



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO. 9 OF 2011
REGINA PACIS UNIVERSITY COLLEGE &
ANOTHERPLAINTIFFS
VERSUS
WILLIAM CHARLES
FRYDA.....DEFENDANT

Coram: Mwera J

Mindo for the defendant

Kihara for plaintiff

RULING

The plaintiff sought an injunction order as per the chamber summons brought under Order 40 rr. 2 (1) (2), 4 (1) of the Civil Procedure Rules and ss. 1A 3A of Civil Procedure Act:

- i) that the defendant should be restrained from interfering with the on-going recruitment of students and the management of the university herein; and
- ii) that the defendant should not interfere with the plaintiffs' occupation of plot LR. No. 27229

In the grounds it was stated that the 1st plaintiff was a registered constituent college of the Catholic University of Eastern Africa, now in the process of admitting students and running graduate courses on its premises. That without any right the defendant had threatened to disrupt the processes, including the 2nd plaintiff's running of an institution called St Mary's High School regarding the 2011 form one intake. As at this point it is not clear as to how St Mary's has come in but be that as it may.

Mary Therese Gacambi, chair of the 1st plaintiff and a trustee of the 2nd plaintiff deponed that while the 1st plaintiff (the university) was located on plot LR 27229 Langata, Nairobi, the 2nd plaintiff was on LR. 27228 and 18591/11 also at Langata. The 2nd plaintiff also enjoyed plot no. LR 9361/10, Elementeita Nakuru and a plot known as KIINE/RUKANGA/2846, Sagana. That the defendants had trespassed on the described plots of land. That such acts were the basis of NKU HCC 224/10 (pending). The defendant had also interfered in the management of the plaintiff's institutions and businesses causing

interruptions. All these pose imminent danger in operations of the 1st plaintiff - the admission of students and running their studies.

It was added that at some stage the 2nd plaintiff permitted the defendant to solicit funds in its name and for its benefit, to develop medical and educational facilities. The defendant had failed to remit the funds raised. Such an act if not restrained stands to have the donors to decline supporting the 2nd plaintiff's projects. Then the affidavit delved into other aspects, but all with the purpose to illustrate that the defendant's actions were prejudicial to the plaintiffs ownership of their properties and the management and development of their institutions/businesses.

On 12.1.11 the court granted the plaintiffs an interlocutory injunction.

When the matter came up for hearing inter partes on 24/1/11 Mr. Mindo for the defendant intimated that his client opposed the summons. Both sides were directed to submit in writing. The matter came up again on 7.2.11 and the court was informed that each side had filed a script of submission. It was not readily seen on the file that Mr Mindo filed grounds of opposition to the application and or a replying affidavit. The court was thus left to glean the defendant's opposition from the submission filed on his behalf.

Mr. Kihara reiterated the grounds and the contents of the affidavit supporting the application in that his clients (whom he described as defendant!) had placed before court evidence of registration over plot. LR. No. 27229, Langata, where the university college stands and that in Nakuru HCCC 224/2010 the other parcels of land featured. A ruling was pending there. That the 1st plaintiff was not a party in the Nakuru case where plot LR no. 27229 was not a subject. Then the submission got into the provisions of Civil Procedure Rules 2010 which apparently the defendant had put up in his defence and submission, ending with the plea that the plaintiffs had made out a case warranting an injunction.

Mr. Mindo opened his submission by urging the court to separate the 1st and 2nd plaintiffs. Beginning with the 2nd plaintiff reference was made to this part in the Nakuru case with focus on the application of the Civil Procedure Rules 2010, in that this party was trying to circumvent the orders in that court.

Then the submission shifted to the 1st plaintiff in that the university through the board of trustees had no life of its own yet it was endeavouring to use the parcels of land through the 2nd plaintiff which parcels were in dispute in the Nakuru case.

And then that the plaintiffs were violating 054 of Civil Procedure Rules 2010 which revoked the previous rules. There were no signed list of statements by witnesses, copies of documents or as regards which track (small, fast, multi) the case fell in. So the plaint ought to be struck out and that it was undesirable to have multiple suits in various courts. In his submission the defendant referred to a replying affidavit quite likely in the Nakuru court, whose copy was not availed to this court, together with annexures WCF 2, 7, 9, 12. Again, as noted above there were neither grounds of opposition nor a replying affidavit filed by the defendant here. Accordingly, this court has proceeded in partial darkness as to the path the defendant has mapped out here.

Similarly the court was not enlightened by either side on the relevance of the Nakuru case or how it was expected to incorporate that case in these proceedings. Indeed if one or some of the suit properties are involved in the dispute herein then why refer to others that do not? And then there was this St Marys High School! Why is it here? The parties ought to sort out these rather not- so- clear aspects before they settle down to try this case. And if one side feels that the other's pleadings ought to be struck out then may that be by whatever tenable course permitted under the Civil Procedure Rules. At this point and without adopting the relevant procedure, this court is disinclined to consider and/or order striking out or dismissal.

What remains for now is that the plaintiff has not refuted or denied the plaintiffs' assertion that he is trespassing on their parcels of land and interfering with the running of their institutions and businesses without right, consent or authority.

Injunction orders are hereby granted with costs.

Ruling delivered on 23.2.11.

J. W. MWERA

JUDGE