



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)

Civil Case 155 of 2002

between

LAISA MPOYE.....1ST PLAINTIFF

PENINAH NTOYIAN.....2ND PLAINTIFF

JUDITH LESHINIKA.....3RD PLAINTIFF

(THE OFFICIALS OF ILKIPIRASH MILK PROJECT AND ILKIPIRASH WOMEN GROUP)

VERSUS

KAJIADO CENTRAL MILK

PROJECT "THE BOARD".....1ST DEFENDANT

KAJIADO WOMEN GROUP PROJECT.....2ND DEFENDANT

AGNES BENE.....3RD DEFENDANT

HELLEN PILALE NKAISSERY.....4TH DEFENDANT

DISTRICT SOCIAL DEVELOPMENT OFFICER,

KAJIADO CENTRAL DISTRICT.....5TH DEFENDANT

HON. ATTORNEY GENERAL.....6TH DEFENDANT

RULING

The applicant's in this ruling, **Mary Maren, Lucy Tayiana and Cecilia Simiren**, have moved this Court by way of notice of Motion dated 15th May 2012 seeking the following orders:

- 1. That this application be certified urgent and service be dispensed with at first instance.**
- 2. That the applicants Mary Maren, Lucy Tayiana and Cecilia Simiren be enjoined in the proceedings as interested parties.**
- 3. That the plaintiffs be and are hereby ordered to return the Milk Record Books and other instruments of management to the official offices of Likipirash Women Milk Project which they confiscated on 7th April 2012.**
- 4. That the plaintiffs be and are hereby restrained from interfering with the effective management of the project pending the determination of these proceedings.**
- 5. That cost of this application be in the cause.**

The said application is supported by an affidavit sworn by **Mary Maren** on 15th May 2012. The gist of the said affidavit is that sometimes in the year 2005 several women came together to form a community based organisation by the name Ilkipirash Women Group and the deponent was elected the Vice Chairlady. The Group later changed its name to Ilkipirash Milk Project. Subsequently the Group together with other similar Groups came together to form a Board known as Kajiado Central Constituency Milk Project Board in which each Group was represented in the Management Board. Through this Board the Groups were able to realise good prices and best sales and have registered a Co-operative society for purposes of maximisation of the benefits through the adoption of modern technology. In order for the Board to efficiently run its affairs the members agreed that all groups contribute 50% from the bonuses towards the said purpose. However, problems arose between the members of the Management Committee of the Ilkipirash Group pitting one Group comprising of the plaintiffs who wanted to pull out of the Project and another Group who wanted to remain within the project which, according to the applicants, was the majority. When it became clear that the plaintiffs' group was adamant in their intentions the majority members sought help from the 5th defendant who advised them to call a meeting in order for members to make a decision. The plaintiffs were expelled by the board after they boycotted meetings with the 2nd plaintiff, a signatory to the Board's accounts refusing to sign out monies to enable payments to be made to the members. Following a meeting convened by the 5th defendant, new officials of the Ilkipirash Women Group were elected with the applicants herein taking the positions of chairman, secretary and treasurer respectively. Following the change of names from Ilkipirash Women Group to Ilkipirash Milk project the former ceased to exist. Following the elections of 5th April 2012, the plaintiffs proceeded to the offices of the Milk Project and stole all the members' records hence paralysing the activities of the other members. According to the applicants the plaintiff's have since opened up another dairy facility and already supplying milk to Brookside. Since the suit before the Court revolves around the problems bedevilling the members of the Group, it is the applicants' position that as the current officials of the Group they ought to be joined in the suit since they have authority from members to do so.

The application was opposed by a replying affidavit sworn by **Laisa Mpoeye**, the 1st plaintiff. According to the plaintiffs, the coming together of the various women groups to form Kajiado Central Constituency

Milk Project was at the instigation of the 4th defendant and not by way of a resolution by the Group. By that time Ilkipirash Women Group/Ilkipirash Milk Project was already selling milk to KCC. It is the plaintiffs' case that it was their objection to be parties to Maasai Kajiado Women Dairy Co-operative Society Ltd that led to their expulsion from the umbrella body. This Society, according to the plaintiff, is engaged in rivalling the Ilkipirash which is not its member since Ilkipirash Women Group and Ilkipirash Milk Project have since disengaged and have nothing to do with the Society. On the issue of disagreements within the Group, the plaintiffs maintain that there are no such disagreements. While admitting that there were expulsions, the plaintiffs state that the Group has moved out of the Umbrella body and is not part of the Society. On the elections, it is their position that there were none and if there were any there was no notification and maintain that they were elected on 18th June 2008 for a period of 5 years till the year 2012. It is further contended that the minutes of the said elections have not been authenticated by the 5th defendant herein and the elections that took place were those of the Co-operative Society and not the Group. It is however, contended that the said new officials have not been registered. The plaintiffs further deny that they have taken the records as alleged and aver that it is the applicants who have taken over the building instead. While denying that her son was engaged in picking up milk using Brookside van, they admit that they have opened another dairy and are supplying milk to Brookside. According to the plaintiffs the applicants are a co-operative society hence a separate legal entity and no useful purpose will be served by joining them in this suit. Since the Court does not make orders in vain the application should be disallowed. Since the applicants are not parties to this suit, it is contended that the orders sought some of which are final orders cannot be granted.

