



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL SUIT NO. 74 OF 2017

NORTHERN ADVOCACY FOR

SUSTAINABLE AGRICULTURE.....PLAINTIFF

- V E R S U S -

NATIONAL SUPER ALLIANCE.....1ST DEFENDANT

REGISTRAR OF POLITICAL PARTIES.....2ND DEFENDANT

NON-GOVENRMENTAL ORGANISATIONS

COORDINATION BOARD.....3RD DEFENDANT

RULING

1) The subject matter of this ruling is the Notice of Preliminary objection dated 18.4.2017 taken out by the registrar of political parties, the 2nd defendant herein. In the aforesaid notice the 2nd defendant raised the following grounds:

1. That to the extent that the suit seeks to injunct the 2nd respondent from acts done and intended to be done, the same offends Section 40 of the Political Parties Act 2011, and the court lacks jurisdiction.

2. That the suit offends the need to exhaust internal or available remedies first as a principle of constitutional law and as enshrined also in Section 9(3) of the Fair Administrative Action Act.

3. That the suit is fatally defective for the inclusion of a non-existence and non judicial entity in the name and style of the 1st defendant.

4. That the prayers sought in the application cannot issue for various reasons;

· Prayers 2 and 4 cannot issue as it has not been shown that the 1st defendant has any legal or juristic personality that allows the court to grant such order against it. The orders would be idle and academic.

· Prayer 3 & 5 cannot issue as there is no evidence that an application the kind sought to be restrained has been mooted let alone issued to the 2nd defendant.

· That the 2nd defendant has not received any application to register a political party in the name and style being complained about by the plaintiff/applicant.

5. That the plaintiff/applicant has not exhibited any proof of exclusive legal right to the shortening acronym of its name as NASA.

6. That the plaintiff/applicant has completely failed to prove that the actions alleged are more than mere over active imaginations and machinations.

7. That to the extent that the suit touches on the constitutional powers of the registrar, the matter ought to have been filed in the constitutional court.

8. That the application is fatally and inherently conflicted, approbating and reprobating between the existence and absence of specific and critical facts necessary to ground any court order.

2) The substantive matter which prompted the 2nd defendant to raise the preliminary objection is the plaint and the motion both dated 31st March 2017. In the motion, Northern Advocacy for sustainable Agriculture (NASA), the plaintiff herein, sought for inter alia, an interim order for injunction to restrain the 2nd defendant from receiving or proceeding with the registration of National Super Alliance (NASA), the 1st defendant herein, as a political party in Kenya pending the hearing and determination of this suit.

3) When the preliminary objection came up for hearing, the 2nd defendant was the only party who turned up for hearing. Consequently the 2nd defendant's advocate was permitted to prosecute the preliminary objection exparte. Mr. Munyua, learned advocate for the 2nd defendant submitted that this court lacks the original jurisdiction to hear and determine the sit under Section 33 of the Political Parties Act. He pointed out that the Registrar of Political Parties has the sole jurisdiction to hear and determine the dispute. It was also stated that the suit is fatally defective in that a non-existent body i.e the 1st defendant was enjoined as a defendant. This court was further urged to find any dispute arising from the decision of the Registrar should have been presented before the Political Parties Disputes Tribunal.

4) After a careful consideration of the submissions, I am convinced that the preliminary points of law raised by the 2nd defendant have merit. Consequently the suit and the motion are found to be prematurely filed before this court. For the above reason, I uphold the preliminary objection. The suit as against the 2nd defendant is ordered struck out. In the circumstances of this case each party should bear its own costs.

Dated, Signed and Delivered in open court this 25th day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant