



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 264 OF 2013

ABDULLAHI MOHAMED ALI.....1ST PLAINTIFF

MOHAMED NOOR HASSAN.....2ND PLAINTIFF

YOUTH KENYA FOR SOCIAL DEVELOPMENT.....3RD PLAINTIFF

-VERSUS-

ABDULLAHI SHARIFF.....1ST DEFENDANT

FIRST COMMUNITY BANK LTD.....2ND DEFENDANT

REGISTRAR OF SOCIETIES.....3RD DEFENDANT

RULING

1. The application before the Court is the 1st Defendant's **Notice of Motion** dated 6th August, 2013 and filed on even date. The same was filed pursuant to the provisions of **Sections 1A, 1B, 3A and 63 (c) and (e)** of the **Civil Procedure Act** as well as **Order 13 Rule 2** and **Order 51 Rule 1** of the **Civil Procedure Rules, 2010**.
2. The 1st Defendant sought for the following orders:-
 1. **Spent**
 2. **Spent**
 3. **Spent**
 4. **The Plaintiff's suit be struck out with costs.**
 5. **The costs of this application be borne by the 1st and 2nd Plaintiffs/Respondents.**
3. The application is based on the grounds set out therein and is supported by the Affidavit of 1st Defendant, **ABDULLAHI SHARIFF**, sworn on **6th August, 2013** in which the 1st Defendant averred that the 1st and 2nd Plaintiffs, obtained orders on **27th June, 2013** by falsely pretending that they were legitimate office bearers of the 3rd Plaintiff, notwithstanding that the Registrar of Societies had communicated to all concerned the names of the legitimate office bearers of the 3rd Plaintiff. According to the 1st Defendant the Registrar of Societies, by virtue of the letters dated

- 13th, 20th February, 21st May, 2013 and 24th July, 2013, had confirmed the *bona fide* office bearers of the 3rd Plaintiff and had, in the same vein, made it clear vide the letter dated 20th February, 2013 that the letter dated 8th October, 2012 had been obtained through misrepresentations and fraud on the part of the 1st Plaintiff and his accomplices and that the contents of the said letter had been duly retracted.
4. It is therefore the 1st Defendant's case that the suit was filed in breach of Order 4 Rule 1 (4) of the Civil Procedure Rules, granted that the 1st Plaintiff was not authorised to institute the suit on behalf of the 3rd Plaintiff. It was further the 1st Defendant's argument that the authority and capacity of the 3rd Plaintiff to sue in its own name goes to the jurisdiction of the Court. In view of the foregoing, the 1st Defendant urged the Court to allow the application and to strike out the Plaint dated 21st June, 2013 for being in gross violation of the provisions of the Civil Procedure Rules.
 5. The 1st and 2nd Plaintiffs appear not to have filed any responses to the present application. The only responses in the file are the two affidavits, the first of which was sworn by the 1st Plaintiff in support of the Plaintiff's application dated 21st June 2013 and the second is further affidavit sworn by **Abdi Weli Mohamed** and filed on 17th December 2013. In the premises, the 1st Defendant's application is entirely uncontroverted.
 6. I have considered the 1st Defendant's application together with the bundle of documents marked "AS 1" as well as the written submissions filed on 17th December, 2013 in support of the application. According to the 1st Defendant, the 1st and 2nd Plaintiffs did not have the locus to institute the present suit as they were not legitimate office bearers of the 3rd Plaintiff. The 1st Defendant further argued that the 3rd Plaintiff was not properly before the Court as it could not sue in its own name. The 1st Defendant referred the Court to a letter dated 24th July, 2013 from the Registrar of Societies which bears the names of the legitimate office bearers of the 3rd Plaintiff. It is clear that neither the names of the 1st nor the 2nd Plaintiffs appear in the said list. The documents annexed in support of this application leave the court in no doubt that as at the time this suit was instituted, neither the 1st nor the 2nd Plaintiff was a bona fide officer bearer of the 3rd Plaintiff. It is worth noting that the letter dated 8th October, 2012 from the Registrar of Societies which purported to show that the 1st Plaintiff was one of the office bearers of the 3rd Plaintiff, and which the 1st Plaintiff relied on to found this case, was subsequently revoked by the Registrar of Societies vide the letter dated 30th November, 2012 on grounds that the said letter had been fraudulently obtained. This Court also noted that the Plaintiffs did not respond to the queries raised by the Registrar of Societies when they were called upon to answer to allegations of fraud.
 7. There is no dispute that the 3rd Plaintiff, **Youth Kenya for Social Development (YOKESO)** is an unincorporated body that was registered pursuant to the provisions of the Societies Act, Chapter 108 of the Laws of Kenya. In Particular, the letter dated 21st May 2013 from the office of the Registrar of Societies annexed to the instant application confirms that the society was registered on 14th February 2002 under certificate number 21145, and that the society's office bearers as at the date of the letter were:

- a) **Abdullahi Shariff** - **Chairman**
- b) **Mohamum Unshir** - **Secretary**
- c) **Mukhtar Abdullahi** - **Assistant Secretary**
- d) **Ahmed Jibril** - **Treasurer**
- e) **Khadijo Osman** - **Assistant Treasurer**
- f) **Mohamed Haji Juma** - **Organizing Secretary**

This position was reiterated in the Registrar's letter dated 24th July 2013.

8. In the circumstances foregoing, it is apparent that the 1st and 2nd Plaintiffs had no locus to institute the present suit on behalf of the 3rd Plaintiff as they were not officials of the 3rd Plaintiff at the material time, namely as at 25th June 2013 when the suit was filed.
9. In paragraph 3 of the Plaint, the 3rd Plaintiff is described as a society registered under the Societies Act. That being the case, it is trite that it ought not to have come to court in its own name. In the case of Free Pentecostal Fellowship in Kenya vs. Kenya Commercial Bank HCCC No. 5116 of 1992, the court stated thus:

"The Position in common law is that a suit by or against unincorporated bodies of persons must be brought in the names of, or against all the members of the body...Where there are numerous members the suit may be instituted by or against one or more such persons in a representative capacity. In the instant matter the suit was instituted in the name of a religious organization. It is not a body corporate...That being so, it lacked the capacity to institute proceedings in its own name."

10. Consequently, it is plain that the 3rd Plaintiff is improperly before the Court as it cannot sue in its own name, it being an unincorporated body. (See also the case of Kenya Country Bus Owners Association v Barclays Bank of Kenya Ltd [2010] eKLR in which the Court held that the registration of an association under the **Societies Act, Cap 108 Laws of Kenya**, did not confer upon such an association corporate personality as in the case of a registered company and therefore such an association could not institute Court proceedings in its own name). There is nothing on the record to show that the Plaintiffs complied with the provisions of **Order 1 Rule 8 of the Civil Procedure Rules**. Authorities abound in support of the position that the institution of proceedings by persons who form a society in a representative capacity without complying with the provisions of **Order 1 rule 8 of the Civil Procedure Rules** renders the suit null and void *ab initio*.
11. I note that that reliance was placed on the provisions of Order 4 Rule 1(3) and (4) of the Civil Procedure Rules, which I find irrelevant to the facts hereof. In particular Rule 1(4) aforesaid is in respect of corporations, which the 3rd Plaintiff is not.
12. In view of the foregoing, it is the Court's finding that the 1st Defendant's Notice of Motion dated **6th August, 2013** and filed on even date is meritorious. The Plaintiffs' suit, being incompetent, is hereby struck out with costs to be borne by the 1st and 2nd Plaintiffs.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF MARCH, 2016

OLGA SEWE

JUDGE