



**Kiangi (Suing as a Shareholder and Director of Mikululo Ranching  
(Directed Agricultural) Company Limited) v Mwilu (Civil Miscellaneous  
E120 of 2024) [2025] KEHC 12441 (KLR) (26 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12441 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL MISCELLANEOUS E120 OF 2024  
TM MATHEKA, J  
AUGUST 26, 2025**

**BETWEEN**

**WILSON NDUULU KIANGI ..... APPLICANT  
SUING AS A SHAREHOLDER AND DIRECTOR OF MIKULULO RANCHING  
(DIRECTED AGRICULTURAL) COMPANY LIMITED**

**AND**

**RUTH KALONDU MWILU ..... RESPONDENT**

**RULING**

1. Before me is the Notice of Motion dated 13/8/2025.
2. It is brought under Order the 51 rule 1. Section 1A and 3 A of *Civil Procedure Act* Section 238,239 and 276 of the *Companies Act*.
3. The applicant sought the following orders'
  1. Spent
  2. That the applicant be granted leave to institute a derivative claim seeking relief on behalf of the Mikululo Ranching (Directed Agricultural) Company Limited in respect of the acts and omissions by the respondent involving negligence, breach of duty and breach of trust on the part of the respondent.
  3. Spent
  4. That the honourable court be pleased to stay and/or stop the respondent either by herself, agents and/or any other person acting under her instructions from calling for Annual General



Meeting for Mikululo Ranching (Directed Agricultural) Company Limited pending hearing and determination of Makueni Civil Suit Number E004 of 2022.

5. That, costs of this application be provided for.
4. The application is supported by the grounds on its face inter alia
  1. That the said notice was advertised on the standard and daily nation newspapers on 30<sup>th</sup> of July, 2024.
  2. That the said notice outlines the following agenda:
    - a. Opening prayer
    - b. Secretary to read the notice convening the meeting and to confirm the quorum and read the previous minutes from the last AGM.
    - c. Update on Land Demarcation with KWS and Re-survey exercise.
    - d. Update on all pending cases, including KWS appeal case.
    - e. Replacement of deceased directors to form quorum
  3. That the respondent acted ultra-vires as she called the Annual General Meeting unilaterally without the consent, authority or participation of the other directors.
  4. That this being a public company it must have at least two directors and as per the [companies Act 2015](#) and the company's Articles of association, an Annual General Meeting can only be called by the directors.
  5. That the respondent has instituted a suit against the applicant herein in Makueni Civil Suit Number E004 of 2022 - Ruth Kalondu Mwilu (Suing as a shareholder and director of Mikululo Ranching(Directed Agricultural) Company Limited Vs the registrar of companies and 6 others.
  6. That the issue of the company holding an Annual General Meeting is pending before this honourable court and it is prejudicial and against the principles of subjudice for the respondent to hold any general meeting pending hearing and determination in the afore-mentioned suit.
  7. That Civil suit Number E004 of 2022 is scheduled to be mentioned on 3/10/2024 before High Court Number 1 at Makueni.
5. It is supported by the affidavit of the applicant, which reiterates these grounds.
6. It is opposed by the replying affidavit of Ruth Kalondu Mwilu who depones inter alia
  1. That, I wish to state that it is indeed true that I am a director of the aforesaid company known as Mikululo Ranching Company Limited where I also serve as the Treasures thereto.  
  
(Annexed herewith is a copy of the CR 12 indicating the names of the Directors/ Shareholders of the said Mikululo Ranching (Directed Agricultural) Company Limited marked as 'R.K.M 1')
  2. That, initially, we were 8 Directors in the Company and out of the said 8 Directors, only 2 directors that is the Applicant and myself are remaining as all the other 6 Directors are since deceased, a fact which is well acknowledged by the Applicant in paragraph 7 of his supporting Affidavit.



3. That, I wish to inform this Honorable Court that it is not in dispute that the Applicant and myself are not in good terms and there have been numerous court matter between ourselves in relation to the company herein which include but not limited to Makueni Civil Suit No. E004 of 2022 which was instituted through a plaint date the 28th day of April 2022.

(Annexed herewith is a copy of Plaint dated 28<sup>th</sup> April 2022 marked as annexure 'R.K.M 2')

(Annexed herewith a copy of Ruling in Makindu SPMC ELC 55 of 2021 – Joseph Musili Kyule and 2 Others .V. Mikululo Ranching (Directed Agricultural) Company Limited and Wilson Kiangi Ndululu marked as annexure 'R.K.M 3')

4. That, it is not disputed that the last time the company held an Annual General Meeting for purposes of conducting elections to ensure compliance on the legal requirements of proper management of the company was way back in the year 1986. Despite that I am the director of the company the applicant herein as completely refused and/ or neglected to call an Annual General Meeting for all those years with an agenda for conducting election despite having received calls from members and/or subscribers and/ or shareholders of the company to call for the said Annual General Meeting.

