



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AY NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
E L C CASE NO. 990 OF 2015

KIBERA BLESSED ACADEMY.....PLAINTIFF/APPLICANT

=VERSUS=

WORLD MISSIONARY EVENGELISM OF

KENYA REGISTERED TRUSTEES.....1ST DEFENDANT/RESPONDENT

T.A.P.A. TRUST.....2ND DEFENDANT/RESPONDENT

ALFRED ODOUR OTIENO.....3RD DEFENDANT/RESPONDENT

PAUL MUTUA.....4TH DEFENDANT/RESPONDENT

JOSHUA NDUNDA.....5TH DEFENDANT/RESPONDENT

RULING:

The Plaintiff/Applicant has brought this Notice of Motion dated **8th October 2015**, against the 1st – 5th Defendants under **Section 3A of the Civil Procedure Act, Order 50 Rule 1 of the Civil Procedure Rules, 2010** and all other enabling provisions of the law. The applicant has sought for these orders.

- a. That the Court do grant a temporary injunction restraining the Defendants/Respondents, their agents, servants and/or anybody claiming under them from developing, trespassing, alienating and/or dealing in any way whatsoever with parcel of land known as LR No.209/13073 situated within Kibera, Nairobi pending hearing and determination of this suit.***
- b. That the Plaintiff/Applicant's teaching and/or support staff be reinstated into the suit property pending hearing and determination of this suit.***
- c. That OCS Capital Hill Police Station does offer Police assistance to ensure compliance with Court Orders.***
- d. That cost of the application be provided for.***

The application is premised on the grounds stated on the face of the application and on the annexed

affidavit of **Mark Ojwang Anyanga**. These grounds are:-

- a. The 1st **Defendant is the registered owner of the parcel of land LR No.209/13073 situated within Kibera, Nairobi wherein, the Plaintiff was started and/or sponsored, by the 1st Defendant.**
- b. **That the 1st Defendant on or about July 2015 withdrew sponsorship of the Plaintiff and surrendered control and/or possession of the suit property to the 2nd Defendant with the intention of transferring ownership of the suit property to private developers to the detriment of Plaintiff and/or the local community.**
- c. **That the Defendants have since gone ahead on or about 30th September 2015 to forcefully evict the Plaintiff and/or its staff from the suit property and have constructed a permanent structure to keep off the said staff.**
- d. **Unless the Defendants are temporary restrained, the Plaintiff will suffer irreparable loss and/or damages as the Defendants are likely to transfer the suit property to private developers and the Plaintiffs pupils learning has been abruptly interrupted in the middle of the term.**
- e. **It is in the interest of justice and fairness to grant the orders sought.**

In his supporting Affidavit, **Mark Ojwang Anyanga** , the chairman of the Plaintiffs Management and/or **P.T.A** averred that the Plaintiff was started and/or sponsored by the 1st Defendant for the sole purpose of the benefit of local community, whereby the Plaintiff was set up at the 1st Defendant property known as **LR No.209/13073 Kibera, Nairobi.**

Further that on or about July 2015, the 1st Defendant terminated its sponsorship of the Plaintiff and abruptly handed over control and/or possession of the suit property to 2nd Defendant with the intention of eventually transferring ownership of the suit property to private developers to the detriment of the local community and/or the plaintiff. He further averred that on or about **30th September 2015**, the 2nd Defendant together with the 3rd ,4th & 5th Defendants violently took possession of the suit property and forcefully evicted the Plaintiff's teaching and/or support staff from the suit property and have constructed a permanent perimeter wall around the school with the intention of locking out the Plaintiffs' said staff. He further averred that due to the Defendants forceful occupation and eviction of the Plaintiff's staff from the suit property, the Plaintiffs' pupils have been greatly prejudiced and/or inconvenienced as their learning has been interrupted in the middle of the term.

