



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 31 OF 2016

PETER NTOYIAN OLE MESEI & 11 OTHERS.....APPELLANT

VERSUS

NON GOVERNMENTAL ORGANIZATIONS

COUNCIL..... RESPONDENT

RULING

1) The appellants herein took out the motion dated 24th February 2016, in which they sought for the following orders:

1. THAT this application be certified as urgent and service thereof be dispensed with in the first instance.

2. THAT this honourable court be pleased to issue an order restraining Wilson Kipkazi, Kevinah Loyatum, Grace Weru, Benjamin Onkoba, George Obondo, Stephen Cheboi, Winfridah Abuya, Davies Njuguna, alias Lenanan Momoï, Patrick Katelo Issacko, Ismael Ruri, Felix Ngalese, Silvanus Juma, Nomo Muhamed, Pauline Kirombo, Ruth Muli Samwel, Shem Ongori, Hellen Mwangi & Francis Muumbi alone or jointly or through their agents or anybody acting through them from interfering with the leadership, functions and affairs, or representing, or calling any meeting to deal with the affairs or in any way carrying out the business of the respondent pending the hearing and determination of this application.

3. THAT this honourable court be pleased to issue an order restraining Mr. Wolson Kpkazim Ma. Kevinah Loyatum, Grace Weru, Benjamin Onkoba, George Obondo, Stephen Cheboi, Winfridah abuya, David Njuguna, Alias lenana Momoï, Patrick Katelo Issacxko, Isamel Ruri, Felix Ngalese, Silbanus Juma, Nomo Muhamed, Pauline Kirombo, Ruth Muli Samwel, Shem Ongori, Hellen Mwangi & Francis Muumbi alone or jointly or through their agents or anybody acting through them from interfering with the leadership, functions and affairs, or representing, or calling any meeting to deal with the affairs or in any way carrying out the business of the respondent pending the hearing and determination of this appeal.

4. THAT this honourable court be pleased to issue an order restraining any further planning and/or holding of an induction workshop in respect of Mr. Wilson Kipkazi, Ms. Kevinah Loyatum together with Grace Waweru, Benjamin Onkoba, George Obondo, Stephen Cheboi, Winfridah Abuya, Davies Njuguna, Alias Lenana Momoï, Patrick Katelo Issacko, Ismael Ruri, Felix Ngalese, Silvanus Juma, Nomo Muhamed, Pauline Kirombo, Ruth Mjuli Samwel, Shem

Ongori, Hellen Mwangi & Francis Muumbi on the 28th February 2016 until further orders of the court.

5. THAT Ms. Kevinah Lloyatum be ordered to forthwith surrender and handover all properties and documents of the respondent within her custody, control and/or management.

6. THAT the honourable court be pleased to order for substituted service of orders and court processes on Wilson Kipkazi, Kevinah Loyatum, Grace Weru, Benjamin Onkoba, George Obondo, Stephen Cheboi, Winfridah Abuya, Davies Njuguna, Alias Lenana Momoi, Patrick Katelo Issacko, Ismael Ruri, Felix Ngalese, Silvanus Juma, Nomo Muhamed, Pauline Kirombo, Ruth Muli Samwel, Shem Ongori, Hellen Mwangi and Francis Muumbi by way of advertisement in any of the daily newspapers.

7. THAT the costs of this application be provide for.

2) When served with the motion, National Council of Non- Governmental Organisation, the respondent herein filed grounds of opposition to resist the motion.

3) When the motion came up for directions before this court on 11th March 2016, Miss Oduor, learned advocate for the appellants, appeared exparte and beseeched this court to issue on temporary basis prayers 2 and 5 of the aforesaid motion pending the interpartes hearing of the same. The learned advocate relied on the affidavit of John Mwangi Ngugi. Those prayers are reproduced as follows.