5. That, it is imperative for his Honorable court to note that the company herein has a vast membership with about 5000 members and which members have over the years felt the need for Annual General Meeting as the Applicant herein has thwarted all the efforts made for the members to hold an Annual General Meeting for purposes of conducting election especially for purposes of replacing all the directors who are since deceased.

(Annexed herewith is a list of members of the Mikululo Ranching (Directed Agricultural) Company Limited marked as R.K.M 4')

6. That, as indicated herein above, the Applicant has completely thwarted the holding of the Annual General Meeting and this is evidenced by the fact the Applicant filed are Civil Suit at Makindu being Civil Suit Number. 394 of 2009 – Mikululo Ranching Company Limited.V. Ndeti Nganga, Musili Kyule and Daniel Maithya where in its judgment, the court gave the following orders as hereunder: -

- a. The plaintiff's suit and defendants' counterclaim be and is hereby dismissed with no orders as to costs;
- b. The plaintiff's membership be and is hereby directed to hold fresh elections within 90days from the date hereof;
- c. The office of the Sub-County/ District Commissioner Makindu be and is hereby directed to ensure compliance;
- d. The officer of the Sub-County/ District Commissioner Makindu is further hereby directed while ensuring compliance to;
  - i. Ascertain the plaintiff's total membership;
  - ii. Schedule the dates for the elections;
  - iii. Ensure that sufficient and adequate notice of the election date is given to the members;
  - iv. Officiate and / or preside over the said election.



(Annexed herewith is a copy of the said Judgement in Makindu Civil Suit No. 394 of 2009 marked `R.K.M 5`)

7. That, from the foregoing, I do therefore understand that since it is only the applicant and I who are the surviving Directors of the subject company herein and due to the fact that we have equal shares in the company, the Applicant herein does not have any higher rights and superior preferences than I to require his exclusive consent and/ or authority to call the Annual General Meeting. This therefore goes to the root of the matter in that I am quite in order to call for an Annual General Meeting of the subject company due to the fact that the Applicant has completely failed and/or ignored the calls by the members herein to call and hold the Annual General Meeting pursuant to the provisions of the Section 278 of the Companies Act, 2015.
8. That, it is imperative for this Honorable Court to note that there are several pending cases in relation to the subject company herein, Mikululo Ranching (Directed Agricultural) Company Limited including but not limited to Nairobi Court of Appeal Civil Appeal No. E 548 of 2021 - Kenya Wildlife Service. V. Mikululo Ranching (Directed Agricultural) Company Limited and which appeal is still pending before the Court of Appeal. There is need to inform the members herein of the status aforesaid matter and further all the matters related to the company and which update can only be informed through an Annual General Meeting.
9. That, I have also been advised by my advocates and record and which advice I verily believe to be correct that the orders sought herein cannot be issued through a Miscellaneous Application. I am further advised that the orders sought are by the very nature substantive orders which affect about 5,000 members and the orders can only be sought through a main suit where all parties hard and the substantive issues dealt with by the court. It is quite wanting that why the applicant herein did not seek this order in the already aforementioned suit being Makueni Civil Suit No. E004 of 2022 – Ruth Kalondu Mwilu (Suing as a shareholder and director of, Mikululo Ranching (Directed Agricultural) Company Limited. vs. The Registrar of Companies and 6 others.
7. The application was canvassed through written submissions.
8. In his submissions the applicant reiterated the facts as set out in his affidavit in support of the application
9. He submitted that respondent instituted a suit against him Makueni Civil Suit Number E004 of 2022 - Ruth Kalondu Mwilu(Suing as a shareholder and director of Mikululo Ranching (Directed Agricultural company Limited Vs the Registrar of companies and 6 others seeking that this honourable court does issue an order directing that an AGM to be held.
10. He set out the following issues for determination:-
  - a. Whether the plaintiff/applicant has met the criteria for the grant of order of temporary injunction pending the hearing and determination of this suit
  - b. Who shall bear the costs of the application?
11. The applicant cited *Giella vs Cassman Brown* (1973) EA 358 on the principles to be considered in the grant of temporary injunction. He also cites *Nguruman Ltd Vs Jan Bonde Nielson & 2 others* [2014] eKLR where the court held:-

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable



injury if a temporary injunction is not granted and c, allay any doubts as to b, by showing that the balance of convenience is in his favour.”

12. He relies on *MRA0 Ltd vs First America Bank of Kenya Ltd* [2003] eKLR on the definition of prima facie case:-

“...in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

13. He submits that under section 275 of the *Companies Act* 2015, the company is required to have at least 2 directors who “ may convene a general meeting of the company.”

14. It is his position that one director cannot call an AGM in the exclusion of the other director

15. The applicant argues further the respondent having filed the suit E004/2022 – seeking orders for an AGM cannot turn back and call an AGM. He relies on;

- a. *Agricultural Development Corporation of Kenya V Tum & another* [2014] KEHC 7545 (KLR) in which the court stated

“Applying the test in the case of *Giella V Cassman Brown*, the applicant has established a prima facie case with probability of success. The substantive issues pleaded in this suit are not frivolous, and it will be a great prejudice to the applicant if the meeting convened in violation of the law is allowed to take place before the issues in controversy are adjudicated upon and resolved by the court. In light of what I have stated above, the prejudice will cause irreparable damage that cannot be compensated by way of damages. One other consideration; the court ordered a general meeting to be convened within 60 days from 5.12.2013, and prudence demands that an injunction should issue against the proposed meeting. I need not utilize the third threshold because the court is not in any doubt on the matter.”

- b. *Jenerus Wanjau Wanderi & 7 Others va Kiru Investments Co. Ltd* [2019] eKLR where the court said;

“The primary prayer in the plaint is to compel the company to hold the general meeting. If the court calls the meeting at this stage without tested evidence, the value of the main suit will be spent or greatly diminished. Paraphrased, the interest of justice would obviously be better served by hearing the main suit and eschewing numerous interlocutory applications ...”

16. He submits that if the prayers sought are granted then the suit will be rendered nugatory hence – that no AGM should be called before the suit is heard and determined.

17. The respondent’s submissions also begun with a summary of the facts of the matter – one of them being that the 2 surviving directions of the company herself and the applicant do not see eye to eye as evidenced by the numerous court cases, all of which have been in relation to the holding of an AGM.

18. It is submitted that the company has over 5000 members and that the last time the company held AGM for elections and management of company affairs was in 1986.



19. It is submitted that the last suit at Makindu Law Courts was struck out on 11/9/2023, that in Makindu MCC 394/2009 through a judgment dated 19/8/2015 the court directed that an AGM be held within 90 days- that the judgment has never been appealed against, and the orders therein subsist to date - and it was in an attempt to comply that she called the AGM. The respondent is of the view that an AGM would resolve many of the issues the company is facing - including failure to comply with the law.

She submits that as evidenced by annexures to her affidavit - the applicant has been collecting money from members in the name of the company , and an AGM would be the best place to decide how the company funds will be spent.

20. The respondent, relying on section 275 on the Company Act submits that it is couched in mandatory terms - that a company shall convene an AGM once a year - in default there is a penalty.

The respondent urges the court to be guided by *Dave Macharia & another v Kenya Motor Sports Federation Limited* [2012] KEHC 593 (KLR) the court expressed the view;

In that regard, I find it unnecessary to grant injunction orders in the present application as granting such an order would essentially only serve to paralyse the operations of the defendant and this would be of no gain to the plaintiffs. It would be prudent that a proper Annual General Meeting of the company be arranged and conducted, through which all the grievances of the plaintiffs would be addressed.

and *Jenerus Wanjau Wanderi & 7 others v Kiru Investments Co. Ltd* [2019] KEHC 3862 (KLR) where the court stated;

"...  
22. The primary prayer in the plaint is to compel the company to hold the general meeting. If the court calls the meeting at this stage without tested evidence, the value of the main suit will be spent or greatly diminished. Paraphrased, the interests of justice would obviously be better served by hearing the main suit and eschewing numerous interlocutory applications. I am well guided by the decision of Nyamu, JA in *Stephen Boro Gitiha v Family Finance Bank & 3 others*, Nairobi, Court of Appeal, Civ. Appl. 263 of 2009 (UR 183/09) [2009] eKLR:

23. But the court cannot countenance the current state of affairs or condone the failure to hold a general meeting for over a decade. The court is imbued with power to intervene to correct the course at this stage. Section 280 of the Act is express on the matter. It is clear from the depositions that the company is unable to conduct the meeting in the manner required by the articles of the company or the Act.

21. That the respondent was calling an AGM pursuant to Section 276 of the *companies Act*, 2015.

22. That in any event, the orders sought herein were granted by the court in 2015 - that through the application the applicant only wants to circumvent the import of the said judgment. The respondent goes on the cite *Burchell V. Burchell* Case No 364/2005 of the High Court of South Africa and *Moses P N Njoroge & Others Vs. Reverend Musa Njuguna and Another* Nakuru HCCC No. 247 "A" of 2004 as considered by the court in *Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and Planning & 3 others* [2017] KEHC 8755 (KLR) on the importance of the rule of law and the imperative to obey court orders .



23. It is further submitted that the application is incompetent as it ought to have been made in HCCC E004/2022. That orders sought cannot be granted via Miscellaneous application.
24. The court is urged to dismiss the application.
25. Having considered the application, the rival affidavits and the submissions - the issue is whether the application before me has any merit.
26. The applicant seeks to be granted leave to institute a derivative claim seeking relief on behalf of the Mikululo Ranching (Directed Agricultural) Company Limited in respect of the acts and omissions by the respondent involving negligence, breach of duty and reach of trust on the part of the respondent. He also seeks that the court be pleased to stay and /or stop the respondent either by herself, her agents and or any other person acting under her instructions from calling for Annual General Meeting for Mikululo Ranching (Directed Agricultural) Company Limited pending the hearing and determination of Makueni Civil suit number E004 of 2022.
27. Regarding the prayer on the derivative suit the applicant cites sections 238 and 239 of the [Companies Act](#) 2015 which state:

238. Interpretation: Part XI

- (1) In this Part, "derivative claim" means proceedings by a member of a company—
  - (a) in respect of a cause of action vested in the company; and
  - (b) seeking relief on behalf of the company.
- (2) A derivative claim may be brought only—
  - (a) under this Part; or
  - (b) in accordance with an order of the Court in proceedings for protection of members against unfair prejudice brought under this Act.
- (3) A derivative claim under this Part may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.
- (4) A derivative claim may be brought against the director or another person, or both.
- (5) It is immaterial whether the cause of action arose before or after the person seeking to bring or continue the derivative claim became a member of the company.
- (6) For the purposes of this Part—
  - (a) "director" includes a former director;
  - (b) a reference to a member of a company includes a person who is not a member but to whom shares in



the company have been transferred or transmitted by operation of law.

239. Application for permission to continue derivative claim

- (1) In order to continue a derivative claim brought under this Part by a member, the member has to apply to the Court for permission to continue it.
- (2) If satisfied that the application and the evidence adduced by the applicant in support of it do not disclose a case for giving permission, the Court—
  - (a) shall dismiss the application; and
  - (b) may make any consequential order it considers appropriate.
- (3) If the application is not dismissed under subsection (2), the Court—
  - (a) may give directions as to the evidence to be provided by the company; and
  - (b) may adjourn the proceedings to enable the evidence to be obtained.
- (4) On hearing the application, the Court may—
  - (a) give permission to continue the claim on such terms as it considers appropriate;
  - (b) refuse permission and dismiss the claim; or
  - (c) adjourn the proceedings on the application and give such directions as it considers appropriate.

28. The applicant accuses respondent of acting ultra vires by calling for the AGM without involving him, and for filing the suit herein above mentioned

29. Section 275 gives powers to the directors to convene the AGM. The applicant has not shown any evidence to support his claim that the respondent needed his consent to call for the AGM. They are only two directors who evidently cannot agree on anything. Calling for an AGM cannot in any way be considered an act that is ultra vires as it is a requirement of the law that a company holds an AGM annually. The respondent provided evidence that the Company had been directed to hold an AGM in 2015. That AGM has never been held. The applicant gave no explanation as to why that AGM was never called. Instead, there has been suits in court. He has not denied the claim by the respondent that no AGM has been held in the last 39 years and has not provided any explanations. Without that I find nothing to place all the blame on the respondent with regard to any problems that the company is facing. Having been the only two directors surviving the right thing would have been for an AGM to be called at the earliest sort out the company's issues.

30. Regarding the suit no E004 of 2022 But these include the Register of companies, the attorney general, applicant herein one Benedict Nduulu and Peter Nduulu . There are two interested parties, Onesmus Muia Mutisya and Harun Kipkemoi Mossop.



31. The prayers by the plaintiff include Restraining orders against the 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup> and the first interested party from dealing with the affairs of the company until the company holds an AGM to elect new directors and company secretary. She also seeks permanent injunction against the first defendant from making any changes in the records until the company holds an AGM to elect directors and company secretary. She also seeks a declaration that the 4<sup>th</sup> and 5<sup>th</sup> defendants are not directors of the company and that the and that the 3<sup>rd</sup> defendant be declared as an unworthy director of a public company. And the court direct that an AGM beheld.
32. It is evident from the matters pleaded in the plaint the solution to many of the disputes would be resolved if an AGM is held. The law demands the same.