It was his contention that the Defendants have every intention of transferring ownership of the suit premises to private developers thereby kicking out the school to the detriment of the local community and /or the pupils of the Plaintiff. He also contended that the 1st Defendant being a charitable organization was holding the said land under an implied trust for the benefit of the local community and/or the Plaintiff and had no intention of owning land for other proprietary interests. He further contended that unless the Defendants are restrained accordingly the Plaintiff will suffer irreparable loss and/or damages as the same is very emotive to the local community and/or pupils of the Plaintiff who cannot afford to pay high fees for their education. He urged the court to allow the application herein.

The application is contested and the Law Firm of **Ameyo, Guto, Etole & Co. Advocates** , entered appearance for 1st, 3rd 4th & 5th Defendants and filed a Notice of Preliminary Objection and a Replying Affidavit sworn by **Alfred Otieno Odour**, the 3rd Defendant herein. He averred that the 1st Defendant is a duly registered Christian organization in Kenya representing World Missionary Evangelism incorporation of Dallas United States of America. Further that the 1st Defendant started the Plaintiff school to assist the needy children living in Kibera and its environs and in facilitation of that purpose, the 1st Defendant acquired property in **Kibera LR 209/13073**, where the school and other programmes are run. It was his contention that these programmes run on behalf of the 1st Defendant by the 3rd Defendant as an acting

National Director.

However, that over the years, the plaintiff school has had numerous administrative problems, such as high turnover of the sponsored children and lack of transparency in the running of the school. Thereafter the 1st Defendant decided to relinquish the plot on which the school is built and the school altogether. It was his contention that this was done diligently and legally without posing any disruption to the Plaintiff since the 2nd Defendant (TAPA) is engaged in similar educational projects in Kibera area and has therefore taken over the Plaintiff's school without any interruption at all.

It was his further contention that if there was any interruption of the Plaintiff's activities, the same was caused by the action of the disgruntled former National Director of the 1st Defendant with the help of her cronies who included part of the teaching staff who have since been replaced. He contended that the changeover of the school to TAPA was smooth and learning has not been interrupted. Further that TAPA is not a private developer but a charitable organization engaged in similar educational programmes in Kibera. He also contended that **Mark Ojwang Anyanga** is not the Chairman of the Plaintiff's Management and/or **PTA** Chairman as alleged and for one to qualify as a **PTA** Chairman, one needed to have a child in the school and **Mark Ojwang Anyanga** has no child in the school. Further that the Plaintiff has no capacity to institute legal proceedings and that this suit is misconceived, bad in law and should be struck out.

The Law Firm of **C.Riungu Koyier & Co. Advocates**, entered appearance for 2nd Defendant and filed Notice of preliminary objection on **9th November 2015**, and stated that:-

1. The entire suit and the application is incompetent and incurably defective for reason that:-

(a) The Plaintiff /Applicant has no locus standi to institute, maintain and prosecute this suit and the said application.

2. That the Plaintiff has no proprietary or beneficial interests in the suit property. In the premises, the reliefs sought are not available to the Plaintiff under Order 40 of the Civil Procedure Rules.

3. The suit is vexatious and a waste of the court process.

Further **Johnson Migwi**, a trustee and program director of 2nd Defendant/Respondent swore a Replying Affidavit and averred that the Deponent of the Supporting Affidavit does not qualify to be a PTA Chairman as he has not been duly elected nor does he have a pupil in the school and cannot therefore purport to swear the affidavit on behalf of the Plaintiff. He also averred that the Plaintiff was started and registered and sponsored by the 1st Defendant but it was registered as a private school located on private land registered under the 1st Defendant as one of the projects and hence the deponent cannot purport to separate the school from the 1st Defendant. He further averred that the 2nd Defendant is not a private developer, but like- minded organization that has a proven record of working successfully with the local Community in Kibera . Further that **Kibera Blessed Academy** was officially handed over to the 2nd Defendant on **18th September 2015**, as per the instructions of the 1st Defendant in a ceremony attended by the **Director of Education , Lang'ata Sub-county**, the area Chief , other Officers and Parents and therefore the alleged violent takeover is the work of fiction by the deponent.

He also alleged that there was no forceful eviction as alleged by the deponent because the new Acting National Director of the 1st Defendant, the 3rd Defendant herein requested the former teacher to step aside temporarily over to the acrimonious atmosphere they had created in the school and later requested them to re-apply and only four of them re-applied .

He further contended that the 1st Defendant is the registered owner of the land where the school is located and also is a manager of the school which was registered as a private school by the 1st Defendant on **1st**

March 2011, and has found it fit to transfer it to the like-minded organization which is **TAPA**, so as to continue with the outreach programmes to the community of Kibera. It was his contention that the orders sought if granted will have the effect of disrupting the smooth running of the school. He urged the court to dismiss the instant Notice of Motion and vacate the temporary orders issued herein.

The Plaintiff filed a supplementary Affidavit and averred that he was elected the Chairman of PTA for the year 2012 to 2014 and since there has not been any other election held, he was still the Chairman of the school. He annexed various annexures among them annexure **MOA5**, being a certificate of Registration of Schools to show that the Manager of **Kibera Blessed Academy is Kibera Blessed Society**.

Johnson Migwi also filed a further affidavit and reiterated that **Mark Ojwang Anyanga** is no longer the PTA Chairman of the Plaintiff as he insists and any actions by him are **null** and **void**. Further the registration referred to by **Mark Ojwang Anyanga**, is completely irregular and the said registration certificate marked as annexure **MOA5** has curiously the same date for registration as the one previously annexed and filed by the Plaintiff on **8th October 2015**, as annexure **MOAI**. Further that the registration of the school as a Society does not confer any legal status to the school to grant it the mandate to operate outside the authorization of the 1st Defendant who has granted **TAPA** the authority to continue with its community outreach programmes. Further that the 1st Defendant still holds the title to the land where the school is located and the court cannot grant the plaintiff the orders sought.

Alfred Otieno Odour also filed a further affidavit on **5th February 2016**, and reiterated that the said **Mark Ojwang Anyanga**, the deponent of the Supporting and Supplementary Affidavit has not **locus standi** in this case. He further averred that though the Plaintiff had alleged that the parents of the school authorized the **P.T.A** Chairman to immediately proceed and register the school under the Registrar of Societies and annexed **MOA5** to that effect, he alleged that **MOA5** was a forgery and an afterthought.

The Court directed that both the Preliminary Objection and the main Notice of Motion be canvassed together by way of written submissions. The Plaintiff/applicant filed its first set of submissions on **9th February 2016**, through the law Firm of **Lee Maina & Associates Advocates** and second set on **7th March 2016**. The 1st, 3rd, 4th and 5th Defendants filed their submissions on **19th February 2016**, and the 2nd Defendant on **4th February 2016**.

This Court has now carefully considered the instant application and the annexures thereto, the pleadings generally, the written submissions and the attached decided case and the relevant laws and the court makes the following findings:-

There is no doubt that the Plaintiff herein was initially registered as a **Private Mixed Day Nursery and Primary School** on **1st March 2011**, in the name of **Kibera Blessed Academy** and being managed by World Missionary Evangelism of Kenya, who are the 1st Defendant herein. It is also evident that the said school is situated on land known as **LR No. 209/13073**, situated in Kibera which is registered in the name of World Missionary Evangelism of Kenya, Registered Trustees, the 1st Defendant herein. The said Registration was affected on **21st May 1996**. It is also not in doubt that the said World Missionary Evangelism which is based in **Dallas**, United States of America, has expressed its wish to terminate the child sponsorship program in Kibera and sought for like-minded organization to take over the running and management of the school. There is evidence that **TAPA**, the 2nd Defendant was identified to take over the Management of the PTA which they did effect in September 2015. However, the changeover was not received kindly by some of the concerned actors of **Kibera Blessed Academy** and the said acrimony led to the filing of this suit. The Court did grant interim orders on **9th October 2015**, when the matter came under certificate of urgency.

