



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NUMBER 457 OF 2013
THE LAW SOCIETY OF KENYA. PLAINTIFF
VERSUS

MARTYN DAY
LDIGH DAY
KENYA HUMAN RIGHTS COMMISSION DEFENDANTS
GITU WA KAHENGERI

AND
MAU MAU GOVERNING COUNCIL OF KENYA. APPLICANT

RULING

The application before the court is the Notice of Motion dated 22nd January, 2014. It is brought by a Third Party and seeks mainly that the applicant therein: - **Mau Mau Governing Council of Kenya**: - be enjoined in this suit as a co-plaintiff.

The grounds upon which the application is based are that: -

- a. The applicant, which is registered under the Societies Act, was so registered on 13th November, 2013.
- b. It represents the Kenya **Mau Mau War Veterans** whose interest is to be compensated by the British government, an issue which is the substance of the cause of action of the Plaintiff in this suit.
- c. The applicant has a substantial interest in the cause of action warranting it to be enjoined in this suit.

- d. The applicant's interest was hijacked by others including the Plaintiff who failed to enjoin all the members of the class the Plaintiff presently represents.

The applicant accordingly said that in not representing in this suit, all the Mau Mau members in Kenya, including those now forming the applicant society, the Plaintiff erred and discriminated against the applicants and that such an unconstitutional and unjust and unfair situation, can only be corrected by enjoining the applicant.

This application is brought under Order I Rule 10 of the Civil Procedure Rules. The application was seriously opposed by the Defendants in this suit but fully supported by the Plaintiff. The Defendants' position is that the applicant does not demonstrate a sufficient interest and qualification to qualify to be enjoined as a co-plaintiff in this suit. They stated that the applicant is not qualified to be a party in any suit because it is not a corporate body but merely a society registered under the Societies Act and has no legal capacity to sue or be sued. Secondly, they argued that the suit into which they seek to be enjoined is a finalized and finally determined suit, remaining only for the distribution of the judgment funds to the decree-holders. In those circumstances, they, argued, the applicants cannot possibly have any interest in a judgment belonging to others. Thirdly, the Defendants argued that when the judgment and decree was obtained, the applicant herein was not in existence as it had not been registered. That is to say, that at the time the cause of action was filed in court as this suit and when the cause of action was realized, the applicant was not in legal or factual existence. Finally, the Defendants also argued that this suit itself may turn out to be incompetent under Order V rule 21-22 of the Civil Procedure Rules.

I have carefully considered the application. It has been brought to the attention of this court that the applicant has no capacity to sue or be sued, the Applicant being a mere society registered under the Societies Act and not more. That fact, although strongly raised by the Defendant was not denied nor controverted in any way. If this court accordingly allowed this application, it would have done so in vain as the applicant has no capacity to be a party.

Secondly, the suit into which the applicant wishes to be admitted as a Plaintiff, has already been finalized. There is no position for a Plaintiff still open as the present plaintiff is already a decree holder and the prospects of reversing the process has not been demonstrated to be possible in law. The court cannot, therefore, be able to admit the applicant as a co-plaintiff as that would not be practical.

Finally, the applicant's members, including their formed clubs were always available and could have sought to be enjoined in the suit before the suit was finally determined. They did not however, do so until in the view of this court, it was too late. This court cannot help parties who heavily slept on their rights until too late.

In the above circumstances, this application raises no merit or practical justification and must fail. It is hereby dismissed with costs. Orders accordingly.

Dated and delivered at Nairobi this 16th day of September, 2014.

.....

D A ONYANCHA

JUDGE