



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CIVIL CASE NO. 4 OF 2001**

**1. HENRY INYANGALA**

**2. DRAKE F/ AMBUNDO**

**3. ISAAC MUGOGO.....PLAINTIFFS**

*(Suing on their own behalf and on behalf of Kakamega Teachers Housing Committee  
and Housing Contributors Group)*

**VERSUS**

**1. THE CHAIRMAN, KENYA NATIONAL UNION OF TEACHERS**

**2. THE CHAIRMAN KENYA NATIONAL**

**UNION OF TEACHERS BRANCH EXECUTIVE COMMITTEE.....RESPONDENTS**

**JUDGMENT**

This is a case heard by three previous judges. When the matter was mentioned before me, counsel for the parties, that is Mr. Mukavale for the plaintiffs and Ms Rauto for the defendants agreed to file written submissions and asked me to deliver judgment. For the record, the judges who took evidence in this matter are **Justice Chitembwe**, **Justice Lenaola** and **Justice Jaden**. The matter is a land matter. Since counsel for the parties agreed that I deliver judgment, I will do so.

This matter was filed in court through a plaint dated 16th January 2001. The plaintiffs sought the following orders -

- a. A declaration that Kakamega/Town/Block 1/81 and the building thereto are the properties of Kakamega Teachers House Contributors group;
- b. The defendants do give an account on income and expenditure of the house as prayed in paragraph 11 of the plaint.
- c. A declaration that the loan advanced and charging of the suit property was illegal and that the defendants should repay it and have the suit property discharged forthwith.
- d. An order directing the Chief Land Registrar to issue a title in respect of Kakamega/Town/Block 1/81 in the names of Kakamega Teachers House Contributors Group.

- e. A perpetual order of injunction restraining the defendants from managing, or in any other way interfering with the affairs of Kakamega Teachers Housing Contributors Group once the said orders are granted.
- f. General damages.
- g. Any other relief this honourable court may deem just to grant in the interest of justice.

After service of the plaint, a defence was filed jointly by the defendants. The defendants stated that there was no registered body known as Kakamega Teachers Housing Committee, on whose behalf the plaintiffs would purport to bring this suit. That the plot was acquired and developed by the Kenya National Union of Teachers (KNUT) and the question of the original contributors to the project would not arise as the property was under the control and management of KNUT. The alleged resolutions of 1988, 1989 and 1994 were denied. The defendants also stated that the accounts of the assets of KNUT were given at Annual General Meeting as required by the law.

The evidence tendered in court for the plaintiffs was firstly that of PW1 Drake Francis Ombundo, the 2nd plaintiff. He stated that he was an Assistant Education Officer in 1987 as well as KNUT official. He was aware that the Kakamega Teachers Contributors Group constructed a house on Kakamega Town/Block 1/81. He produced a copy of the green card from the Land Office. He stated that this was a representative suit for almost 2,000 members some of whom had died. It was his evidence that in 1987, a circular from KNUT Headquarters directed that all houses in Kenya built by old teachers be given to the said teachers. He produced a copy of that circular. It was his evidence that all contributors to the subject building were called and asked to elect a Committee to which the building would be handed over. He produced a letter written by the Executive Secretary on this as Exh/ 4.

It was his evidence that in 1987 a 13 people Committee was elected in which he was a member. He produced a copy of the minutes as Exh.5. He also stated that in December 1989 the old teachers Committee met with KNUT officials to discuss the matter, and it was resolved that the house be handed over to the old teachers. He produced exh. 7 and 8 to confirm the position. Further he stated that in May 1994, a resolution was passed that the building be officially handed over. He produced exh. 9 to support his position.

He stated also that there was a resolution that the name of the building be changed to Kakamega Teachers Contributors Group and relied on a document which he produced as Exh. 10.

He stated that currently, the property was registered under the name of KNUT. Their efforts to have it transferred to the Contributors Group had not been successful. He was aware that the property was used to secure a loan of Kshs.800,000/= from Kenya Commercial Bank, but insisted that the contributors were not consulted when the loan was taken. He concluded by stating that the property should be transferred to them and they be refunded the rent collected. The property should also be discharged by KNUT from the current loan obligation and that they be awarded damages and costs.

He was not cross-examined on his evidence.

PW2 was Henry Inyangala, the 1st plaintiff. He testified that he was a retired teacher, having retired in 1987. He was a member of the Kakamega Teachers Contributors Group. He supported the evidence of PW1 and stated that he was the Chairman of the Contributors group. He stated further that deductions were made from their salaries for the project and that it was the contributors group who put up the building.

He was not cross-examined by Mr. Nandwa for the defendants. That was the close of the plaintiff's case.

The defendants called DW1, Robert Okwora who testified on 3rd March 2010. It was his evidence that he became chairman of KNUT on September 2008. That he had heard of Kakamega Teachers Housing Committee and Housing Contributors Group, but did not know their officials. He stated that the plot was registered in the name of KNUT, and that the offices were situated therein.

He was not aware of any resolution to transfer the plot to the plaintiffs. It was his evidence that in 1988 he was in High School and did not know the happenings in KNUT then. In his view, a decision of the magnitude alleged to transfer the property, had to be ratified by the National Executive Council of KNUT. When shown exh.2, he stated that it was a list of members but was not sure of its authenticity as their TSC Numbers and ID numbers were missing. He was not aware of contributions made by the plaintiff's group.

When shown Exh. 11, he stated that it was a Notice of a House Committee signed by B. Magwagwa, Executive Secretary, KNUT Kakamega on 6/5/1988. According to him, the record of payments showed that the payments for the plot and the building were by KNUT, Kakamega Branch.

He was cross-examined. He stated that he received records from the outgoing Chairman a Mr. Gitonye. He stated that records were kept by the Executive Secretary. When shown exh.2 which was a list of teachers who contributed to construction of the Kakamega Teachers building as at 1/10/68, he stated that he could not tell how records were kept then. He accepted that Mr. Magwagwa was once the Executive Secretary. He stated that he only had records of the current branch members and that he could not get the records as far back as 1968. He emphasized that the building belonged to the union (KNUT).

The second defence witness DW2 was Francis Anguba, a teacher at Amalemba Primary School. He stated that he was the KNUT Kakamega Branch Vice-chairman from 1991 to 1996. He became Chairman from 1996 to 2001 and Branch Executive Secretary from 2001 to 2006. He stated that he did not know PW2, Henry Inyangala and had only seen his records in the office.

When shown exh.1, he stated that the land belonged to KNUT. He stated that exh.2 was a list of teachers who contributed to the construction of the building as at 1st October 1968, but that it was not authentic. According to him, teachers contributed to the construction of the offices, but the building remained the property of the KNUT National Trustees. He stated that exh.3 was a speech from the Secretary General of KNUT during the Kakamega Annual General Meeting. The speech stated that Title Deeds should remain in the name of the Union. He stated that exh.4 was a meeting held on 26/10/87 where it was resolved that contributors should take over the house, but it was not clear if a committee was elected to take over the building.

He stated that though exh.5 was a list of Interim Committee members, it was not clear if the actual committee was elected. He stated that his interpretation of Exh. 9 was that the Interim Housing Committee was going to meet again and make a resolution on the handing over of the building to the old contributors. Secondly, that the name had to be changed from KNUT House to Teachers House, and a certificate issued. However, he had not seen that certificate though the report was actually made by the Executive Secretary.

He was not aware that teachers had decided how the building was to be held. According to him, all resolutions in such matters had to be taken to the Union's (KNUT) Annual General Meetings. When shown Exh.5, he stated that there was a proposal to form Kakamega Teachers Investment Co. Ltd. He was however not aware that such a company was ever registered or whether the proposal was put to members for ratification.

According to him, the lease hold interest for the land expired in 2003 and was renewed in 2005. He stated that the plaintiffs were not a genuine entity. That the Trustees of the Union hold the properties. That all properties of the union were meant to be used for administrative operations of KNUT, thus contributions from members were never refunded. He stated that KNUT could procure a loan on security of the property if it wanted to do so.

He was cross-examined. He stated that he had served Kakamega KNUT branch for 15 years, and was conversant with its operations. That the KNUT Trustees were at the National Office. He stated that the disputed plot was not registered in the name of the KNUT Trustees, but maintained that the trustees oversaw all branch properties including the one in Kakamega. He stated that Article 13 of the Constitution had not been breached. He stated that he knew one Drake Ambundo claiming ownership of

the building.

According to him, from the records, the building was constructed between 1967 and 1977, but he had no records of the contributors. He admitted that he found scanty records of members of KNUT in Kakamega from whom deductions were made. He had however come across records of Kakamega Teachers Contributors Group.

He stated that the building had tenants upto 2006 which included a medical clinic and a bookshop. He stated that Dr. Khalwale operated a clinic which he had now closed. According to him, under Article 10 (c) of the Constitution, the Union (KNUT) Branch Executive Committee could mortgage the Union property by consent from the National office. He stated that he had no copy of such consent to mortgage the property. He stated that during his time in office, they had secured overdraft facilities using the title for the plot. He stated that he was unable to say who contributed to the construction of the building.

He admitted that B. Magwagwa, the Executive Secretary had issued a Notice to all members of the Teachers Committee that the building be handed over to the contributors. However, he had not seen a certificate issued in the teacher's name.

DW3 was Bitonye Laban Wakhisi. He testified on 13/6/12. It was his evidence that he was the Executive Secretary of KNUT Kakamega Branch. That he had taken office the previous year. That Article 2 of the Constitution of KNUT described the institution as a service, not an enterprising body. He stated that the building in question was put up for the purposes of providing administrative services to members, who were teachers. He stated that members contributed to the Union Head Quarters in Nairobi, and had a similar facility in Nairobi. The Branch office served as an administrative centre and members would come for solutions to their problems such as retirement benefits. That no member was entitled to any share of the properties of KNUT. That the plaintiffs did not have any claim to the property, as it belonged to the KNUT.

In cross-examination, he stated that he did not know the history on how the property in question came to exist. He admitted not having seen the 1987, 1988 and 1989 minutes and resolution regarding registration of the property in the name of the contributors. He admitted that there were tenants in the building who paid rent. He stated that the rent collected facilitated the services rendered to teachers.

He stated that KNUT Kakamega operated on overdraft using the same property. He also stated that they took loans to furnish the office. However, he did not bring the Constitution to court. He emphasized that no member was entitled to ownership of the property in question. He was not aware of the resolutions that the property be registered in the names of the plaintiffs. He stated that the extract from the land register showed that the property was registered on 19/4/1984. He admitted that they kept records of all contributors at the Kakamega Central office, including those who had died or retired.

That was the evidence of both the plaintiffs and the defendants.

The plaintiffs through their counsel, Onsando Getanda & Co. advocates filed their written submissions in October 2012. The defendants through their counsel J. J. Mukavale filed their submissions in February 2014. Counsel relied on written submissions filed. I have perused the submissions. No case authority was cited to me.

This is a dispute on ownership, registration and management of a developed plot at Kakamega. The plaintiffs who came to court in a representative capacity, stated that the building belongs to them and that it should be registered in an institution called Kakamega Teachers Housing Contributors Group. The defendants claim that the building belongs to KNUT and that it cannot be registered in the name of the group. Firstly, because that group is not a registered land entity. Secondly, even assuming that the plaintiffs were contributors, they like all other teachers could not claim direct benefit or ownership to the building.

The main prayers in the plaint herein are for declarations. Having evaluated the evidence on

record, it is clear to me that it is admitted on both sides that the building was put up through contributions by Kakamega teachers from around 1967. The names of those teachers have not been ascertained because the office has not kept proper records.

However, it appears that teachers who were teaching in Kakamega area starting from 1967 contributed to the construction of the building. The minutes produced by PW1 were not controverted through cross-examination. The evidence of the Plaintiff's witnesses therefore stands. The evidence of the defendant's witnesses, who denied some of the contents of documents produced by the plaintiffs, was in my view an afterthought. That is so because the evidence of the two plaintiffs' witnesses was not challenged through cross-examination, though the defendants were represented by an advocate throughout. Though the defendants claim that the building belongs to Kenya National Union of Teachers (KNUT) no evidence was tendered to support that contention.

The defendants stated that properties of the Union were held by National Trustees. They nonetheless admitted that this particular property was registered in the name of KNUT Kakamega not the National Trustees. They also admitted that if the property belonged to KNUT, the local Branch would have required consent from the National Trustees before charging the property. The branch nonetheless secured loans from Banks and I.C.D.C. without obtaining consents from the National Trustees of KNUT. That in my view shows that the property does not belong to the National body called KNUT.

The minutes and other documents produced by the plaintiffs show that successive Branch Officials as well as the National Secretary General of KNUT, Abrose Adongo, had indicated many years back, that the asset be registered in a suitable name of the Kakamega teachers who contributed to its construction. This in my view establishes that the KNUT is neither the registered owner, nor interested in owning or retaining the property. It is my finding therefore that the building belongs to contributors who were teachers in Kakamega area, but somehow registered in the name of the Kakamega KNUT Branch.

Can the building be registered in the name of the Teachers House Contributors Group as requested? In my view, it currently cannot. The first reason is that the group is not a registered entity, and therefore is cannot be the registered owner of a land property. Secondly, the membership of the group is not certain. It will serve no purpose to order that the property be registered in the group as requested. Courts should not act in vain, and I would not do so in the present case. Therefore, prayer (d) of the plaint cannot be granted.

That problem of the non registration of the Kakamega Teachers House Contributors Group cuts across all other prayers. However, looking at all the prayers sought, this court can still give certain orders, in order to do substantive justice. The names of some of the people who were contributors, were given in the list of those who authorised the three plaintiffs to come and sue for them. Being a representative suit, they did not have to sue through a registered or legally recognized institution. Therefore in my view, appropriate orders in favour of the three plaintiffs can be given to serve the interests of justice.

In my view, the plaintiffs have proved their case on the balance of probabilities. They proved that they, among others contributed towards the acquisition of the land asset and putting up the office building therein.

I find that the defendants have not shaken the plaintiffs claim on the financing and the construction of the property. I also find that the defendants have not accounted to the plaintiffs on what they are doing with the property. I find that the plaintiffs have proved their claim. The plaintiffs' case succeeds. In the result, I will issue some orders in favour of the plaintiffs as follows -

1. I declare that the subject land property and the building are the property of the plaintiffs and the teachers who contributed to it (currently called Kakamega Teachers House Contributors Group).
2. I order that the defendants do give the income and expenditure of the house to the plaintiffs herein as prayed in paragraph 11 of the plaint.
3. I order that the parties do find an amicable way of resolving the issues of registration of the

- property and building as indicated in the minutes and document produced by the plaintiffs herein to have the property registered in the name of a properly constituted institution of the teachers contributors, and that thereafter seek formal registration with the Government Land Registration authorities. The existing charge for a loan on the property will also be resolved under this order.
4. That in effecting 3 above, the parties be at liberty to use arbitration or mediation procedures.
  5. I award the costs of these proceedings to the plaintiffs.

***Dated and delivered at Kakamega this 19th day of June 2014***

**George Dulu**

**JUDGE**