2. THAT this honourable court be pleased to issue an order restraining Wilson Kipkazi, Kevinah Loyatum, Grace Weru, Benjamin Onkoba, George Obondo, Stephen Cheboi, Winfridah Abuya, Davies Njuguna, alias Lenanan Momoi, Patrick Katelo Issacko, Ismael Ruri, Felix Ngalese, Silvanus Juma, Nomo Muhamed, Pauline Kirombo, Ruth Muli Samwel, Shem Ongori, Hellen Mwangi & Francis Muumbi alone or jointly or through their agents or anybody acting through them from interfering with the leadership, functions and affairs, or representing, or calling any meeting to deal with the affairs or in any way carrying out the business of the respondent pending the hearing and determination of this application.

5. THAT Ms. Kevinah Lloyatum be ordered to forthwith surrender and handover all properties and documents of the respondent within her custody, control and/or management.

4) It is the averment of the appellants that pursuant to the motion dated 2nd February 2016, Hon. Mr. Justice Ombija issued an interim order of stay of execution of the ruling and orders of Hon. P. Muholi, learned Resident Magistrate issued vide Nairobi R.M.C.C.C. no. 5469 of 2015 and delivered on 27th January 2016 pending the hearing and determination of the application. The honourable judge also issued a further order for stay of further proceedings in the subordinate court pending the hearing and determination of the application. The appellants have argued that the effect of the orders issued by Justice Ombija is to the effect that the leadership and management of the respondent reverted to the position as of 14th September 2015 being the date of filing of R.M.C.C.C no. 5469 of 2015. It is important to state that on 27th January 2016, Hon. Muholi, learned Resident Magistrate issued interalia orders of injunction to restrain the appellants herein from transacting any business on condition that due process of discipline is followed. The learned Resident Magistrate issued an order directing the respondent through its chairperson to prepare and make full account of the monies allegedly misappropriated and file the same in court as well as serve the appellants (respondents) within 25 days from the date of the order. The chairperson was also directed to convene an urgent meeting to discuss the issues affecting the Non-Governmental Organisation council.

5) I have already stated that the aforesaid orders were stayed by the order of Justice Ombija issued on 8th February 2016.

6) The appellant stated that the other effect of the order is that the resolutions of the governance organs of

the respondent including the executive committee resolution suspending the chairman Wilson Kipkazi and that terminating the services of Kevinah Loyatum as the Chief Executive officer of the respondent on 11th September 2015 remained in force as the same have not been set aside and or varied. They also aver that the leadership and management of the respondents is lawfully under the hand and management of the applicants together with other officials duly in office pursuant to their election and gazette under Kenya Gazette dated 15th August 2014. It is argued that despite the order issued by Justice Ombija, the respondent's officials namely Mr. Wilson Kipkazi and Ms Kevinah Loyatum together with Grace Weru, Benjamin Onkoba, George Obondo, Stephen Cheboi, Winfridah Abuya, Davies Njuguna, Alias Lenana Momoi, Patrick Katelo Issacko, Ismael Ruri, Felix Ngalese, Silvanus Juma, Nomo Muhamed, Pauline Kirombo, Ruth Muli Samwel, Shem Ongori, Hellen Mwangi and Francis Muumbi continued to illegally and regularly hold themselves out as officials and officer of the respondent and transacting business of the respondent contrary to court orders thus forcing the appellants to take out the motion dated 24th February 2016. The appellants further pointed out that Wilson Kipkazi and Kevinah Loyatum have remained as bank signatories of the respondent and have continued to transact business despite the issuance of the court orders.

7) After a careful consideration of the oral submissions of Miss Oduor and the facts deponed in the affidavit of John Mwangi Ngugi, it is apparent that there is need to grant temporary orders as prayed for to avoid the flagrant abuse and disobedience of court orders. Consequently I grant prayers 2 and 5 of the motion dated 24.02.2016 to last until aforesaid motion is heard and determined.

Dated, Signed and Delivered in open court this 15th day of March, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent