



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

**ELC CASE NO. 616 OF 2013**

EVANS NAKHABALA WEKESA ..... PLAINTIFF

VERSUS

KENYA AFRICAN NATIONAL UNION ..... DEFENDANT

**RULING**

On 8<sup>th</sup> July 2013, I delivered a ruling in which I enjoined the defendant/respondent its servants, employees and/or agents from entering, demolishing, building structures, constructing, disposing or in any way interfering with the property/premises or plot No. MURANGA/MUNICIPALITY BLOCK 3/12 pending the hearing of this suit.

The defendant has now filed this Notice of Motion under **Order 45 Rule 1 Section 3A and 1A of the Civil Procedure Rules** and Act respectively seeking the following orders:-

1. *Spent*
2. *That this Court be pleased to review/discharge vary, set aside and/or expunge the interlocutory orders of injunction granted on 25<sup>th</sup> June 2013 and confirmed on 8<sup>th</sup> July 2013.*
3. *That the Court do declare that the entire application and the suit is fatal.*

The gist of the application basically is that the applicant (K.A.N.U) who are the defendants in this suit are an entity unknown in law and cannot be sued in it's own name. The application is supported by the supporting affidavit of KENNETH MARABU MWANGI the Chairman of K.A.N.U Murang'a Branch who depones, inter alia, that the officials of K.A.N.U both at the National and Branch level are known yet they were not sued thus rendering this suit fatally defective.

Submissions have been made by both sides and I have considered them together with the respective affidavits and other annextures.

It is not in dispute that the property subject of this dispute i.e. MURANGA MUNICIPALITY BLOCK 3/12 is registered in the names of EVANS NAKHABALA WEKESA the plaintiff in this suit and the respondent in this application. The Certificate of official search is self explanatory. There is also evidence that he has been paying the required rates.

The issue being raised in this application for review is that the defendant K.A.N.U (Kenya African National Union) being a political party, can only be sued in the names of it's trustees and not in it's own names. Mr. Mungai for the defendant/applicant has placed reliance on the Constitution of the party K.A.N.U and also on the case of **KIMANI NGUNJIRI VS DAVID MANYARA 2005 e**

**K.L.R.** I have looked at the said case of **KIMANI NGUNJIRI** (supra) and I find that it involved a dispute between two members of K.A.N.U and the Court made a ruling that such dispute should first be taken to the Tribunal Established under **Article 23** of the K.A.N.U Constitution before referring the same to Court. In the case now before me, the dispute involves K.A.N.U and the plaintiff who is not its member. In the circumstances, the **KIMANI NGUNJIRI** case (supra) is distinguishable from this case.

Being a political party, K.A.N.U is governed by the **Political Parties Act of 2011** which provides under **Section 16** that it has its common seal and shall be capable **in it's own name of suing and being sued**. In the circumstances, it is not open to the defendant/applicant to allege that the plaintiff has not sued the correct party or that K.A.N.U is not a legal entity capable of suing or being sued. **Section 16** of the **Political Parties Act** states categorically that it can sue or be sued in its own names. That submission by the defendant must be rejected.

It is also submitted on behalf of the defendant/applicant that the plaintiff/respondent has no locus standi to bring this suit and is therefore not deserving of the injunctive relief granted on 8<sup>th</sup> July 2013. For one to enjoy the benefits of injunctive relief, he must demonstrate a prima facie case with a probability of success apart from satisfying the other tests set out in the case of **GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358**. In this case, as I have already indicated above, the plaintiff/respondent has demonstrated that he is the registered proprietor of the parcel of land subject matter of this suit. He is therefore entitled to rights that are indefeasible as provided under **Section 28 of the Registered Land Act** (now repealed) under which the land is registered. As of now, there is no defence on the record that appears to challenge that right and in the circumstances, it would be a travesty of justice to find otherwise than that a prima facie case with a probability of success has been established.

On the issue of irreparable loss which is the second test in the **GIELLA** case (supra), I agree with the observation of Waki J in **MOHAMED VS COMMISSIONER OF LANDS & FOUR OTHERS HIGH COURT CIVIL SUIT NO. 423 of 1996 (MSA)**, that it is no answer to a prayer for an injunctive relief that the applicant may be compensated in damages and further that no amount of money can compensate the infringement of such a right or atone for transgressions against the law. I am satisfied that not only does the plaintiff/respondent have the locus to file this suit but also that the injunctive relief is well merited.

**Order 45 of the Civil Procedure Rules** under which this application for review is brought allows the Court to review any order if there is evidence of discovery of new and important matter or evidence that was not within the applicant's knowledge or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. This application was based on the claim that the party (K.A.N.U) has wrongly been sued in its own names but as I have already found above, the law allows it to sue or be sued in its own names. I therefore see no evidence, discovery of new and important matter or mistakes/error apparent on the face of the record or other sufficient reason to warrant a review setting aside or expunging of the orders issued on 8<sup>th</sup> July 2013.

In the circumstances, the defendant/applicant's Notice of Motion dated 29<sup>th</sup> July 2013 is accordingly dismissed with costs.

**B.N. OLAO**

**JUDGE**

**27<sup>TH</sup> JUNE, 2014**

27/6/2014

Before

B.N. Olao – Judge

Mwangi - CC

Mr. Wangai for Kinuthia for Applicant - present

Mr. Gachau for Mungai for Respondent – present

COURT: Ruling delivered this 27<sup>th</sup> June 2014 in open Court in the presence of Mr. Wangai for Mr. Kinuthia and Mr. Gachau for Mr. Mungai