



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 610 OF 2019**

**JOHN MUHORO MAINA & FRANCIS MUNYAO MATHEKA**

**(Suing as officials of ZIWANI JUA KALI**

**ENGINEERING WORK ASSOCIATION).....APPELLANTS/APPLICANTS**

**VERSUS**

**DAVID KAVOI.....1<sup>ST</sup> RESPONDENT**

**PAUL OFULA.....2<sup>ND</sup> RESPONDENT**

**JOHN WAEMA.....3<sup>RD</sup> RESPONDENT**

**SAMSON OTIENO.....4<sup>TH</sup> RESPONDENT**

**ALOICE ABOUT AKECH.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. The appellants/applicants herein took out the Notice of Motion dated 22<sup>nd</sup> October, 2019 in which they sought for the orders hereunder:

***(i) Spent.***

***(ii) Spent.***

***(iii) THAT this Honourable Court be pleased to restrain by an injunction the respondents, their servants and/or agents or any person acting by them or through them from printing, designing or publishing letters or documents purporting themselves to be officials of Ziwani Jua Kali Engineering Work Association and from presenting themselves to any person or putting themselves forward to the public as of the said society or from conducting any transaction whatsoever purporting to do so for or on behalf of Ziwani Jua Kali Engineering Work Association pending the hearing and determination of the appeal.***

***(iv) THAT this Honourable Court be pleased to direct the OCS Kamukunji Police Station to enforce the court orders.***

***(v) THAT costs of the application be provided for.***

2. The Motion is supported by the grounds set out on its body and the facts stated in the affidavit of the 1<sup>st</sup> applicant.

3. In opposing the Motion, the 2<sup>nd</sup> respondent swore a replying affidavit on 22<sup>nd</sup> November, 2019 on behalf of the other respondents.

4. When the application came up for hearing, the parties agreed to dispense with the same by filing written submissions.

5. I have taken into consideration the grounds set out on the face of the Motion and the facts deponed in the affidavits in support of and in resistance thereto. I have also considered the contending submissions and authorities relied upon.

6. A brief background of the matter is that the applicants instituted a suit before the Chief Magistrate's Court together with a Notice of Motion in which they sought for injunctive orders against the respondents.

7. The applicants maintained that they are the rightful officials of Ziواني Jua Kali Association (“the society”) duly registered under the Societies Act Cap. 108 Laws of Kenya and that on 8<sup>th</sup> August, 2019 the committee of the society was in the process of holding an Annual General Meeting when the respondents while in the company of goons disrupted the meeting and committed various other illegal acts in the society’s premises.

8. Upon hearing the parties on the Motion, the trial court ruled that it lacked jurisdiction to entertain the dispute, hence the appeal now before the High Court and the present application.

9. It is clear that the application concerns itself with the granting of an interlocutory injunction until such time as the appeal is heard and concluded. The germane principles on interlocutory injunctions were stated by the Court of Appeal of East Africa in **Giella v Cassman Brown & Co. Ltd (1973) EA** and are as follows:

***a) The applicant must first establish a prima facie case with a probability of success.***

***b) The applicant must then demonstrate that he, she or it stands to suffer irreparable loss that cannot be adequately compensated through damages.***

***c) Where there is doubt on the above, then the balance of convenience should tilt in favour of the applicant.***

10. In respect to the first principle as to whether there exists a prima facie appeal, it was the applicants’ argument that their memorandum of appeal raises viable grounds of appeal challenging the trial court’s finding that it lacked jurisdiction to entertain the suit notwithstanding the fact that the Societies Act does not explicitly oust the courts’ jurisdiction to handle disputes involving societies or their members.

11. In contrast, the respondents submitted that the applicants’ appeal is unfounded on the basis that the claim ought to have been lodged with the Registrar of Societies pursuant to the provisions of Sections 17 and 18 of the Societies Act which sets out the procedure for effecting a change in the name or title of officers, as well as the procedure for lodging disputes arising between members or officers of a registered society. In that regard, the respondents were of the view that the trial court correctly found that it did not have jurisdiction to hear the suit.

12. It is apparent that the appeal lies against the trial court’s finding on jurisdiction. Without delving into the merits of the appeal at this stage, I am of the view that the subject on jurisdiction is always critical in ascertaining whether a judicial body has the power to act or not. I am therefore satisfied that in seeking to challenge the trial court’s decision in that regard, the applicants have established a prima facie appeal.

13. On the second principle, the applicants argued that unless an interlocutory injunction is granted, the society stands to suffer irreparable damage since it will be prevented from holding any elections while the respondents are likely to continue interfering with the management of the society. On their part, the respondents did not directly address me on the subject.

14. I have considered the applicants’ sentiments in that respect and I noted their reservations concerning the security issues such as threats of violence and disruption of the society’s operations which may arise should this court decline to grant an interlocutory injunction. While I appreciate that the appeal is yet to be heard, I am of the opinion that the applicants have reasonably demonstrated the likelihood of irreparable damage for which an award of costs may not constitute adequate compensation.

15. In view of the foregoing, I am persuaded that the balance of convenience tilts in favour of the applicants.

16. The upshot is that the Motion is allowed as prayed and the following orders are made:

**a) The respondents, their servants and/or agents or any person acting by them or through them are hereby restrained from printing, designing or publishing letters or documents purporting themselves to be officials of Ziواني Jua Kali Engineering Work Association and from presenting themselves to any person or putting themselves forward to the public as of the said society or from conducting any transaction whatsoever purporting to do so for or on behalf of Ziواني Jua Kali Engineering Work Association pending the hearing and determination of the appeal.**

**b) The OCS Kamukunji Police Station shall be responsible for enforcing order a) above.**

**c) Costs of the application to abide the outcome of the appeal.**

**Dated, signed and delivered at Nairobi this 28<sup>th</sup> day of February, 2020.**

.....

**J.K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellants/Applicants

..... for the Respondents