



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 363 of 2012

KENYA CONSORTIUM TO FIGHT AIDS, TB & MALARIA.....1ST PLAINTIFF

PROF. EDWARD KARANJA.....2ND PLAINTIFF

VERSUS

BRIGITTE MUKUI KITENGE.....1ST DEFENDANT

JOSEPH KIRUI.....2ND DEFENDANT

ENOCK NYAMBOKI.....3RD DEFENDANT

KANINI MICHAEL.....4TH DEFENDANT

GEOFFREY W. CHEGE.....5TH DEFENDANT

RULING

1. By his Motion on Notice dated 17th July 2012 expressed to be brought under the provisions of Order 51 Rules 1 & 10, Order 40 Rules 1(a), 2 and 4 of the Civil Procedure Rules and all other enabling provisions of the law, the applicant herein seeks the following orders:

- 1. That this application be certified as urgent and service thereof be dispensed with in the first instance.**
- 2. That an order of this Honourable court do issue restraining the 1st, 2nd, 3rd, 4th, and 5th defendants whether by themselves, their proxies, agents/or servants from meddling with affairs of the 1st applicant an from conducting any further business, passing any resolutions, acting upon or in any manner whatsoever implementing any agenda, from calling conducting holding and or issuing any Notice(s) of the General, Special and or Extra Ordinary Meeting(s) of the Kenya Consortium to Fight AIDS, T.B. and Malaria (KECOFATUMA)**
- 3. That an order of this Honourable court do issue restraining the 1st, 2nd, 3rd, 4th and 5th defendants whether by themselves, their proxies, agents, and/or servants from holding themselves out or passing themselves out as officials, directors, board members, employees, agents/or servants of the Kenya Consortium to Fight AIDS, T.B and Malaria (KECOFATUMA) and from dealing with the management of the 1st Plaintiff.**

4. That an order of this Honourable court do issue restraining the 1st, 2nd, 3rd, 4th and 5th defendants whether by themselves, their proxies, agents and/or servants from trespassing onto, entering and or accessing the business premises of the Kenya Consortium to Fight AIDS, T.B and Malaria (KECOFATUMA).
5. That an interim order of injunction do issue restraining the 1st, 2nd, 3rd, 4th and 5th defendants whether by themselves, their proxies, agents, and/or servants from purporting to hold any meetings of the 1st Applicant and from meddling with the affairs of the 1st applicant and to desist from holding themselves out as officials of the 1st plaintiff.
6. That an order of injunction do issue against the 1st, defendant whether by herself, her proxies, agents and /or servants from purporting to act as the 1st plaintiff's national secretary, agent, employee, servant and or employee.
7. That the defendants whether by themselves, their proxies, agents and/or servants be restrained from using, holding, and from continuing to hold and use all stationery, identity letters and cards, materials (including letter heads and all branded materials) belonging to the 1st plaintiff, and a mandatory order requiring them to return all such stationery, materials, identity letters and cards.
8. That the costs of the application be borne by the Defendants in any event.

2. The application is based on the following grounds:

- a. On or about the 1st day of August 2010, the 1st Defendant was employed as an employee of the Kenya Consortium to Fight AIDS, T.B and Malaria (KECOFATUMA) charged with the duty and portfolio of a Programme Director with a gross monthly remuneration of Kshs 26,500/=
- b. However, on or about the 30th November, 2010, the 1st Defendant's contract of employment was summarily terminated owing to insubordination and gross misconduct on the part of the 1st Defendant.
- c. Despite the dismissal of the 1st Defendant, she has been attempting to usurp the authority of the duly constituted Board of Directors of Kenya Consortium to Fight AIDS, T.B and Malaria (KECOFATUMA).
- d. The 1st Defendant has in cahoots with the 2nd, 3rd, 4th and 5th Defendants been holding out themselves as the employees, agents, servants, directors and management of the Kenya Consortium to Fight AIDS, T.B and Malaria (KECOFATUMA).
- e. The defendant's have allegedly, wrongfully and illegally altered the directorship, registered offices, email and bank accounts in a bid to fleece donors of the Kenya Consortium to Fight AIDS, T.B and Malaria (KECOFATUMA) and obtain funds in the name of the Kenya Consortium to Fight AIDS, T.B and Malaria (KECOFATUMA).
- f. The NGOs Co-ordination Board has on numerous occasions confirmed that the Defendant's were not the registered officials of the Kenya Consortium to Fight AIDS, T.B and Malaria (KECOFATUMA) and thus had no locus and or right to hold themselves out as employees agents, servants, and or directors of the Kenya Consortium to Fight AIDS, T.B and Malaria (KECOFATUMA)
- g. The Defendant's have blatantly disregarded the directive by the NGOs Co-ordination Board and are attempting to illegally alter the constitution of the Board of directors of the Kenya Consortium to Fight AIDS, T.B and Malaria (KECOFATUMA) in complete disregard of the organization's constitution.

h. The failure by the Defendant's to desist their ill advised actions and misrepresentations are prejudicing the plaintiff's goodwill and relations with its donors, sponsors and the general public and the Kenya Consortium to Fight AIDS, T.B and Malaria (KECOFATUMA's) constitution is being curtailed by the Defendants' actions and representations.

i. The defendants have even attempted to open parallel bank accounts in the name of the 1st plaintiff to facilitate their efforts to fleece the 1st plaintiff's sponsors, donors and well wishers.

j. The good will of the applicant has been irregularly tarnished and reduced by the 1st to 5th Defendant's actions resulting in the donors and sponsors shying away from funding the activities and programmes of the applicant.

k. Should the intended illegal' general meeting' and the defendants be allowed to continue with their meddling interference and illegal actions and misrepresentations that they are the Board members of the organization, the plaintiff shall be exposed to irreparable damage.

l. That this application has satisfied the legal threshold governing the grant of injunctive relief.

3. The application is supported by an affidavit sworn by **Prof. Edward Karanja**, 2nd plaintiff herein on 17th July 2012. According to the deponent he is the Chairman of the 1st plaintiff and a Director of Kenya Aids Watch Institute (KIWI), a research firm that specialises on HIV & AIDS-related issues based in Nairobi and a member of the 1st plaintiff since its inception. The first plaintiff, it is deposed, is an umbrella body of Civil Society Organisations (CSOs) in the health sector which include NGOs, CBOs and FBOs and was founded around 2003 and spearheaded by, among other organisations, KAWI, PURPLE IMAGES, MCDI, GLOBALCOM, ALBA LIGHT, BAR HOSTESS, MEDI, FOPHAK, PEHUCCI, ACE AFRICA, HOYWIK, KENWA.

4. According to the deponent, the 1st defendant and her organisation IRDP have never been paid up members of KECOATUMA despite the opportunity availed to her organisation in 2004 which was necessary to qualify her organisation as either Board member for which she had been initially appointed, or ordinary member although the 1st defendant's organisation was a beneficiary of workshop trainings, state of the art info on health-related issues. Despite not being a paid up member of the 1st plaintiff the 1st defendant in 2010 pleaded with the 2nd defendant to employ her at the 1st defendant while being aware that the 1st plaintiff had won Global Fund Round 7 project. Accordingly, the 1st defendant was engaged as an employee by the organisation on or about the 1st August 2010 under the portfolio of Programme Director tasked with the duty of managing and overseeing the implementation of the organisations programmes and more in particular, the strengthening HIV & AIDS Response through Behaviour Change Communication Capacity at the grassroots. It is however, deposed that owing to insubordination and gross misconduct around other employees and sponsors, mismanagement and failure to follow laid down procurement procedures, the 1st defendant's contract was terminated on or about the 30th November 2010. Thereafter, it is deposed the 1st defendant declared herself to be a Board Member and Secretary of the 1st defendant with a right to manage Global Fund 7 Aids Project and proceeded to physically take over the said office and with the co-operation of the defendants assumed total control of the funds and interfered with the 1st defendant's activities. Despite these activities being reported to the police no action was taken.

5. As a result of the 1st defendant's interference with the activities of the 1st plaintiff, it is deposed that the 1st plaintiff's donors and sponsors have shied away and are turning down the plaintiffs' application for funding in projects that they had agreed to fund. If the respondent's actions and misrepresentations are allowed to proceed, it is deposed that the 1st plaintiff stands to suffer heavy losses and damage which the plaintiffs implore the court to forestall.

6. In opposition to the application the Defendants filed the following grounds of opposition:

1. **THAT the plaintiffs have not made out a case for injunction and the principles set out in *Giella vs. Cassman Brown* have not been satisfied.**

2. **THAT there has been no full disclosure on the part of the 2nd plaintiff and he is undeserving of the equitable remedy sought.**

7. The Defendants further opposed the application by way of a replying affidavit sworn by **Brigitte Mukui Kitenge**, the 1st defendant herein. While challenging the competency of the application, the deponent contends that the 1st plaintiff is a Non-Governmental Organisation duly registered with the NGO's Co-ordination Board which is the body tasked with overseeing and regulating the operations of such organisations. According to her there is no provision in the genuine Constitution of the 1st plaintiff for levying registration and full membership fees. According to her she has been involved with the affairs of the 1st plaintiff since its registration both as a member and also a member of its Board and is unaware of any loan accessed by the organisation from any entity. In her view the 2nd plaintiff's continued hold on the position of the Chairman of the 1st plaintiff is unlawful and without mandate from the membership of the organisation and contrary to the constitution of the 1st plaintiff hence the 2nd plaintiff has continued to treat the 1st plaintiff as a personal outfit rather than a corporate entity by not convening a general meeting of the 1st plaintiff despite the directions of the NGO's Coordination Board.

8. According to her she was not offered employment but that upon the 1st plaintiff receiving the Global Fund Round 7 Project funds, she was requested to take up the position of the programme director on the dismissal of the previous programme director. The disagreement between the 2nd plaintiff and the 1st defendant according to the deponent arose from the refusal by the 1st defendant to sanction corruption and unprocedurally processes in the implementation of the funded programmes of the organisation. Even after her termination as the 1st plaintiff's programmes director, the 1st defendant deposes that she remained as a Board member of the 1st plaintiff. According to her the defendants have not been involved in any of the incidents alleged by the 2nd plaintiff. According to her, her involvement with the affairs of the 1st plaintiff have been legitimate, in accordance with its constitution and with the express approval of the NGO's Co-ordination Board and that the general meeting initially scheduled for 18th July 2012 had been convened in a legitimate exercise of a mandate given by the constitution of the 1st plaintiff and in the realisation of the fact that the 2nd plaintiff was keen to continue disregarding the provisions of the said supreme documents of the organisation by frustrating the holding of the first general meeting of the 1st plaintiff since its registration despite numerous directions by the statutory regulator in this regard. According to her the failure by the 1st plaintiff to attract funding is solely attributable to the 2nd plaintiff who has disregarded the organisation's constitution. According to her the 2nd plaintiff has approached the court with unclean hands with the intention of frustrating the attempts of the 1st plaintiff to operate within the terms of the constitution.

9. In their submissions the plaintiffs, while reiterating their case as set out above, contended that from the evidence tendered the Defendants are not members, agents, employees nor officials of the 1st plaintiff yet there is evidence of their intermeddling with the affairs and activities of the 1st plaintiff. Relying on **Kathangariri Tea Factory Co. Ltd vs. Harrison Mugo Marimba & 3 Others [2006] eKLR**, it is submitted that the power to injunct the Defendants from further holding themselves out as officials, members, agents and or employees of the 1st plaintiff. According to the plaintiffs, the body governing Non-Governmental Organisations has confirmed who the bona fide members of the 1st plaintiff are. Since the Defendants have not controverted the Plaintiffs' evidence, the court is urged to find so and injunct the Defendants.

10. On behalf of the Defendants, it is submitted, while reiterating the contents of the replying affidavit that the prayers sought in the application, if granted, would persist in perpetuity since they are not intended to subsist until the final determination of the suit. . According to the Defendant what are being sought are final orders at an interlocutory stage which is against public policy of the law hence the

application ought to be struck out. It is further submitted that since the orders sought in the application are the same as the ones being sought in the plaint, if the applicant were to succeed at this stage, there would be nothing left to go for trial as the entire suit would have been determined which is not the purpose of Order 40 of the Civil Procedure Rules. In support of this submission, the Case of **Monica Wangari Ruthi & Another vs. Kenya Commercial Bank Ltd & Another HCCC No. 82 of 2009** is relied upon.

