exist.
15. The elections in this Petition refer to those of Kangaita Tea Factory which the 1st to 7th Respondents have referred to as Kangaita Tea Factory Company Limited and of which the Petitioner and the first seven (7) Respondents actually belong and therefore the failure to include the words Company Limited though noticeable is not fatal as it is clear who both the Petitioner and Respondents are talking about. The Respondents' actions of continually and discriminatorily restraining and/or preventing the Petitioner from assuming office despite being duly elected and confirmed have also caused the Petitioner great stress and anxiety and greatly embarrassed him and made him a laughing stock in the society thereby causing him psychological torture are in contravention of the Petitioner's right to Human dignity which is a violation of Article 28 of *the Constitution* of Ken a 2010 which provides that "Every person has inherent dignity and the right to have that dignity respected and protected". Further, the Respondents' failure to supply him with copies of minutes for the meetings already conducted are a violation and/or breach of the Petitioner's right to access information as enshrined in Article 35 (1) (b) of *the Constitution* of Kenya, 2010.

9th Respondent submissions

16. In the determination of this issue, we invite the court to first consider whether there are any constitutional issues disclosed in the Petition. This, we place reliance on the case of College of Human Resource Management v Institute of Human Resource Management [2024] where the court stated,
 - iii. "This being a Constitutional Petition, the Court must satisfy itself that the Petition before it raises Constitutional questions. This means that the matters in question can only be determined through reference to *the Constitution*, as matter that can be settled legislation should be settled within requisite legislation. *The constitution* should only be invoked if a



fundamental freedom or a key constitutional principle is threatened with violation or has been violated... The Court, sitting as a Constitutional Court, has a duty to weed out disputes that do not raise constitutional issues and which may therefore be conveniently be resolved through other legal avenues”

17. They submit that there are no constitutional issues in the instant petition meriting this court’s consideration. The issues raised by the Petitioner can only be handled in accordance with the [Companies Act](#), relevant Companies Regulations and the 8th Respondent’s Article and Memorandum of Association.
18. The conduct of the affairs of respective small holder tea factories is guided by their Articles and Memorandum of Association. Tea factories are limited liability companies run and managed according to the [Companies Act](#), the relevant regulations and their respective Articles and Memorandum of Association.
19. The Petitioner ought to have pursued the issues raised in a manner stipulated in the 8th Respondent’s Articles and Memorandum of Association. They are not constitutional issues.
20. The Supreme Court in Communications Commission of Kenya & 5 others v Ro al Media Services Limited & 5 others 2014 eKLR had the following on constitutional petitions: -

iv.

“ Although article 22(1) of [the Constitution](#) gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru v Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of [the Constitution](#) alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”

1st – 8th & 10th Respondents submissions

21. They submit that the Petitioners rights to ascend to office, if any, are all contained in the [Companies Act](#) and the applicable Memorandum & Articles of Association. There is no single Article or provision in [the Constitution](#) that concerns the taking up of office in a limited liability company after voting by the shareholders. That is strictly an area of Company Law and no resort is necessary from [the Constitution](#).
22. In CN Mv WM G [2018] eKLR which was extensively cited by Justice Korir in the Joseph Mwangi Mbote case (supra), Justice Mativo (as he then was) once again expressed how courts abhor the habit of converting every issue into a constitutional one. See also the decision of tis court in Billow Hussein v Attorney General & 3 others [2021] eKLR.
23. The applicable Election manual by the 9th Respondent, the Memorandum and Articles of Association of the 8th Respondent factory and the [Companies Act](#) all provide a mechanism for dispute resolution which should have been exhausted first before approaching court vide a Plaint rather than a Constitutional Petition. Besides, there is nothing Constitutional in the election and taking up office by directors.



Issues

Whether constitutional rights have been violated.

Whether the petitioner should be remedied.

Analysis

Whether constitutional rights have been violated

24. The Petitioner's main prayer is assumption of office as a director of the 8th Respondent (Kangaita Tea Factory).
25. The subject of this whole Petition is an election of the 8th Respondent that was conducted on 29th June, 2024 pursuant to Court Orders issued by the Constitutional and Human Rights Division Court at Nairobi in Petition number E254 OF 2020 (Consolidated with Petitions No. E243 and 083 of 2020) and which election was conducted in line with Section 22 (3) of the *Tea Act*, 2020 which provides thus: "The Board of Directors of tea factory limited Companies shall be elected through a democratic system of one grower one vote."
26. The Petitioner submits that he was duly elected and confirmed a director of the 8th Respondent in a Special General Meeting held on 17th July, 2024 pursuant to the Court Orders of the High Court in Nairobi, Constitutional and Human Rights Division Petition number E254 of 2020 which Orders in Clause 12 expressly stated that "Each Smallholder Tea Factory Company shall convene a Special General Meeting of shareholders within twenty one (21) days of conclusion of the director's nominations, for the purpose of confirming the newly elected directors:"
27. The meeting had only one sole purpose as per Clause 12 referred to hereinabove which was to confirm the elected directors. The meeting was held and the Petitioner was present, took to the podium, was proposed and seconded as a director just as all the other had been proposed and seconded hence confirmed.
28. The petitioner submits that the Respondents did not produce an evidence indicating. that the Petitioner's election had been challenged in any forum whatsoever and they did not equally provide proof of procedure for confirmation as the same did not exist.
29. The Petitioner contends that after his election and confirmation, the 1st to 6th Respondents proceeded to exclude only him from meetings that transact the business of the 8th Respondent despite having the right to be present by virtue of his election and confirmation as a director which action is discriminatory and a violation of the Petitioner's right to equality and freedom from discrimination as enshrined in Article 27 (4) and (5) of *the Constitution* of Kenya, 2010.
30. The Respondents' actions of restraining him from holding office upon being duly elected and confirmed are an infringement and/or violation of his political rights as an adult citizen to be a candidate for public office, or office within a political party of which the citizen is a member and if elected, to hold office in contravention of Article 38 (3) (c) of *the Constitution* of Kenya, 2010.
31. Further, the Respondents' failure to supply him with copies of minutes for the meetings already conducted are a violation and/or breach of the Petitioner's right to access information as enshrined in Article 35 (1) (b) of *the Constitution* of Kenya, 2010.



32. The Petitioner also submits that his Petition meets the threshold in the case of Anarita Karimi Njeru v Republic 1979 KEHC 30 KLR. wherein the court defined what is a required of anyone seeking redress in an alleged constitutional violation. The court stated thus:

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

33. The 9th Respondent submit that there are no constitutional issues in the instant petition meriting this court’s consideration. The issues raised by the Petitioner can only be handled in accordance with the *Companies Act*, relevant Companies Regulations and the 8th Respondent’s Article and Memorandum of Association.

34. The 1st – 8th & 10th Respondents reiterate that there is no single Article or provision in *the Constitution* that concerns the taking up of office in a limited ability company after voting by the shareholders. That is strictly an area of Company Law and no resort is necessary from *the Constitution*.

8. The Petitioner has purported to cite Constitutional provisions alleging that they have been violated. He alleges Discrimination under Article 27, violation of Political rights under Article 38, refusal to provide information under Article 35 and right to dignity under Article 28 of *the Constitution*.

9. Nevertheless, there is no precision on how the Petitioners rights have been violated.

Whether the petitioner should be remedied

35. The procedure in the election of Directors of the 8th Respondent commences with the successful nomination through voting of a candidate in his zone. As regards the Petitioner, this was done.

36. The next stage required the confirmation of the nominee in a General Meeting. While this -as done for the rest, the same was not done for the Petitioner. The members in the General Meeting did not endorse him and hence he was not elected. He did not also take an oath office. Accordingly, he cannot ask this court to impose him as a Director when the shareholders failed to do so.

37. The respondents submit that the Petitioner sued the wrong individuals. It is not the other members of the Board that were to have him confirmed. It was the general meeting of the Company. That is the entity he should have picked a battle with.

38. The respondents depose that as for the Petitioner, the shareholders by loud acclamation declined to confirm his election as a director for reasons only known to themselves and arising from that, pandemonium broke out in the venue and all efforts to restore calm failed whereupon the Police intervened, escorted the Petitioner out of the venue for his own safety and the meeting closed.

39. The petitioner avers that the 8th Respondent’s Memorandum and Articles of Association do not provide and/or outline the manner in which confirmation is done but only provide that the same is done.

40. The Court would agree with the respondent that the petitioner ought to engage the shareholders to call for another General Meeting to confirm his nomination as director. The complaint about violation of constitutional rights can properly be addressed under the statutory scheme under the *Companies*



Act and the Memorandum of Association of the 8th Respondent. It is properly within the principle for constitutional avoidance where the dispute may be resolved under other statutory procedure without invoking the Constitution.

ORDERS

41. Accordingly for the reasons set out above, the Petition dated is declined.

42. There shall be no order as of costs.

Orders accordingly.

DATED AND DELIVERED THIS 27TH DAY OF MARCH 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Gwaro for Mr. Otuke for the Petitioner.

Mr. Thuita for 1st – 8th & 10th Respondents.

Mr. Kiprono for 9th Respondent

