



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CIVIL CASE NO.11 OF 2014**

**FREDRICK REMARQUE CHITECHI**  
.....**PLAINTIFF/APPLICANT**

**VERSUS**

**SAMANTHA ASSOCIATES .....1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**

**KIPRONO KITTONNY AND GROUP .....2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**

**GEORGE M. MUSINDI AND GROUP .....3<sup>RD</sup>**  
**DEFENDANT/RESPONDENT**

**KENYA NATIONAL CHAMBER OF COMMERCE & INDUSTRY .....4<sup>TH</sup>**  
**DEFENDANT/RESPONDENT**

**RULING**

**Introduction**

1. The application for determination is the Notice of Motion dated 1<sup>st</sup> July 2014 brought pursuant to Section 3A of the Civil Procedure Act and Order 40 Rule 1 of the Civil Procedure Rules. In the application the applicant seeks Orders:-
  1. Spent
  2. THAT pending the inter party hearing herein KNCCI National Governing Council be restrained from interfering with the operations of Kakamega County Chamber of Commerce and Industry.
  3. THAT this Honourable Court be pleased to restrain George M. Musindi and the group from acting as the bonafide officials of Kakamega County Chamber of Commerce and Industry and the resolutions of KNCCI National Governing Council held on 27<sup>th</sup> day of June 2014 be termed as ultra-vires pending the hearing and determination of this petition.
  4. THAT the respondents herein be ordered to prepare, publish and circulate audited accounts since 2007 for approval by older members before any elections are held pending the inter-party hearing of this application.
  5. THAT this Honourable Court be pleased to recall and rescind the deliberations, any decisions or operations realized ever since the purported Kakamega County Chamber of Commerce and Industry elections held on 23<sup>rd</sup> March 2012 at Tingiza Club.
  6. THAT pending the interparty hearing herein the respondents by themselves, their agents and/or servants be restrained from holding any bank account in the name of Kakamega County Chamber

- of Commerce and Industry with any local and International bank.
7. THAT pending interparty hearing herein the respondents by themselves their agents and/or servants be restrained from interfering with the operations of the Kakamega County Chamber of Commerce and Industry.
  2. The applicant claims that the operations of the respondents are intended to defeat justice in Kakamega H.C. Petition No.5 of 2014 and that he is interested in curbing graft in the organization since the respondents have engaged in misinformation, misrepresentation and mismanagement of Kakamega County Chamber of Commerce.
  3. The application is supported by the applicants own affidavit sworn on the same date in which he reiterates what is contained in the grounds set out on the face of the application.

### **Response**

4. The application is opposed. There are grounds of opposition by the Respondents filed through the firm of Kihara Njuguna & Co. Advocates dated 15<sup>th</sup> September 2014 together with the respondents replying affidavit sworn on the same date by the 3<sup>rd</sup> respondent.
5. Briefly the applicant in response explains that the resolution of the 4<sup>th</sup> Respondent's AGM held on 27<sup>th</sup> march 2014 were passed in good faith for the benefit of the organization. He further depones that Kakamega County Chamber of Commerce and Industry is properly managed in accordance with the law and its Memorandum and Articles of Association.
6. He adds that he is not aware of any complaint against the organization nor is there any dispute on the leadership or election of the leadership. He adds that the complaints that were there were settled by the Honourable Court in Judicial Review Case No.169 of 2013. He states further that it is in order and administratively right for the leadership of the organization and/or its branches to open bank accounts and to transact with any financial institutions for the purposes of smooth running of the institutions operations.
7. He explains the contents of paragraphs 155,156 and 174 of the amended Memorandum and Articles of Association of the organization on where they get finances, funds raised from membership fees, rental income from immovable assets the organization owns and other avenues as stipulated therein. He further explains that the organization has a dispute resolution mechanism which he claims has not been exploited by the applicant. He claims further that the issues raised herein are sub judice as some of them are substantially in issue in H.C.C.C 253 of 2009 which is ongoing in the High Court at Milimani and that the issue of election and/or leadership was settled in Judicial Review case no.169 of 2013.

### **Submissions and Determination**

8. Parties canvassed the application by way of written submissions which they duly filed and exchanged and which this Court has carefully read. From the prayers sought in the application what is clear is that the applicant wants this Court to issue restraining orders against the respondents to halt or curb the operations of Kenya National Chamber of Commerce and Industry Kakamega branch. The applicant wants this Court to interfere with and restrain the officials of the Kakamega branch from acting as such officials and further from opening any bank accounts in the name of Kakamega County Chamber of Commerce and Industry. He also wants this Court to rescind the deliberations and decisions of the institution since the Kakamega County Chamber of Commerce and Industry was formed after their elections.
9. From the submissions herein what comes out is that the Kakamega County Chamber of Commerce and Industry is not a self governing institution or organization as it operates under the Kenya National Chamber of Commerce and Industry. It is therefore governed by the Memorandum and Articles of Association of the National Chamber of Commerce. As provided in the said Memorandum at Article 58 the National Governing Council is the organ of the 4<sup>th</sup> Respondent mandated to formulate the chamber's operations agreements policies, procedures and other operational standards and it also has the responsibility and authority to ensure that each County

Chamber is implementing the Chambers' operating agreements, policies procedures and other standards. It is also noted that the 1<sup>st</sup> respondent is a duly appointed officer while the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are duly elected officials of the 4<sup>th</sup> respondent whose elections have never been challenged or nullified.

10. It therefore means that the operations of the 4<sup>th</sup> respondents Kakamega county Branch are on-going. There is no order to date that has stopped its operations. Be that as it may, for this Court to issue restraining orders or injunction for that matter the applicants application has to meet the basic principles for the grant of an injunction laid down in the case of **Giella -vs- Cassman Brown Co. Ltd [1973] E.A** as follows:

- a. An applicant has to show a prima facie case with a probability of success.
- b. An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury.
- c. When the Court is in doubt it will decide the application on the balance of convenience.

11. The applicant's bone of contention is not only on the elections and leadership of KNNCI but he also says he intends to curb corruption in the entire institution both at County and national chambers. Even though the applicant contends that he is the founding Chairman of the Kakamega County Chamber of Commerce and Industry, he never challenged the election of the leadership of the 4<sup>th</sup> respondent both at National level and at Kakamega County level which were held on the 29<sup>th</sup> of March 2016.

12. This Court notes that most of the prayers sought have been overtaken by events. Elections have already been held and bona fide officials of Kakamega County Chamber of Commerce and Industry were duly elected and are holding office. As earlier stated these officials have opened bank accounts which are running, and the resolutions of 27<sup>th</sup> June 2014 have been overshadowed by other resolutions. In the circumstances, the applicant has not shown that he has a prima facie case with a high probability of success, nor has the applicant demonstrated how he is likely to suffer irreparable loss or injury if the orders sought are not granted.

13. From the reasons set out above this Court finds that the Notice of Motion dated 1<sup>st</sup> July 2014 is lacking in merit and is therefore dismissed with costs to the Respondents.

14. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 22<sup>nd</sup> day of June 2016.

**RUTH N. SITATI**

**J U D G E**

In the presence of:

Present in Person for Applicant

Miss Malumi for Musiega for Kihara Respondents

Mr. Solomon Lagat - Court Assistant