



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**Civil Case 559 of 2010**

**1. NATIONAL COUNCIL OF NON-GOVERNMENTAL ORGANISATIONS**

**2. ENLARGED TENT FOR GROWTH & OUTREACH IN AFRICA (ETAGOA)**

**3. ORGANISATION FOR HEALTH AND**

**TECHNOLOGY STUDIES..... PLAINTIFFS**

**VERSUS**

**1. KITUO CHA SHERIA**

**2. ACTION AID**

**3. WORLD VISION**

**4. DEVELOPMENT QUEST**

**5. INTERCONTINENTAL CHARITY ORGANISATION**

**6. TOBACCO, ALCOHOL, SUBSTANCE ABUSE &**

**HIV/AIDS COUNSELING CENTRE**

**7. ACCOUNTABLE LEADERSHIP FORUM ..... DEFENDANTS**

**R U L I N G**

1. The Plaintiffs' case as set out in the **plaint dated 22<sup>nd</sup> November 2010** is that the Defendants, particularly the 1<sup>st</sup> Defendant, have held themselves out as the 1<sup>st</sup> Plaintiff, the National Council of Non-Governmental Organizations, and unlawfully called for a special general assembly of the 1<sup>st</sup> Plaintiff for 25<sup>th</sup> November 2010 (now past) for election of office bearers of the 1<sup>st</sup> Plaintiff, in order to defeat a similar meeting lawfully called by the 1<sup>st</sup> Plaintiff for 27<sup>th</sup> November 2010 (also past). The main reliefs sought are appropriate permanent injunctions.

2. The same case is repeated in the Plaintiffs' application by **chamber summons dated 22<sup>nd</sup> November 2010** filed together with the plaint. The main prayers in that application are for –

(i) a temporary injunction to restrain the Defendants from holding a general assembly of the 1<sup>st</sup> Plaintiff or carrying out elections of its officers on 25<sup>th</sup> November 2010 or on any other date pending hearing and determination of the suit; and

(ii) a temporary injunction to restrain the Defendants from holding themselves out as the 1<sup>st</sup> Plaintiff or “as the 1<sup>st</sup> Plaintiff’s alter ego, agents, servants, officers, employees or howsoever, or purporting to host the 1<sup>st</sup> Plaintiff...” pending hearing and determination of the suit.

3. There is a supporting affidavit sworn by one George Andhanja in support of the application to which a number of documents are exhibited.

4. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants have opposed the application by **replying affidavit filed on 25<sup>th</sup> November 2010** which is sworn by one Priscilla Nyokabi Kanyua, the Executive Director of the 1<sup>st</sup> Defendant. A number of documents are annexed to this affidavit.

5. A perusal of the material now before the court discloses a dispute over the leadership and management of the 1<sup>st</sup> Plaintiff. A mutual attempt to resolve this dispute prior to the filing of the suit is also disclosed. It appears that all parties concerned appreciate the need for free and fair elections of office-bearers of the 1<sup>st</sup> Plaintiff. But there is a tussle over who will control the general assembly of the 1<sup>st</sup> Plaintiff at which such elections will be conducted.

6. What is also clear is that the very issues raised in the plaint are the same that have been raised in the chamber summons dated 22<sup>nd</sup> November 2010, and deciding those issues at this stage will have effectively determined the suit. Those issues include –

(i) Whether the Defendants are holding themselves out as the 1<sup>st</sup> Plaintiff?

(ii) Whether the notice of general assembly for 25<sup>th</sup> November 2010 was lawfully called or in contravention of the **Non-Governmental Organizations Co-ordination Act, 1990** and **Regulations**?

(iii) Whether the Defendants are legitimate members of the 1<sup>st</sup> Plaintiff?

7. For a proper adjudication of those and other issues so far disclosed, tested evidence in a proper trial will be necessary. It is not desirable that issues that ought to be decided upon a proper trial of the action be decided upon untested affidavit evidence in an interlocutory application.

8. Having considered the written submissions filed on behalf of the parties, and having perused through the material now before the court, I hold the view that the best way forward in the interests of justice would be for the court to facilitate the holding of a general assembly of the 1<sup>st</sup> Plaintiff so that free and fair elections of officers of its executive and other committees can be conducted. This will facilitate a more lasting solution to the leadership wrangles that now seem to be the main problem bedeviling the 1<sup>st</sup> Plaintiff. For this purpose the matter shall be mentioned on date to be taken at the registry. In the meantime the interim injunction now in place will continue in place. But the application by chamber summons dated 22<sup>nd</sup> November 2010 is dismissed with no order as to costs.

Those will be the orders of the court.

9. The delay in preparation of this ruling is deeply regretted. It was caused by my poor state of health the last few years. But thanks God, I have now fully regained my health.

**DATED AT NAIROBI THIS 20<sup>TH</sup> DAY OF SEPTEMBER 2012**

**H.P.G. WAWERU**  
**JUDGE**

**DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2012**