



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL SUIT NO. 77 OF 2013

JOSEPH KIPLANGAT SOI 1ST PLAINTIFF

GEOFFREY CHEPKWONY 2ND PLAINTIFF

KIPSOI ARAP KOECH3RD PLAINTIFF

VERSUS

NICK SALAT, THE NATIONAL SECRETARY

GENERAL OF KENYA AFRICAN NATIONAL UNION (KANU)1ST DEFENDANT

JOSEPH KIPKURUI TOWETT,THE EXECUTIVE DIRECTOR OF KENYA

AFRICAN NATIONAL UNION (KANU)2ND DEFENDANT

THE NATIONAL EXECUTIVE COUNCIL, KENYA AFRICAN

NATIONAL UNION (KANU)3RD DEFENDANT

PARAMINDER SINGH 4TH DEFENDANT

SIMBACATE HOLDINGS LIMITED 5TH DEFENDANT

RULING

1. The Plaintiffs/Applicants filed a Notice of Motion dated 7th November, 2013 seeking the following orders:-

1) spent

2) spent

3. An injunction do issue restraining the Defendants jointly and severally either by themselves or their agents, employees, servants and/or other persons acting on their authority/instructions from trespassing unto, selling, disposing, occupying, alienating,

valuating and/or dealing in a manner detrimental to the plaintiffs and the duly registered proprietors of the suit property to wit Kericho Municipality L.R. NO 631/1034 now Kericho Municipality Block 5/422 pending the hearing and determination of this suit.

4. Spent

5) That the costs of the application be provided for.

2. The application is supported by the grounds appearing on the face of it as well as the Supporting Affidavit sworn by **Geoffrey Chepkwony**, sworn on **7th November, 2013** in which he deposes that he is the interim secretary of the Kenya African National Union (hereinafter referred to as “the Party”), Kericho branch; That the suit property situate within Kericho town is duly registered in the names of the trustees (all deceased) of the Party (Kericho Branch) ; That the Defendants/Respondents jointly and severally are in the process of disposing of the suit property and as such shall deprive the Kericho Branch its proprietary right over the suit land; That the Defendants/ Respondents are not trustees of the party Kericho branch and are fraudulently attempting to dispose the suit land.
3. The application is contested. The 1st Defendant filed a Replying Affidavit sworn on **18th November, 2013** in which he stated that he is the Interim National Secretary General of the Party. He contended that not all the plaintiffs/applicants were members of the party and in any case, individual Party members do not have a right to sue and maintain an action unless with the mandate of the Party; That the applicants have not exhausted the dispute resolution mechanism established by the party and or the Political Parties Disputes Tribunal before referring the matter to court. As such, he urges the court to find the application premature and bad in law.
4. The 1st Defendant further stated that the decision to dispose the suit property was as a result of a resolution by the Special National Executive meeting in which the members agreed to sell the suit property through its trustees; that the sale has been completed and the application is overtaken by events and ought to be struck out.
5. The application was argued before me on **26th November, 2013** by the Learned Counsel, **Mr. Miruka** for the Plaintiffs/Applicants and **Mr. Kurgat** for the Defendants/Respondents. I have considered their oral submissions in my analysis of the issues.
6. Before considering the application, the defendants/respondents raised a preliminary issue on *locus standi* of the applicants. **Mr. Kurgat** submitted that the 3rd Applicant names does not appear in the list of the party's members filed by the Independent Electoral and Boundaries Commission; That there is no evidence before the court to show the applicants are officials of the Party's Kericho branch; further, no evidence shows that the trustees of the Party's Kericho branch are deceased.
7. The principles of *locus standi* or standing determine whether a litigant is entitled to institute a particular dispute before the court. The purpose of ascertaining the legal standing of a litigant is among other reasons to ensure that the case is presented in the best way possible, by a person with real interest and to ensure that people do not meddle in the affairs of others.
8. I have perused the documents in the court record, the 1st and 2nd Applicant/plaintiffs have annexed copies of their membership card. It shows the 1st and 2nd plaintiffs/applicants are registered members of the Party at Kericho branch. Further, the Independent Electoral and Boundaries Commission also confirm the names of the 1st and 2nd plaintiffs/applicants appear in the register of members of the Party.
9. This suit is instituted by the applicants in their individual capacity and as life members of the Party. They therefore need not take out letters of administration as argued by counsel of the defendants/respondents as they are not seeking sue on behalf of the estate of the deceased trustees.
10. The 3rd Plaintiff/applicant did not annex any evidence showing his nexus to the suit property or the Party. However, our **Constitution, 2010** requires this Court to render justice without undue regard to technicalities of procedure and in particular where an error can be corrected through an amendment. To this end, I do find that the 1st and 2nd Plaintiff/Applicant have a real interest and a legal standing in this matter.
11. The second issue for the court to determine is whether or not to grant the applicants the orders

they seek. **Mr. Miruka**, learned counsel for the applicants submitted that the court has jurisdiction to hear the dispute between the parties. He further submitted the suit property is registered in the names of the trustees of the party (Kericho branch) (all deceased); that the defendants had proceeded to sell the said land fraudulently without substituting the deceased trustees and or seeking consent of members in whose trust the property is held.

12.**Mr. Kurgat**, learned counsel for the defendant was of a different position. He submitted that the case was prematurely before the court and the applicants ought to have exhausted the internal dispute mechanism provided for in the Party's Constitution.

13.**Article 21(1)** of the Party's Constitution provides as follows:

“No member, as a condition precedent for membership of the party, shall resort to a Court of Law for the resolution of any dispute arising out of the conduct of any Party matter, issue or affairs, unless the machinery herein established has been exhausted.”

14.**Article 21 (4)(a)(b) and (c)** establishes and operationalizes the Dispute Resolution Committee of the party. It is therefore right to state at this stage, that the applicants did not exhaust this avenue before resorting to court.

15.The principles of granting orders of injunction are well settled. First, an applicant must show he has a prima facie case with high chance of success. In the case before this court, the 1st and 2nd applicants have shown that they are members of the Party, Kericho branch. This fact is not denied by the Respondents. The applicants have demonstrated that the defendants are in the process of disposing the suit property. This fact is also admitted by the respondents. The question as to whether or not due process was followed by the respondents with consultations with the beneficiaries is to be heard and determined on full hearing. I am convinced that the applicants have shown a prima facie case with high chance of success.

16.Secondly, the applicants must show that unless the order of injunction is given, they would suffer irreparable loss. In this dispute, the applicants have alleged that the respondents are involved in the sale and purchase of the suit property. In their response, the respondent exhibited a copy of the Agreement for sale of the suit property. In my opinion, if this matter is referred back to the party to resolve the dispute, there is imminent danger that the sale process will proceed and the property shall be transferred in favour of the purchasers.

17.Thirdly, if the court is in doubt, the balance of convenience will be applied. Since I have no doubt, I do not need to consider this principle. However, I am convinced that the applicants will be most affected if the Party proceeds to sell the suit property without their participation and or consent.

18.From the above analysis, I do find that the motion is brought prematurely before this court. The applicants are hereby referred to the Party's Dispute Resolution Committee to resolve the dispute. However, this court further finds that the suit property in dispute is in danger of being disposed by the respondents. To this end, I invoke my discretion under **Order 40** of the **Civil Procedure Rules** and grant prayer 3 in the following terms;

“An temporary injunction do issue restraining the Defendants jointly and severely either by themselves or their agents, employees, servants and/or other persons acting on their authority/instructions from trespassing unto, selling, disposing, occupying, alienating, valuating and/or dealing in a manner detrimental to the plaintiffs and the duly registered proprietors of the suit property to wit Kericho Municipality L.R. NO 631/1034 now Kericho Municipality Block 5/422 pending the decision of the Kenya African National Union's Dispute Resolution Committee.

19.I further direct the matter be mentioned before this court on the progress of the tribunal on the 30th April 2014.

Costs will be in the cause.

Dated, signed and delivered on this 27th day of January 2014.

L N WAITHAKA

JUDGE.

PRESENT

Mr. Miruka for Plaintiff/Applicant

Mr.Orina holding brief for Mr.Kurgat for Defendant/Respondent

CC: Josphine Koech