



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION

HCCC NO. 14 OF 2004

KENYA POWER & LIGHTING COMPANY LTD.....PLAINTIFF

VERSUS

JULIUS OLE SUNKULI(Acting Secretary General).....1st DEFENDANT

MOHAMMED YUSUF HAJI(National Treasurer).....2nd DEFENDANT

BONAYA GODANA(Deputy Secretary

of Kenya African National Union).....3rd DEFENDANT

AND

John Muthee Ngunjiri

Peter Otieno Oketch

Charles Maina Wandaka

Evans Ekaliche Attanasi

Silas Richard Mukolwe (Duly Registered Trustees

of Kenya African National Union Nakuru Branch.....OBJECTORS

JUDGEMENT

1. The Appeal before me stands or falls on the singular issue whether a Branch to a duly registered Political Party is a distinct and separate legal entity from the Party itself.
2. Prior to the enactment of the now repealed Political Parties Act, 2007, Political Parties in Kenya were registered under the provisions of the Societies Act. One such party was Kenya National African Union (KANU), the Grand Old Party (GOP) of Kenya Politics.
3. The Kenya Power & Lighting Company Ltd (KPLC) herein commenced this suit against KANU claiming the sum of Kshs.212,816,986.180/= on account of electricity supplied by the KPLC to it. As was required then the suit was brought against the Office Bearers of KANU.

4. In a Decision dated 7th August 2009 Lesit J. entered Judgment against KANU for the sum of Ksh.212,816,986.00/- together with interest at Court rates from the date of filing suit until payment in full and costs.

5. In execution of a Decree extracted pursuant to that Judgment, KPLC obtained an order for attachment of Nakuru Municipality Block 9/31(**the suit property**) A prohibitory Order against the property was issued by Court.

6. It is common ground that the suit property is registered in the name of “Kenya African National Union, Nakuru Branch, P.O. Box 1123 Nakuru.”

7. Enter John Muthee Ngunjiri, Peter Otieno Oketch, Charles Maina Wandaka, Evans Ekaliche Attanasi and Silas Richard Mukolwe being the duly registered Trustees of KANU (Nakuru Branch) into the proceedings as Objectors herein. They were objecting to attachment of the suit property.

8. The Objection was heard and on 28th July 2014 dismissed with costs by Hon D.W Nyambu (Deputy Registrar). In dismissing the Objection, the learned Deputy Registrar held as follows;

“All in all my finding is that, yes the Objector is the registered proprietor of the property. I also find that the Defendant and Objectors are the same. The body corporate is KANU. The Objectors are a branch of KANU”.

9. This is an appeal against that decision. Condensed, the Appeal essentially raises two grounds. That the Deputy Registrar erred in finding that the suit property which is registered in the names KANU (Nakuru Branch) could be attached and sold to satisfy a Decree against KANU. Second, that the Deputy Registrar’s decision contravenes the provisions of The Land Registration Act and the Constitution. The Appeal by agreement of Counsel and with the concurrence of Court, was argued by way of written submissions.

10. The Court has read and understood those written submissions and takes a view that this matter is really straightforward turning on the question whether KANU Nakuru Branch is a separate Legal Entity from KANU and should therefore not answer to the debt of KANU.

11. What is the legal status of KANU? In an Affidavit sworn by Awour Owiti on 12th August 2014 and made in response to the objection he deponed as follows:-

“5. The Defendants named in the heading were sued as representatives of Kenya African National Union. Subsequent to the filing of these proceedings Kenya African National Union was registered under the Political Parties Act, 2007. By virtue of that registration:

a. Kenya African National Union became a body corporate with power to sue and be sued under section 24 (1) of the Political Parties Act, 2007.

b. All funds, assets and other property, moveable and immovable, became vested in the registered political party in its corporate capacity under section 44(4) of the Political Parties Act, 2007.

c. All actions, suits and other legal proceedings pending by or against the original party were to be carried on or prosecuted by or against the new corporate party under section 44(7) of the Political Parties Act, 2007.”

That was not controverted by the Appellants herein and this Court takes the same position as the Deputy Registrar that KANU was registered under the political parties Act, 2007.

12. In an Affidavit sworn by Nick Salat on 16th August 2012 and filed on 16th August 2012 in support of an Application in the proceedings, he makes this revealing averment,

“That KANU obtained its full registration and therefore became a corporate body in May 2012. It is instructive to note that the Officials who succeeded the Defendants as sued in this suit were not enjoined in the proceedings. It is therefore doubtful that the service alleged to have been effected on the Party Headquarter was good service”.

It is therefore not in dispute that KANU is a body corporate.

13. Whether KANU was registered under the repealed Political Parties Act, 2007 or later under the Political Parties Act 2011, would not affect the outcome of this Appeal. Section 24(1) of the Repealed Act provides:-

“(1). A Political Party which has been fully registered under this Act shall upon such registration become a body corporate with a common seal and shall as such have, subject to subsection (6), perpetual succession and may sue and be sued in its corporate name”.

While Section 44(4), a Transitional Provision, provides:-

“(4). Upon the full registration of an Original Party under this act, all the funds, assets and other property, movable and immovable, which immediately before such registration were held by the Original Party or on its behalf shall, vest in the fully registered political party in its corporate capacity (hereinafter referred to as “the New Party”)”

14. As Correctly submitted by Counsel for the Respondents, as a consequence of the registration under Section 24(1) and by dint of the provisions of Section 44(4) all assets of KANU (the Society) vested in KANU (the Body corporate) and this must include Nakuru Municipality Block 9/31.

15. Even if it was accepted that KANU became a body corporate for the first time in May 2012 as averred by Nick Salat (see paragraph 12 above) and therefore was duly registered under the Political Parties Act (Act No.11 of 2011) the effect is the same for purposes of the matter at hand. Section 16(1) of The Political Parties provide:-

“(1) A political party which has been fully registered under this Act shall be a body corporate with perpetual succession and a common seal and shall be capable, in its own name, of—

(a) acquiring and disposing of property;

(b) suing and being sued; and

(c) doing or performing all such acts and things as a body corporate may by law do or perform.”

Once it became a body corporate, the branches of KANU could not exist as separate legal entities unless set up by separate legal instruments or provisions of law. For that reason, and for purposes of answering to a Court Decree, the property of the Branch is the property of KANU (the body corporate).

16. In the Affidavit sworn on 28th July 2014 in support of Objection the 1st Objection deponed as follows:-

4) THAT title No. Nakuru Municipality/Block 9131 is not the property of KANU Headquarters that is the Defendant in this matter.

5) THAT KANu Nakuru Branch owns its own property and doe its own business that is not regulated or controlled by KANU Headquarters.

The Appellants have not provided any evidence that KANU (Nakuru Branch) exists as a separate Legal Entity distinct from KANU.

17. A branch of a Political Party is not a separate and distinct Legal Entity from the mother Party unless there is a legal instrument or legal provision separating them. Nothing was shown to the Deputy Registrar to prove such separation or a distinction.

18. The argument that the Political Parties Act 2012 is subordinate to the Land Registration Act 2012 must be rejected. So must the argument that to reach a decision that Nakuru Municipality Block 9/31 belongs to KANU is to infringe on the Constitutional rights of KANU (Nakuru Branch). Having conceded that KANU (Nakuru Branch) is a branch of KANU, the inescapable conclusion to be made is that what belongs to the Branch belongs to the Party. The conclusion does not take away the suit property from the Branch as the Branch is part of the Party and does not exist as separate Legal persona.

19. In the end, I must hold that the Deputy Registrar reached a correct Decision and this Appeal is without merit. It is dismissed with costs.

Dated, Signed and Delivered in Court at Nairobi this 17th Day of November, 2016.

F. TUIYOTT

JUDGE

PRESENT;

S. I Mwangi for Appellant

Fraser for Respondent

Alex - Court clerk