275A. Annual general meeting

- (1) Every company shall convene a general meeting once a year.
  - (2) Subsection (1) does not apply to single member companies.
  - (3) The Registrar may, on the application of the company or for any other reason the Registrar thinks fit, extend the period referred to in subsection (1) even if, as a result, the period is extended beyond the calendar year.
  - (4) A company that fails to comply with this section commits an offence and is liable to a fine not exceeding one hundred thousand shillings.
33. This is a company that is in violation of s. 275A and stands to be penalized for failure to hold the AGM if for no other period for the period from 2015 when it was ordered by the court to hold an AGM.
34. Does the fact that there exists a prayer for an order for an AGM make the call for the AGM irregular? I do not agree with the applicant that holding an AGM would render the suit nugatory. What does that even mean? In my view if the suit is settled by an AGM the better still as that would ensure that members had heir say and the company got to replace the deceased directors and a company secretary.
35. Has the applicant established the grounds for injunctive orders as per *Giella vs Cassman Brown et al*?
36. From the foregoing it is clear to me that there is no prima facie case, the applicant has not shown he will suffer irreparable damage, and the balance of convenience falls on the part of the company represented by the holding of an AGM.
37. I echo the words of the Judge in *Dave Macharia* that it would be imprudent to grant an injunction as that would further paralyse the company and continue the chaos already visible from the numerous court matters. An AGM would deal with all these internal matters and bring order.
38. In the circumstances I find that the prayer no. 2 in not tenable. It would make sense when the company has its full directorate and company secretary. Prayer no 4. is untenable for the reasons set out above
39. I echo the words of the Judge in *Jenerus* in this case one of the prayers in the plaint is to compel the company to hold the general meeting and it would be better to hear the suit. However, the current status of affairs of the company is untenable and the court cannot condone the failure to hold a general meeting for almost 4 decades. The court is imbued with power to intervene to correct the course at this stage by the express powers prided by Section 280 of the Act . It states;

280. Power of Court to order general meeting to be convened

- (1) This section applies if for any reason it is impracticable



- (a) to convene a meeting of a company in any manner in which meetings of that company may be convened; or
    - (b) to conduct the meeting in the manner required by the articles of the company or this Act.
  - (2) The Court may, either on its own initiative, or on the application —
    - (a) of a director of the company; or
    - (b) of a member of the company who would be entitled to vote at the meeting, make an order requiring a meeting to be convened, held and conducted in any manner the Court considers appropriate.
  - (3) If an order is made under subsection (2), the Court may give such ancillary or consequential directions as it considers appropriate.
  - (4) Directions given by the Court under subsection (3) may include a direction that one member of the company present at the meeting be regarded as constituting a quorum.
  - (5) A meeting convened, held and conducted in accordance with an order under this section is taken for all purposes to be a meeting of the company properly convened held and conducted.
40. That the directors as constituted cannot agree to hold an AGM as required by law , and they have failed to so for the longest time.
41. In the circumstances I order the following:
- i. That the Registrar of Companies be and is hereby directed to convene a general meeting of the company within 60 days hereof on a date to be determined and communicated by the Registrar.
  - ii. That the meeting shall be conducted as much as is practicable in accordance with the company’s articles, the Act and any directions by the Registrar.
  - iii. That the venue of the meeting shall be either the company’s premises or at venue to be determined and communicated by the Registrar.
  - iv. That Notice of the Meeting be issued and announced in accordance the Articles the Company’s Articles, the law at least 21 days from the date of the meeting. Such notice to specify the matters stipulated in the said article
  - v. That the Registrar is directed to ensure that the main agenda of the meeting shall be to the elect directors to replace the deceased directors and the to appoint a company secretary. The Registrar will be at liberty to add any other necessary or additional agenda.
  - vi. That the nearest Officer Commanding Police Division to the venue of choice be and is hereby directed to provide the necessary security and ensure peace



and security at the meeting. The Deputy Registrar Makueni to ensure that this order be is served accordingly

- vii. The costs of holding the meeting shall be borne by the company.
- viii. The Registrar be and is hereby directed to a return from the meeting and file a report with the Court in civil suit E004 of 2022 which report shall become part of the record.

42. This application is dismissed with ccosts to be in the cause.

**DATED, SIGNED AND DELIVERED VIA CTS THIS 26<sup>TH</sup> AUGUST 2025**

**MUMBUA T MATHEKA**

**JUDGE**

**CA MWANATUMU**