The applicant has sought for confirmation of the said orders and grant of the other orders contained in the Notice of Motion dated **8th October 2015**. The Defendants have opposed the said application. The question now for determination is whether the applicant is deserving of the orders sought.

There is a preliminary objection raised by the Defendants touching on capacity of the Plaintiff herein to bring this suit. The Defendants have alleged that the Plaintiff has *no locus standi*, to institute, maintain and prosecute this suit.

Though the Court directed that both the Preliminary Objection and the main Notice of Motion be canvassed together, the court will have to determine the preliminary objection first.

The Court will first have to determine whether the objection raised by the Defendants qualify to be an preliminary objection as described in the case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696**, where Law J A stated that;

‘ So far as I am aware , a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings and which objection point may dispose the suit’.

Further Sir Charles Newbold P had this to say in the case;-

“A preliminary objection raises a pure point to law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

The Defendants have submitted that the Plaintiff has no *Locus Standi* or capacity to institute this suit. That due to the lack of the said capacity, the suit is incompetent and should be struck out.

In the case of **Law Society of Kenya Vs Commissioner of Lands & Others Nakuru High Court Civil case No. 464 of 2000**, the Court held that ;-

“Locus Standi signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of **Alfred Njau and others Vs City Council of Nairobi (1982) KAR 229**, the Court also held that;-

“ the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

It is therefore evident that Locus Standi is the right to appear and be heard in Court or other proceedings and literally, it means a place of standing. Therefore if a party is found to have no *locus standi*, it means he/she cannot be heard even on whether or not he has a case worth listening to. It is therefore evident that if this Court was to find that the Plaintiff has no *Locus Standi*, then the Plaintiff cannot be heard and that point alone may dispose of the suit. In the case of **Quick Enterprises Ltd vs. Kenya Railways Corporation, Kisumu High Court Civil Case NO. 22 of 1999** the Court held that:-

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the court having to resort to ascertaining the facts from elsewhere apart from looking at the pleadings alone”.

Having now considered the objections raised by the Defendants the Court finds that lack of Locus Standi can dispose of the matter preliminarily without having to resort to ascertaining of facts. The preliminary objection raised by the Defendants fits the description of preliminary objection as stated in the ***Mukisa Biscuit case (Supra)***.

The issue for determination is whether the preliminary objection as raised is merited or not. The Defendants have averred that the suit land herein is registered in the name of the 1st Defendant who had sponsored the Plaintiff herein and later withdrew their sponsorship in July 2015. However, 1st Defendant remains the registered owner of the suit land and therefore plaintiff has no beneficial interests over the suit property.

Further that the Plaintiff has no legal capacity to sue or be sued as it is not a legal entity. It was submitted that the Plaintiff was registered under the ***Education Act Cap 211*** (now repealed) and the said registration did not confer to the Plaintiff legal existence at all. They relied on the case of ***St.Mary School , Nairobi Vs Gitonga Kabugi HCCC No. 307 of 2006*** , Where the Court held that;-

“ ... it is clear therefore that registration of a body under the Education Act does not give the body legal existence at all”.

In the instant suit, the Plaintiff was registered under the Ministry of Education in March 2011. Indeed that registration was meant for regulation of the schools but did not give the Plaintiff legal existence. Though the Plaintiff states that it later got registered under the Societies Act as ***Kibera Blessed Academy Society***, there is no evidence of registration of such Society as the certificate of Registration is not attached together with ***MOA5***. The Court finds that indeed the Plaintiff is registered under the ***Ministry*** of Education and that has not given it to legal existence to sue and be sued. ***Justice Bosire*** (as he then was) in the case of ***Free Pentecostal Fellowship in Kenya Vs Kenya Commercial bank (HCCC No. 5116 of 1992 (OS)*** stated as follows:-

“ In the instant matter the suit was instituted in the name of a religious organization . It is not a body corporate which then meant it would sue as a legal personality. That being so, it lacked the capacity to institute proceedings in its own name”.

Equally in this matter, the Plaintiff ***Kibera Blessed Academy*** is not a corporate body, but a private school registered under the management of 1st Defendant and it lacks capacity to institute proceedings in its own name.

Though the Plaintiff alleged that it was registered as ***Kibera Blessed Academy Society***, in July 2015, the certificate of registration is not available and when the suit was filed, the attached certificate of registration is the one issued to 1st Defendant but not the alleged ***Kibera Blessed Academy Society***. Though the Plaintiff has alleged that the misjoinder of the Plaintiff herein can be cured by an amendment, the court finds that the suit herein was filed by a body that had no capacity to sue or be sued. It has no standing and that the said omission therefore cannot be cured by a mere amendment. In the case of ***Mbwoi Self Help Group Vs Nzoia Sugar Co.Ltd Civil Appeal No.256 of 1997*** the Court held that;-

“ An unregistered group (registered under the Ministry of Culture & Social Services) does not have a Locus Standi to sue and be sued. See Order 1 Rule 8 and any suit filed by such a group is incompetent and the same applies to any subsequent appeal”.

The plaintiff herein is not a registered body and even if the plaintiff has alleged that the school is now registered under ***Kibera Blessed Academy Society***, there is no evidence of such registration and therefore the Plaintiff has no Locus Standi to sue or be sued and this suit brought by the Plaintiff is incompetent as the Plaintiff has not established that it has ***Locus Standi*** to bring this suit against the Defendants jointly or severally. As was held by Kimaru J, in the case of ***Attorney General Vs Kenya Commercial Bank Ltd & Another, Nakuru HCCC No. 260 of 2004*** , the Court will invoke its inherent jurisdiction and order that the Plaintiff's suit be struck out with costs to the Defendants as the Plaintiff has no ***Locus Standi*** to bring this suit against the Defendants and further the suit is an abuse of the Court process.

Having now carefully considered the preliminary objection raised herein by the Defendants and the rival submissions and the authorities quoted, the Court finds that the Preliminary Objection is merited and the end result is that the same succeeds and the Plaintiff together with the Notice of Motion dated ***8th October 2015***, are struck out as Plaintiff has no legal existence and thus no ***locus standi*** to file the suit and the suit herein is therefore incompetent. The same is struck out with costs to the Defendant.

Even if the Court was to disallow the preliminary objection, the Court finds that the suit property is registered in the name of the 1st Defendant. The 1st Defendant being the registered owner has its right

protected under **Sections 24(a) and 25(1) of the Land Registration Act**. There is evidence that the 1st Defendant relinquished the running of the school to the 2nd Defendant and has intention of transferring the land to the 2nd Defendant. As a registered proprietor of the suit property, there are no sufficient reasons given why the 1st Defendant should be enjoined from exercising its rights over the suit property.

The Plaintiff has no registered interest in the suit property and therefore no interlocutory injunction would be available to it. Even if the suit had not been struck out, the Court would have found that the Notice of Motion dated **8th October 2015**, is not merited and the end result would have been to dismiss the same and vacate the interim orders issued on **9th October 2015**, with costs to the Defendants.

However, since the Court has upheld the preliminary objection, the Court finds that the Plaintiff herein has **no locus standi** and legal existence and therefore the suit is incompetent and an abuse of the Court process. The said suit and the Notice of Motion dated **8th October 2015**, are consequently struck out with costs to the Defendants.

It is so ordered.

Dated, Signed and Delivered this **26th** day of **September, 2016**.

L. GACHERU

JUDGE

In the Presence of:-

Mr Wawire holding brief Mr Maina for the Plaintiff/Applicant

M/s Asli holding brief for M/s Koyier for the 2nd Defendants/Respondents

M/s Musau holding brief for Mr Etole for 1st, 3rd 4th and 5th Defendant/ Respondent.

Court Clerk: Hilda

Court:

Ruling read in open Court in the presence of the above stated advocates.

L. GACHERU

JUDGE