



IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 544 OF 2010

**REV. JUSTUS NJUGUNA KWEREKA
& OTHERS..... PLAINTIFFS**

VERSUS

FRANCIS NZIOKA NTHENGE & OTHERS..... DEFENDANTS

Coram: Mwera J
Ms Sawe for plaintiff
Waigi for Ombwayo for 1, 2, 3rd defendants
AG N/A for 4th defendant
Njoroge court clerk

RULING

By a chamber summons dated 15.11.10 the plaintiffs citing the old Order XXXIX Rule 1, 2, 3 of the Civil Procedure Rules asked for orders in the main:

- i) that the 1st to 3rd defendants be restrained from denying the applicants the right to participate in the affairs of a society called Settle Villagers Scheme;
- ii) that the 1st to 3rd defendants should be restrained from taking office and conducting the affairs of the said society and similarly they should not hold out themselves as its office bearers.

In rather too many grounds set forth, it was claimed that the 1st to the 3rd defendants had represented themselves to the 4th defendant (The Registrar of Societies) as officials of Settle Villagers Scheme and had called a meeting on 6.11.10 where they were purportedly elected officials, while the applicants were the genuine office holders elected at the last general meeting. That the applicants notified the registrar that the respondents were not the *bona fide* office bearers of the said scheme, and a place called St Jude Athi River where the respondents intended to hold a general meeting was not the registered office of the Scheme. The scheme was not made a party in these proceedings but in short the applicants claimed that if the respondents were to proceed with the meeting due on 20/11/10 (since past), that would prejudice their interests and those of the other members of Settle Village Scheme. If it may be observed at this point, it was not clarified whether the applicants were suing in a representative capacity of some large body or whatever.

The 1st plaintiff/applicant swore a supporting affidavit as chairman of Settle Villagers Scheme, said to have been registered as a society on 7.7.03 The members had always held their meetings at the society's registered offices at Saika Makongeni, NRI – always on a 21 – day notice. The society has 300 paid – up members. Then before the regular election time, the respondents presented themselves to the 4th defendant in October 2010 as officials of the Scheme. They purported to hold a general meeting on

6.11.10 where they claimed to have been elected office bearers of the Scheme/Society. The applicants, the elected officials of Settle Villagers had been given a notice of about two weeks only of the meeting and at a place called St Jude Athi River Social, not the registered office. The applicants and other society members did not attend the earlier meeting and thus they were prejudiced in the light of their constitution. The meeting of 20.11.10 could cause further prejudice and should therefore be stopped.

In a replying affidavit sworn by the 1st defendant it was deponed that the present application, and the suit herein, was improper, incompetent and bad in law. Both ought to be struck out. That the 4th defendant had confirmed the 1st to 3rd defendants as officials of Settle Villagers Scheme and that cannot be stopped now by injunction. That the applicants were never the elected officials of the Scheme and its meetings were never always held at Saika Makongeni. A notice of 21 days was duly given on 7.1.10 with the meeting coming on 16.11.10. The defendants were *bona fide* officials of Settle Villagers. They had lawfully and properly called the meetings or caused the 4th defendant to do so. Apparently no interim orders were issued, as the parties went about on several mention dates, sorting out the issue of service. By 22/2/11 when all parties ie the applicants, the 1st to 3rd defendants and the AG for the 4th defendant were supposed to have filed their respective affidavits and submissions, only the plaintiffs had done so. Mr. Ombwayo for the 1st to 3rd defendants had not done so either and no reason was given. The court heard that the AG for the 4th defendant was served but had not appeared or filed any papers to oppose the application. So the ruling was drafted basing on the supporting affidavit the replying affidavit of the 1st to 3rd defendants and the submission by the plaintiffs. May it be added that the 5th plaintiff Magdalene Bush who disassociated herself from the suit, had filed a notice to act in person.

In this court's opinion from material placed before it eg. the registrar of societies' notice of 27.1.09 as to the officials of the Scheme, the 5 plaintiffs herein, the minutes of the meetings of the society and notices thereof, the constitution and rules of the society etc, the applicants have made out a *prima facie case* to warrant the orders sought. The 1st to the 3rd defendant had no counter – documents except a bare replying affidavit.

In sum the orders sought are granted with costs.

Delivered on 7.3.11.

J. W. MWERA
JUDGE