



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 240 OF 2015**

**CALEB OTIENO ONGERE.....1<sup>ST</sup> PLAINTIFF/APPELLANT**

**SPROSAA ANANDA OCHOLI..... 2<sup>ND</sup> PLAINTIFF/APPELLANT**

**WALTER OCHIENG OBWANA..... 3<sup>RD</sup> PLAINTIFF/APPELLANT**

**- V E R S U S -**

**THORUNN HELGADOTTIR..... 1<sup>ST</sup> DEFENDANT/RESPONDENT**

**SAMUEL LUSIRU GONA..... 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**FREDRICK RAMGARHIA..... 3<sup>RD</sup> DEFENDANT/RESPONDENT**

**ELIJAH BRIAN ODERA..... 4<sup>TH</sup> DEFENDANT/RESPONDENT**

**DOILINE ONKWARE..... 5<sup>TH</sup> DEFENDANT/RESPONDENT**

**JAMES OLUNYA ODUOR..... 6<sup>TH</sup> DEFENDANT/RESPONDENT**

***(The officials of ABC Children's Aid Kenya)***

**NGOS CO-ORDINATION BOARD.....INTERESTED PARTY**

**RULING**

1. Caleb Otieno Ongere, Sprosa Ananda Ocholi and Walter Ochieng Obwana, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs respectively took out the motion dated 1<sup>st</sup> July 2015 whereof they sought for the following orders inter alia:

1. ***THAT the respondent by themselves, their servants, agents, or any of them or otherwise be restrained by a temporary order of injunction from dealing, interfering, alienating or otherwise with ABC Kariobangi primary and secondary schools pending the determination of this suit.***
2. ***THAT the costs of this application be borne by the defendants.***

2. The motion is supported by the affidavit of Caleb Otieno Ongere. When served with the motion, Thorun Helgadottir, Samuel Lusiru Gona, Fredrick Ramgarhia, Elijah Brian Odera, Doiline Onkware, James Olunya Oduor, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants respectively filed two replying affidavits of Thorun Helgadottir to oppose the motion. The plaintiff filed a

supplementary affidavit of Caleb Otieno Ongere in response to the replying affidavits of Thorun Helgadóttir. The plaintiffs successfully applied for NGOs Coordination Board to be enjoined as Interested Party. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the motion disposed of by written submissions.

3. I have considered the grounds set out on the face of the motion dated 1.7.2015 and the grounds of opposition plus the facts deponed in the affidavits filed in support and against the motion. I have further considered both the rival oral and written submissions. It is the submission of the plaintiffs that the defendants are interfering with the running and management of ABC Kariobangi Primary and Secondary Schools hereinafter referred to as the schools. The plaintiffs aver that the schools face a threat to closure due to the stand-off thus adversely affecting the surrounding community. The plaintiffs also aver that unless the order is granted it might create an avenue whereby the applicants are left destitute. It is complained that the defendants have descended upon the schools purporting to take over. In response to the plaintiffs' motion, the defendants stated that the 1<sup>st</sup> plaintiff is the principal of A.B.C Kariobangi Primary School and Secondary Schools having been employed by ABC Children's Aid Kenya to **inter-alia** oversee the activities of the institutions which were established by ABC Children's Aid Kenya to benefit poor children, street children and orphans. The 1<sup>st</sup> defendant further stated that the 5<sup>th</sup> respondent is not an official of ABC Children's Aid Kenya, but instead she is an administrator. While the 1<sup>st</sup> respondent is the chairperson, the 2<sup>nd</sup> defendant is the secretary while the 3<sup>rd</sup> respondent is the treasurer. The 1<sup>st</sup> defendant pointed out that a meeting was convened on 17.4.2013 in accordance with the terms of the constitution where the following agendas were discussed: first, the removal of inactive members, secondly, the amendment of the constitution, and thirdly, the appointment of new members.
4. The 1<sup>st</sup> defendant further avers that all the members were in agreement and the aforesaid resolutions were passed. It is also pointed out that as a result of the meeting, Hannes Lentz, Bjorg Davidsdóttir and Gudrun Plasdóttir were removed because they were inactive for more than six months and in any case their term in office had lapsed. The defendant denied the allegation that they mismanaged the affairs of the organization. The defendants accused the plaintiffs of being used by members of the International organization to cause havoc in the organization for them to replace the current officials and management.
5. Having considered the rival arguments, let me now consider the merits of the motion. This is an application for injunction. The principles to be considered are well settled. First, an applicant must show a prima facie case with a probability of success. The question which must be answered here is whether or not the plaintiffs have established a prima facie case. In the case before this court, the plaintiffs have alleged that unless the orders are granted the defendants will interfere with the running and management of ABC Kariobangi Primary and Secondary Schools in a manner that may force those institutions to be closed. After a careful consideration of the plaintiffs' assertions, I am unable to comprehend how their rights were or have been infringed. In my humble view the plaintiffs have not convinced me how the management and running of those institutions would affect their rights as parents or employees. In short, the applicants have not established a prima facie case with high chances of success. The second principle to be considered is whether the applicants would suffer irreparable loss if the order sought is denied. The material placed before this court show that the 1<sup>st</sup> plaintiff is an employee and that some parents who had authorised the filing of this suit have already pulled out their children from the schools in question and enrolled them in other schools. It has also emerged that ABC Kariobangi Primary and Secondary Schools were started by ABC Children's Aid Kenya. It would also appear that the defendants have acquired title to those institutions. The interested party has also forwarded a letter to this court confirming that the defendants founded the organization and that they are the current officials. It is obvious from the affidavit evidence presented to this court that the plaintiffs will not suffer any irreparable damage. The 1<sup>st</sup> plaintiff may in any case seek compensation if he feels he has suffered any damage. Courts will also be slow to issue orders of injunction to restrain registered proprietors of any property.

6. The third principle to be considered is the balance of convenience. Since I am not in doubt, I do not intend to apply this principle to this application.

7. In the end, I find no merit in the motion. The same is dismissed with costs to the respondents.

Dated, Signed and Delivered in open court this 22<sup>nd</sup> day of April, 2016

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant