



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

**AT NAIROBI**

**CIVIL CASE NO. 176 OF 2010**

**FEED THE CHILDREN – KENYA .....PLAINTIFF/APPLICANT**

**-VERSUS-**

**JUNE KOINANGE .....DEFENDANT/RESPONDENT**

**RULING**

The Plaintiff has filed this suit against the Defendant for following orders:-

1. *A declaration that the Defendant is a trespasser on the Plaintiff's property.*
2. *A prohibitory injunction restraining the Defendant either by herself or by her servant or agents from continuing to enter the Plaintiff's premises, disrupting its operations and/or otherwise interfering with the Plaintiff's operations.*
3. *A prohibitory injunction restraining the Defendant from damaging the reputation of the Plaintiff, its agents and/or officers.*
4. *General damages*
5. *Costs of this suit.*
6. *Any other relief which this Honourable Court may deem fit to grant.*

Along with the Plaint the Plaintiff has also filed a Chamber Summons dated 26<sup>th</sup> March, 2010 seeking the prayers as under:-

1. *That service of this application be dispensed with in the first instance and that this application be certified as urgent.*
2. *That this application be heard in the court vacation.*
3. *That pending the hearing and determination of this application, the defendant be restrained either by herself, or by her servants and/or agents from entering into and/or remaining on the premises of the Applicant herein and/or otherwise disruption the operations of the Applicant.*
4. *That pending the hearing and determination of this application, the defendant be restrained*

**from making false statements and/or damaging the reputation of the plaintiff, its agents and/or officers.**

**5. That this application be heard inter partes as a matter of urgency on a date to be given by the court.**

**6. That pending the hearing and determination of this suit, an injunction to issue restraining the defendant either by herself or by her servants and/or agents from entering into and/or remaining on the applicant's premises and/or otherwise disrupting the applicant's operations.**

**7. That pending the hearing and determination of this suit, an injunction do issue restraining the defendant either by herself or by her servants and/or agents from making false statements and/or damaging the reputation of the plaintiff, its agents and/or officers.**

**8. That the costs of this application be awarded to the plaintiff.**

The application is supported on the grounds set forth on its face and supporting affidavit sworn by the Deputy Director and Head of Programs of the Plaintiff on 26<sup>th</sup> March, 2010.

The application is opposed and I shall like to mention several affidavits filed by both parties.

**(1) Supporting affidavit already specified.**

**(2) Further affidavit of the same deponent sworn on 9<sup>th</sup> February, 2011.**

**(3) Supplementary affidavit sworn by Seintje Veldhuis Regional Director of the Plaintiff on 25<sup>th</sup> February, 2011.**

**(4) The Defendant filed three affidavits**

**(a) Affidavit sworn on 22<sup>nd</sup> April, 2010**

**(b) Further affidavit sworn on 23<sup>rd</sup> March, 2011**

**(c) Further further affidavit sworn on 1<sup>st</sup> March, 2011 (without its annexures).**

The Plaintiff (referred to as "FTC-K"), is licensed and operates as international non-profit organization in Kenya and runs an abandoned baby centre and children's home with over 100 residential children. This description of the Plaintiff is admitted in the Statement of Defence filed on 28<sup>th</sup> January, 2011. It is contended by the Plaintiff that the Defendant on behalf of Lifespring Counseling and Training Centre entered into an agreement of consultancy to assist in the implementation of the Plaintiff's Community Health Education and Outreach Programme (referred to as 'CHEO'), and that in the course of consultancy, the Defendant also joined the Plaintiff's Board as the Chairperson. As per the Plaintiff the Plaintiff is the registered owner of the property on which Dagoretti Children's Centre is situate. It is also averred that the Plaintiff, on termination of the consultancy agreement on 1<sup>st</sup> November, 2004, moved all its staff members from Lifespring offices to the said premises and assumed full responsibility of CHEO programme. The Defendant has not denied the act of termination but has maintained that the Plaintiff has not changed its officials and that she is still a Chairperson of the Board of the Plaintiff.

In supplementary affidavit sworn by Seintje Veldhuis the Regional Director of FTC – K, (see paragraph 10 thereof) it is averred that though the registered officials are generally referred to as the Board, they do not have any executive or independent decision making powers and that they are the Management Committee whose function is to implement the development programmes and projects of FTC Oklahoma and other various donors as approved by FTC Oklahoma.

Annexure SV4, which is the Minute of Special Meeting of Members of FTC – K of 7<sup>th</sup> February, 2011, shows that the Defendant was present at that meeting and one of the items of agenda was to discuss changes in the Management Committee and to pass necessary resolution.

The Defendant during the discussion of the said resolution called back her lawyer and third parties who had agreed to leave the meeting earlier, and tried to disrupt the meeting but the resolution was passed with the Defendant abstaining from casting her vote to replace her with one Nazareno Ngare. The notification of said change of office bearers was sent to the Executive Director NGO's Co-ordination Board on 7<sup>th</sup> February, 2011.

Annexure SV5 shows Report of Meeting of 17<sup>th</sup> March, 2010, devolution meeting which states *inter alia* how the Defendant had caused disruption in the said meeting.

The affidavit sworn on 23<sup>rd</sup> August, 2010 by the said deponent i.e. Seintje Veldhuis, in support of Judicial Review Application No. 171 of 2010 in its paragraph 15 thereof avers *inter alia* that the Defendant was still a Chairman of Board which is a non-executive position as per the Plaintiff's constitution. The said application was not allowed by the court which sought to prohibit NGO Co-ordination Board from inspecting Plaintiff's financial records.

The Plaintiff in the application on hand has maintained the said position in the grounds and supporting affidavit only to show that as of 7<sup>th</sup> February, 2011 the Defendant has been replaced as a Chairperson. I have specified this fact hereinbefore.

The Plaintiff only asserts that the consultancy agreement having been terminated, Lifespring has no contractual relationship with the Plaintiff and despite that fact, the Defendant has continued to forcibly enter the Plaintiff's premises. The Plaintiff has also annexed the Memorandum of Claim filed by the Defendant in her name against the Plaintiff in the Industrial Court of Nairobi, vide Cause No. 433 of 2010. In the said claim the Defendant has described herself as an employee of the Plaintiff. She has shown her duty as a Chairman of the Board of Directors during and in the course of her employment. Her claim for compensation of Kshs.5,000/= per month made in the said claim thus included her duty as a Chairman. She has also stated that her administrative duties as an employee included *inter alia* a position in the Respondent's Board of Directors as its Chairman. In short, the Defendant has taken legal steps to vindicate her claim as an employee, which included her duty as a Chairman. It is also on record that the Defendant has now been replaced as a Chairperson of the Plaintiff's Board. Even if the Defendant claims the said action as illegal, that issue is not before this court and I would similarly refrain from going into the issue at present whether the NGO Co-ordination Board has any authority to direct who should be the officials of the Plaintiff.

From the perusal of correspondence produced and averments made before the court, it is not in doubt that the relationship between the parties has deteriorated seriously and maybe the same is beyond repair. In these circumstances, it shall be advisable for the Court to see that the conflict between the parties does not spill on to the beneficiaries of the programme i.e. the abandoned children with the Plaintiff. The less I go into details of this conflict and dispute, better it is at this juncture.

The premises of Dagoretti Children Center is admittedly owned by the Plaintiff and it does not want the Defendant to enter its premises, specially after the facts of termination of the consultancy agreement and replacement of the Defendant as a chairperson.

In my view, looking to the facts before the court, the Plaintiff/Applicant has shown *prima facie* case with probability of success. Moreover, the Defendant has not shown any loss if she is restrained from entering the premises of the Defendant and even if she would suffer any loss or prejudice, the recourse is in damages. The balance of convenience is also in favour of the Plaintiff as the effect of this order shall be felt by the recipients of the projects i.e. the children.

I shall thus grant prayer No. 5, 6 and 7 of the Chamber Summons dated 26<sup>th</sup> March, 2010. The cost in the cause.

Orders accordingly.

**Dated, signed and delivered** at Nairobi this 20<sup>th</sup> day of **May, 2011**

**K. H. RAWAL**

**JUDGE**

**20.05.2011**