



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT MOMBASA

(Coram: Ojwang, J.)

CIVIL SUIT NO. 320 OF 2010

**1. PETER MAMBEMBE
(NATIONAL CHAIRMAN,
KENYA INTERNATIONAL FREIGHT
& WAREHOUSING ASSOCIATION**

**2. JAIRUS MUSYOKA
NATIONAL VICE CHAIRMAN,
KENYA INTERNATIONAL FREIGHT
& WAREHOUSING ASSOCIATION**

.....PLAINTIFFS/RESPONDENTS

**3. VINCENT MWACHIRO,
(NATIONAL SECRETARY,
KENYA INTERNATIONAL FREIGHT
& WAREHOUSING ASSOCIATION)**

**4. NAHASHON BUSURU,
(NATIONAL TREASURER,
KENYA INTERNATIONAL FREIGHT
& WAREHOUSING ASSOCIATION)**

-VERSUS-

- 1. HEZRON AWITI**
- 2. WASHINGTON MUTHAMIA**
- 3. BOAZ**

**MAKOMEREDEFENDANTS/
RESPONDENTS**

- 4. MOHAMED ALADINA**
- 5. WILLIAM OJONYO**
- 6. PJ SHAHI**

RULING

In the background to the defendants’ application by Notice of Motion dated **21st December, 2010** is the suit by plaintiff dated **8th September, 2010**.

The suit, essentially, challenges the Association’s elections conducted on **26th August, 2010** and **30th**

August, 2010, and contests the validity of the status of those office-holders who purported to take over on the basis of those elections.

Following the conduct of the elections in question, the plaintiff's moved the Court by Chamber Summons of **8th September, 2010** for interim orders of injunction, restraining the defendants jointly and/or severally from taking over and assuming office as the office-bearers of the Association, and/or running the affairs of the Association as such in any manner whatsoever, pending the *inter partes* hearing of the application.

The said application, which was granted on **9th September, 2010**, led to interim orders which have been extended from time to time, pending the hearing and disposal of the main cause.

Clearly, the resolution of the dispute between the parties will come after the Court has heard the main cause to conclusion, and made **final orders**.

Such a state of affairs has entailed certain operational difficulties at the Association's office — and this is the reason for the instant application by the **Defendants**.

The Defendants/Applicants ask this Court to overlook certain technicalities in the scheme of disposal of the outstanding dispute — especially, so as to ensure that the permanent staff of the Association are **paid salaries**; and they say such employees have already gone without their regular salaries. The defendants are also asking the Court to allow them to issue and sign cheques limited to off-setting the immediate debts payable by the Association.

Learned counsel **Mr. Ruwa**, for the defendants, has stated in Court that, immediately after the Association's elections that are disputed had been concluded, the new officials were formally registered and recognized as the legitimate persons to operate the Association's banking matters.

For the plaintiffs, learned counsel, **Mr. Kenga** opposes the application, maintaining that there is no legal basis for the applicants to operate the Association's accounts.

After considering these contending positions on the merits, I have recognized, by way of Judicial Notice, that the Banks are unlikely to allow a further change to the account signatories, without substantive orders of the Court. I have also taken judicial notice that the permanent staff of the Association, ought in law to continue to be remunerated in accordance with their terms of contract.

I will, therefore, make specific orders as follows:

- (1) The parties shall move diligently to have the stage set for the hearing and disposal of the suit filed on **8th September, 2010**.
- (2) The Interim orders of **9th September, 2010** shall be qualified by new **orders** as herein specified:-
 - (a) The Association's members who have been registered by the Association's Bank as the signatories are hereby empowered to operate those accounts for the **limited purpose** of paying off the Association's standing charges; making salary payments for the Association's permanent staff; paying off any arrears of such salaries which may have accrued in the meantime.
 - (b) Keeping a strict account of the payments referred to in Order 2 (a) above — and regularly rendering the same to the Court.
- (3) Strictly for the purpose set out in Order 2 herein, I hereby order the National Bank of Kenya to honour cheques issued and executed as against Accounts Nos. =0101004299600= and =0101004377200=.

(4) The costs of this application shall be in the cause.

DATED and DELIVERED at MOMBASA this 27th day of January, 2011.

J. B. OJWANG
JUDGE

Coram: *Ojwang, J.*

Court Clerk: *Ibrahim*

For the Defendants/Applicants: *Mr. Ruwa*

For the Plaintiffs/Respondents: *Mr. Kenga*