



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Bankruptcy & Winding-Up Cause 10 of 1979

In The Matter of Missouri Safari Farmers Company Ltd and In The Matter of The Companies Act Chapter 486 Laws of Kenya

RULING

The applicants, who claim to be shareholders of Missouri Safari Farmers Company Ltd., are seeking orders to stop the private surveyor or any surveyor at all from sub-dividing or in any way dealing with the property of the company, stopping the respondents or any former officials and directors of the company from acting or purporting to act in a matter in which they have no jurisdiction, and ordering the liquidator to proceed with the winding – up of the company.

This petition was lodged in 1979, and the file that I have before me is a reconstituted one, with some proceedings from 1982 and the documents which should all be in the file do not appear to be there. Hence, it has not been easy for me to follow the full proceedings.

Messrs. Khaminwa& Khaminwa have appeared for the applicants, Mr Oganah for the Official Receiver and Provisional Liquidator of the Company and Mr Karanja for the respondent who are the ex-officials of the company.

I do not think that it is necessary for me to set out the arguments of the learned counsel before me, but that I should straightaway proceed to deal with the issues. Mr Oganah depones that at an Extraordinary General Meeting of the Company held on 31.1.1982 it was resolved, *inter alia*, by a “large majority” of the members of the Company that members should be given title deeds after a sub-division had been completed by the surveyor at a cost of Shss 3,300/- for three plots for each member and that members should personally meet the costs of the survey.

However, Mr Oganah further states that as soon as the Official Receiver was appointed the Provisional Liquidator of the Company, he instructed the private surveyor to discontinue with his work and that any survey that is now being carried out by the private surveyor is on behalf of the individual members in their personal capacity. That is obviously improper. Since the properties and assets of the Company are now vested in the Provisional Liquidator, individual members have no right to instruct a surveyor to carry out survey of the properties of the company. If the services of the surveyor has been taken over by the Provisional Liquidator that would have been quite a different matter. The number of members of the Company has been determined by Cotran J and I have no intention of opening up the membership issue. The bone of contention between the applicants and respondents would appear to be: whether the lands belonging to the company should be shared amongst the members *pro rata* according to their individual contributions or whether it should be shared equally. The applicants want larger shares according to their

contributions and the respondents, the ex-official of the company, want equal shares and contributions to be made up to a sum agreed in the Extra Ordinary General Meeting. It is not necessary at this stage to decide upon the validity of the respective positions but, as Mrs. Khaminwa points out, if the private survey goes on and some of the respondents or other members each take up 3 of the surveyed plots, it would become very difficult to dislodge them later. In any event, in view of the stand of the Provisional Liquidator, the private surveyor has no locus standi and is hereby ordered to stop from sub-dividing the property. However, in the course of his duties, the Provisional Liquidator has the right to engage any surveyor or deal with the property in any manner within his lawful powers, subject, of course to the directors or supervision of the court, where necessary, and I do not propose to grant the interlocutory injunction in the first prayer upon the wide terms sought but restrict it to the private surveyor now acting on behalf of individual members or any other surveyor that may be engaged by any of the individual members.

As to the second prayer in the chamber summons it is warded in such wide terms that it would be impossible to enforce it. If there is any interference with the affairs of the company the proper person, in any event, to seek the court's intervention is the Provisional Liquidator. Accordingly this prayer is refused.

The provisional liquidator is already proceeding with the winding up of the company as best as he can. Orders against the individual directors in default of filing of statement of affairs have already been made. I do not see what other orders I can make against the Provisional Liquidator in this regard and I refuse that prayer also.

Since the applicants have succeeded only of this application shall be in the cause and the applicants must, jointly and severally, pay to the respondents as well as the Official Receiver 75% of the costs of this application in any event.

March 17, 1983

Sachdeva, J



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