



Gucokaniraria Kihato Farmers and Traders Co. Ltd v Gitome & 2 others; Registrar of Companies (Interested Party) (Civil Suit E015 of 2022) [2024] KEHC 317 (KLR) (25 January 2024) (Ruling)

Neutral citation: [2024] KEHC 317 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL SUIT E015 OF 2022
M MUYA, J
JANUARY 25, 2024**

BETWEEN

**GUCOKANIRARIA KIHATO FARMERS AND TRADERS CO.
LTD PLAINTIFF**

AND

**DAVID GITOME 1ST DEFENDANT
PETER KIARIE 2ND DEFENDANT
PAUL THIGE 3RD DEFENDANT**

AND

REGISTRAR OF COMPANIES INTERESTED PARTY

RULING

1. The notice of motion application dated the 7th day of July 2023 seeks the following orders:-
 1. Spent
 2. That pending the hearing and determination of this application interparties, this honourable court do issue an order setting aside and or review the orders of this honourable court granted on the 16th day of May 2023 on the following terms :-

The plaintiff Company do conduct an Annual General Meeting on or before the 8th day of December 2023.
2. The grounds are as follows:-
 1. The Defendants/Respondents in the month of August 2022 unprocedurally, illegally and unlawfully wrote or caused to be written a notice to the chairman of the plaintiff notifying



him to convene an extra-ordinary meeting of the company within 21 days, failure to which they will proceed and convene such meeting despite lacking powers to issue and or cause to be issued such a notice or even convene such a meeting.

2. That subsequently, an application by the company was filed on the 4th day of November 2022. Injunctive orders were obtained stopping the Defendants from convening an AGM for the plaintiff company.

Thereafter an Annual General Meeting of the company was scheduled on 8th December 2022 in Ruiru Catholic Church.

The directors proceeded to advertise the said meeting to members via print and electronic media including vernacular stations.

3. The meeting was stopped by a court order. The court indicated that directions would be given on 17th December 2022, When the court called for negotiations on modalities of conducting the AGM.
4. On 16th May 2023 the court directed that an Annual General Meeting be held within 90 days from the date of the order.
5. Upon receipt of those orders, the directors of the Company met on the 5th day of June 2023 and instructed their advocates to make an application for review of the court orders in the interest of Justice.
6. This application is opposed. The ground being:-
 - a. That the court on 16th day of May 2023 directed parties to hold an Annual General Meeting within 90 days which the plaintiff has not complied with.
 - b. That the orders issued on 16th May 2023 are consent orders and are not amenable in the manner purported by the plaintiff. That the plaintiff has since persisted in inaction towards holding an AGM despite the many reminders done by the Defendants.
 - c. That the Defendants advocates wrote several letters on 31/5/2023, 21/6/2023, 6/7/2023 and 11/7/2023 all on the subject of the Annual General Meeting which went un replied. The Defendants made arrangements for the Annual General Meeting to be held on 10/8/2023.
 - d. That the fact that the plaintiff alleges that it does not keep records of accounts cannot be a valid ground for review of Court orders.
 - e. That there is a pending Environment and Land Case No.11 of 2019 cannot be a good ground for stopping an AGM as they are not related.
 - f. That the conduct of the directors of the plaintiff clearly show that they do not intend on holding an Annual General Meeting.
 - g. That the meeting was properly conducted and other directors were elected to replace the old ones.
 - h. That the Defendants passed its resolutions to the Registrar of companies via bundle of documents dated 25th August 2023



Analysis and determination

Issues.

Whether the application dated 7th July 2023 is properly before the court?

7. The application seeks, to set aside and or review the courts orders of 16th May 2023.
8. Section 80 of the *Civil Procedure Act* provides as follows:-

“Any person who considers himself aggrieved:

 - a. By a decree or order in which an appeal is allowed by this act but from which no appeal has been preferred or
 - b. By a decree or order from which no appeal is allowed by this Act may apply for a review of Judgment to the court which passed the decree or made the order and the court may make such order as it thinks fit.”
9. Order 45 rule 1 of the *Civil Procedure Rules* provides:

“Any person considering himself aggrieved:-

 - a. By a decree or order from which an appeal is allowed but from which no appeal has been preferred or
 - b. By a decree or order from which an appeal is hereby allowed and who from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason desires to obtain a review of the decree or order, may apply for a review of the Judgment to the court which passed the decree or made the order without unreasonable delay.
10. In the case of *Republic vs Public Procurement Administrative Review Board and 2 others* it was held:

“Section 80 gives the powers of review and order 45 sets out the rules. These rules restrict the grounds of review. The rules lay down the Jurisdiction and scope of review”

These in a nutshell are

 - a. Discovery of new and important matter or evidence
 - b. Mistake or error on face of the record.
 - c. Any sufficient reason.
11. A perusal of the application dated 7th July 2023 does not refer to a discovery of new and important matters or evidence. It does not contain allegations of the existence of a mistake or error on face of the record.
12. On 16th May 2023, this court directed that an Annual General Meeting be convened within a period of 90 days. This was after the court had given the parties the opportunity to discuss the issue and to



arrive at a consensus. The court further directed the parties to discuss on the modalities of holding the Annual General Meeting as the plaintiffs had indicated that they had a problem of finances.

13. The Defendants proceeded to engage the shareholders and an Annual General Meeting was convened within the 90 days ordered by the court. The plaintiff's did not participate in the said Annual General Meeting and decided to file this application for review.
14. It is noted that the company has not been holding Annual General Meetings for the last seven years. The Defendants scheduled an annual General Meeting for 10.8.2023. The Directors of the plaintiff caused to be published a notice in the Nation Daily Newspaper warning the shareholders not to attend the Annual General Meeting on 10.8.2023 terming it as illegal.
15. This conduct does not show willingness on the part of the plaintiffs directors to convene an annual General Meeting as directed by this court.
16. No sufficient reason has been adduced to persuade this court to review its orders granted on 16/5/2023. At any rate the orders were complied by the holding of the Annual General Meeting on 10th August 2023. Elections were carried out and resolutions made.
17. I find this application for review has no merit and it's dismissed with costs. This ruling equally applies to civil case No E010 of 2022 and Misc case No. 45B of 2023.

RULING READ AND DELIVERED IN OPEN COURT THIS 25TH DAY OF JANUARY, 2024.

HON. JUSTICE M. MUYA

JUDGE

In the presence of:

Nduhiu for the Plaintiff

Thuo for 1st Defendant

Ashioya for 3rd Defendant

Registrar of Companies - interested party

Court Assistant: Ndung'u

30 days R/A