The application was prosecuted by way of written submissions. Apart from reiterating the contents of the supporting affidavit, the applicants submit that the applicants' membership of the Milk Project is not denied. It is submitted that the majority of the Group are in favour of partnering with the Board and the Society whereas a few led by the plaintiffs have disengaged therefrom and are operating from new premises. According to the applicants there is no way in which the Court can resolve the dispute between the two sides without involving both of them. Locking out the interested parties from the suit which revolves around elections will amount to injustice when the interested parties are only interested in the truth coming out. It is further contended that the interested parties have shown that they have a case and should not be condemned unheard. In any case, the applicant's position is that the plaintiffs stand to lose nothing if they are heard while a denial of the opportunity to be heard shall be detrimental to their membership and business. Relying **Mwinyi Hamisi vs. Mike Maina and 2 Others [2006] eKLR**, it is submitted that since there are contentious issues raised in the application, it would be fair to let the issues be dealt with in a plenary hearing.

On their part, the plaintiffs contend that the applicants have not properly invoked the jurisdiction of the court and the orders are for denial. It is the plaintiff's position that in considering whether or not to join a party the party must be a necessary party in which case two tests are necessary to be met. These tests, according to the plaintiffs are (1) that there must be a right to some relief against such a party in respect of the matter involved in the proceedings in question and (2) it should not be possible to pass an effective decree in the absence of such a party. According to the plaintiffs the party coming into the proceedings must be one such party whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. It is further submitted that the applicants are officials of the Co-operative Society but are masquerading as officials of Ilkipirash Milk Project. Accordingly, it is the plaintiff's position that in an application of this nature parties coming to court must make a frank, candid, honest and full disclosure of all material facts and should not suppress or withhold facts. Therefore the applicants cannot claim to be officials for both the Milk Project and the Society. According to the plaintiffs, the suit before the court is about the protection of the interests of the Ilkipirash Milk Project and the observance of its Constitution. The plaintiffs' view is that the interested parties are shielding a party and having forcefully evicted the plaintiffs from the plaintiffs' premises they should vacate the same before being heard. It is therefore submitted that the joinder of the interested party far from serving a useful purpose would obstruct, cloud and/or on occasion confuse the issues as it should be possible to pass an effective decree in their absence. Since the Group has its own Constitution, any party aggrieved should come under the said Constitution. It is further contended that the purported election has not been confirmed.

I have considered the foregoing. The principles guiding the court's exercise of discretion are well known. Under Order 1 rule 10(2) of the Civil Procedure Rules, "the court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added".

It is clear from the last part of the foregoing provisions that for the Court to join a party, his presence must be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions in the suit. In **Departed Asians Property Custodian Board vs. Jaffer Brothers Ltd [1999] 1 EA 55** it was held as follows:

"A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person."

In this case the plaintiff's case is that the defendants had called for elections of the office bearers of the Women's' Group in contravention of the Constitution of the Group. That election was slated for 5th April 2012. The plaintiffs accordingly filed an application seeking injunction restraining the defendants from proceeding with the said process. The applicants herein, however, contend that on 5th April 2012, the said election actually took place and they were duly elected as officials of the Group. According to an affidavit sworn by **Wamwati Kariuki Benard**, the District Gender and Social Development Officer, elections were conducted on 5th April 2012 before the Court granted the injunction although the same were never confirmed by the said office. From the record, when the plaintiff's appeared before the Court on 4th April 2012, the Court declined to grant orders restraining the said elections with the result that there was no order stopping the conduct of the elections. It was not until 18th April 2012 that an order was made maintain the *status quo*.

It is therefore clear that the issue of elections, whether legal or not is likely to be a central issue in these proceedings. The relevant tests for determination whether or not to join a party in proceedings were restated by **Nambye, J** (as she then was) in the case of **Kingori Vs. Chege & 3 Others [2002] 2 KLR 243** where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:

- 1. He must be a necessary party.**
- 2. He must be a proper party.**
- 3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.**
- 4. The ultimate order or decree cannot be enforced without his presence in the matter.**
- 5. His presence is necessary to enable the Court effectively and completely adjudicate upon and**

settle all questions involved in the suit.

In this case the plaintiffs seek orders restraining the defendants from interfering with the affairs of Ilkipirash Women Milk Project or Ilkipirash Women Group. The defendants do not claim to be officials of the said entities. The people who claim office in the said entities are the applicants herein. In my view even if the plaintiffs obtain the orders they are seeking the same will not be enforceable against the applicants herein unless they are joined in these proceedings with the result that the claim to the office by the two groups will remain unresolved. It is therefore my view and I so hold that the presence of the applicants in this suit is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit. In the premises I allow prayer 2 in the Notice of Motion dated 15th May 2012 and grant leave to the applicants herein **Mary Maren, Lucy Tayiana and Cicilia Simiren** to be joined in these proceedings as interested parties.

With respect to prayers 3 and 4 of the motion, I agree with the plaintiffs that the said prayers are premature at this stage. The costs of this application will be in cause.

Ruling read, signed and delivered in Court this 27th day of July 2012

G.V. ODUNGA

JUDGE

In the presence of:

Mr. Okumu for the defendants and the applicants

Mr. Arusei for the Respondents