11. It is further submitted that the applicant has not shown that there is any property in dispute which is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree neither is there a dispute before court about the alleged breach of contract hence Order 40 rules 1 and 2 of the Civil Procedure Rules cited do not apply and based on **Chandresh Kumar Babariya & 4 Others vs. Mukesh Manubhai Patel & Another Milimani HCCC No. 163 of 2012**, it is submitted that an application for an interlocutory injunctive relief cannot properly lie.

12. On the merits of the application it is submitted that in an application for interlocutory injunction the court considered the conditions for grant thereof sequentially so that if the first condition is not met, then it would be unnecessary to consider the other two. Further the remedy of injunctive relief being equitable, it is submitted that the court is not limited to the three conditions but must consider whether the conduct of the applicant is in consonance with the dictates of equity and the Defendants rely on **Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**.

13. In the Defendant's view, the 2nd plaintiff being an official of the 1st plaintiff which is a body corporate under section 12(3) of the ***Non-Governmental Organisations Act***, 1990, has no claim against the defendants in these proceedings. It is contended that since the issue of resolution to bring these proceedings was contested, it was upon the 1st plaintiff to satisfy the court that it had obtained appropriate resolution to commence these proceedings. It is the Defendants' position that without calling for Annual General Meeting, it is the 2nd plaintiff who has continued to impose himself upon the organisation and such conducts stifles the desired internal democracy. According to the Defendants there is neither evidence showing the membership of the Board of the 1st plaintiff nor is there evidence as to when the Annual General Meeting which elected the alleged members of the Board were elected. It is the Defendants' view, therefore, that the plaintiffs have not met the threshold on which the orders sought can issue.

14. I have considered the application, the affidavits both in support of and in opposition to the application and the rivalling submissions.

15. The first issue for determination is whether the application is incompetent on the basis of seeking orders in perpetuity as opposed to temporary orders. Order 40 of the Civil Procedure Rules deals with "Temporary Injunctions and Interlocutory Orders". Accordingly, under that Order the Court's jurisdiction is limited to grant of temporary injunctions and interlocutory orders. According to **Snell's Principles of Equity (21st Edn) by R E Megarry and P V Baker at page 578**:

"A perpetual injunction is granted only after the plaintiff has established his right and the actual or threatened infringement of it by the defendant. An interlocutory (or interim) injunction, on the other hand, is granted before the trial of an action; its object is to keep things *in status quo* until the question at issue between the parties can be determined. Accordingly, the plaintiff may obtain it without making out a case which will necessarily entitle him to a perpetual injunction. It follows that a perpetual injunction is so called because it is granted at the final determination of the parties' rights and not because its operation will necessarily last for ever. For example a perpetual injunction may continue only during the currency of a lease".

16. In their Notice of Motion dated 17th July 2012, apart from prayer (5) thereof all the prayers seeking injunction are not expressed to be interim, temporary or interlocutory. In fact the way the said prayers are crafted, they seem to be seeking perpetual injunctions. In **The Headmaster Kiembeni Baptist Primary School & Another vs. The Pastor of Kiembeni Baptists Church Mombasa HCCA No. 103 of 2004**, Maraga, J(as he then was) held that when dealing with applications for interlocutory

injunctions it is wrong to grant a permanent injunction whose effect is to conclusively decide the suit as issues of fact should be decided after hearing evidence and that Courts should be wary of parties who make applications for interlocutory injunctive orders which if granted as prayed would have the effect of granting permanent or mandatory injunctions and sometimes even eviction orders as order 39 does not provide for grant of permanent injunctions at interlocutory stage. The same position was taken by **Tanui, J** in **The Official Receiver ex parte Paul Rotich Cheor vs. Barclays Bank of Kenya Kisumu HCCC No. 17 of 2004** and **Samuel Benjamin Obura vs. Kenya Commercial Bank Ltd Kisumu HCCC No. 91 Of 2003**. In the said cases the learned Judge variously held that Order 39 [now Order 40] of the Civil Procedure Rules does not empower the Court to grant a permanent injunction and an application seeking such orders is incompetent and that where an application for injunction is couched in words which appear to convey that the application is for perpetual injunction such an application is for dismissal.

17. It may be argued that the omission to specify that what was being sought was a mere error that ought to be excused. However, in **Richard Muema Bondo Vs. George Mutuku Nyumu & Another Machakos HCCC No. 105 of 2000** Lenaola, J expressed himself as follows:

“The plain in the instant case seeks orders that cannot be granted. The substantive prayer is a “temporary injunction pending hearing and determination of the suit”. That prayer was in fact granted and it is really basic that a “temporary injunction” cannot be issued as the “final” orders of a court in any suit. It may be said that it was merely an error and the plaintiff meant a “permanent injunction”. That may well be so but the Plaintiff’s suit has been pending in court for eight years and he has had advocates appearing for him at all times including a now deceased retired judge. How can it be an undetected error for so long? In any event, the Court is only speculating because no one has said that the issue is in fact an error.”

18. Although the competency of the application was raised very early in the proceedings the applicants did not deem it fit to amend their application. It therefore follows that save for prayer 5 of the Notice of Motion dated 17th July 2012, prayers 2, 3, 4, 6 and 7 are incapable of being granted at this stage of the proceedings. The same are hereby disallowed.

19. The second issue taken by the Defendants is that the grant of the prayers sought herein will have the effect of determining the suit herein. The mere fact that the orders sought may have the effect of finally determining the suit is not necessarily a ground for disallowing an application for injunction. In mandatory injunctions for example the grant of the orders invariably has the effect of determining the issues in the main suit hence the stringent conditions for the grant thereof. However the grant of an injunction being an exercise of discretion the Court will take into account the effect of the grant of the orders sought on the pending suit in deciding whether or not to grant the same. In light of the determination made herein above it is no longer necessary to make a determination on this ground of objection.

20. The third issue raised by the defendants is that the provisions of Order 40 rules 1 and 2 of the Civil Procedure Rules do not apply since there is neither a property which is in danger of being wasted nor is there an allegation of breach of contract. However, a reading of rule 2 thereof clearly reveals that the rule also applies to a “suit for restraining the defendant from committing...other injury of any kind, whether compensation is claimed in the suit or not”. In my view, this suit falls under that category of cases hence the objection on that ground cannot be sustained.

21. The principles guiding the grant of interlocutory injunctions are well settled. Firstly, an applicant must show *a prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. See **East African Industries vs. Trufoods [1972] EA 420; Giella vs. Cassman Brown & Co. Ltd [1973] EA 358.**

22. In an interlocutory application, however, the Court is not required to make any conclusive or definitive findings of fact or law, on the basis of contradictory affidavit evidence or disputed propositions

of law though it is properly entitled to express a *prima facie* view of the matter and to consider what else the deponent to the supporting affidavit has stated on oath which is not true. A *prima facie* case is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. See **Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others [2003] KLR 125.**

23. In this case it is conceded by the 1st defendant that her appointment to the position of Programme Director for Global Fund Round 7 was terminated. Although she contends that he is a Board member, she has not showed that she is entitled to take the actions complained of by the plaintiffs. In any case, she denies that she has taken the said actions. Her main concern, according to her, is to see that the Constitution of the 1st plaintiff is adhered since she is a member of the Board.

24. Whereas the Court is cognizant for corporate entities to comply with their Constitution and bylaws, there are proper legal machineries for enforcement of such obligations which parties ought to opt for in order for their interests to be protected.

25. In this case, since the Defendants deny the allegations of interference with the affairs of the 1st plaintiff I do not see how the grant of the orders sought in prayer 5 of the Notice of Motion dated 17th July 2012 will prejudice the interest of the Defendants. However, the Court has noted that the allegations made on behalf of the Defendants that the 2nd plaintiff has not called for an Annual General Meeting of the 1st plaintiff despite a directive to do so from the Regulatory authority is not seriously contested.

26. It is now well recognised that in exercising its discretion under the Civil Procedure Act or in determining whether or not to grant the injunction sought the Court is enjoined to consider what has become known as the principle of proportionality under the overriding objective which objective the Court is enjoined to give effect to in the exercise of its powers under the Act or the interpretation of any of its provisions. In **Suleiman vs. Amboseli Resort Limited [2004] 2 KLR 589 Ojwang, AJ** (as he then was) expressed himself as follows:

“It is the business of the court, so far as possible, to secure that any transitional motions before the Court do not render nugatory that ultimate end of justice...The argument that the law governing the grant of injunctive relief is cast in stone is not correct, for the law has always kept growing to greater levels of refinement, as it expands, to cover new situations not exactly foreseen before. Traditionally, on the basis of the well-accepted principles, the Court has had to consider the following questions before granting injunctive relief: (i) is there a prima facie case with a probability of success? (ii) does the applicant stand to suffer irreparable harm, if relief is denied? (iii) on which side does the balance of convenience lie? Even as those must remain the basic tests, it is worth adopting a further, albeit rather special and more intrinsic test which is now in the nature of general principle. The Court, in responding to prayers for interlocutory injunctive relief, should always opt for the lower rather than the higher risk of injustice...Although the court is unable at this stage to say that the applicant has a prima facie case with a probability of success, the Court is quite convinced that it will cause the applicant irreparable harm if his prayers for injunctive relief are not granted; and in these circumstances, the balance of convenience lies in favour of the applicant rather than the respondent. There would be a much larger risk of injustice if the court found in favour of the defendant, than if it determined this application in favour of the applicant”.

27. On consideration of the provisions of section 1A(2) that the court is required in mandatory terms in the exercise of its powers under the Civil Procedure Act or the interpretation of any of its provisions, which provisions include the grant of interlocutory injunctions under Order 40, to seek to give effect to the overriding objective specified in subsection (1) of the section. The said overriding objective under subsection (1) on the other hand seeks to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

28. Therefore whereas the traditional considerations in applications for injunctions will remain

relevant, the Court must develop the law in such a way as to meet the emerging trends in tandem with the ever changing circumstances.

29. In **Hunker Trading Company Limited vs. Elf Oil Kenya Limited Civil Application No. Nai. 6 of 2010** the Court of Appeal dealing with the said Overriding Objective stated *inter alia* as follows:

“the applicant cannot be allowed to invoke the “O2 principle” and at the same time abuse it at will...All provisions and rules in the relevant Acts must be “O2” compliant because they exist for no other purpose. The “O2 principle” poses a great challenge to the courts in both the exercise of powers conferred on them by the two Acts and rules and in interpreting them in a manner that best promotes good management practices in all the processes of the delivery of justice. In the court’s view this challenge may involve the use of an appropriate summary procedure where it was not previously provided for in the rules but the circumstances of the case call for it so that the ends of justice are met. It may also entail redesigning approaches to the management of court processes so that finality and justice are attained and decisions that ought to be made today are not postponed to another day”.

30. Similarly, the same Court in **Safaricom Limited vs. Ocean View Beach Hotel Limited & 2 Others Civil Application No. 327 of 2009** expressed itself thus:

“Section 3A and 3B of the Appellate Jurisdiction Act gives the Court the freedom in the circumstances of this case to ensure that the matter is handled in accordance with the relevant provisions of the Arbitration Act because it is in doing so that justice will be done to the parties. That is what matters. The overriding objective is so called because depending on the facts of each case, and the circumstances, it overrides provisions and rules which might hinder its operation and therefore prevent the court from acting justly now and not tomorrow”.

31. Accordingly prayer 5 of the Notice of Motion succeeds. I, however, appreciate that under Order 40 Rule 2(2) of the Civil Procedure Rules, “the court may by order grant such injunction on such terms as to inquiry as to damages, the duration of the injunction, keeping of an account, giving security or otherwise, as the court deems fit”. Pursuant thereto, I grant an interim order of injunction restraining the defendants herein whether by themselves, their proxies, agents and/or servants from purporting to hold any meetings of the 1st Applicant and from meddling with the affairs of the 1st plaintiff and desist from holding themselves out as officials of the 1st plaintiff for a period of 6 months. I further direct the plaintiffs to facilitate an Annual General Meeting of the 1st plaintiff within the said period in accordance with the regulations of the 1st plaintiff. Unless these orders are complied with the temporary orders granted herein shall automatically lapse. Each party is at liberty to apply for further orders. The costs of this application will be in the cause.

Dated at Nairobi this 25th day of April 2013

**G V ODUNGA
JUDGE**

Delivered in the presence of: