



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

Civil Case 1 of 2009

BISHOP PHILLIP K MAKANGA 1ST PLAINTIFF/APPLICANT

MARGARET MUTHONI 2ND PLAINTIFF/APPLICANT

CHARLES WAMBUA MUNYASYA 3RD PLAINTIFF/APPLICANT

GEDION MACHARIA KAMAU 4TH PLAINTIFF/APPLICANT

PAULINE WANJIRA NJINE 5TH PLAINTIFF/APPLICANT

VERSUS

JUSTUS NJUGUNA 1ST DEFENDANT/RESPONDENT

CAPTAIN AUDI ODHIAMBO 2ND DEFENDANT/RESPONDENT

RULING

1. The suit herein resolves around the issues and affairs of a registered Society called Settle Villagers Scheme. The Society, as I can see is embroiled in leadership wrangles and on the side lines are issues of management of funds and ownership of land. In the Plaint dated 31/12/2008, the Plaintiffs are seeking orders that a permanent injunction be issued to restrain the Defendants from “operating, dealing with, disposing of or in any other way interfering with any property belonging or owned by the society known as Settle Villagers Scheme”.
2. By a Chamber Summons filed on 6/1/2009 and premised on Order XXXIX Rules 1 (a) and (9) of the Civil Procedure Rules, the Plaintiffs seek to restrain the Defendants from interfering with “any property belonging to the Society including bank account No.0120292874534 at Equity Bank, Tom Mboya Street” until the suit is heard and determined.
3. It is the Plaintiffs’ case that the Defendants are not genuine officials of the society; that they are embezzling funds; that they have committed fraud against the Society and that their conduct is prejudicial to the society’s affairs.
4. The Defendants’ case is that the Plaintiffs have no *locus standi* to institute any proceedings purportedly on behalf of the society as they are not its officials; that the 1st Applicant resigned from the Society in 2003 and has no *locus standi* to swear any Affidavit on its behalf; that no funds were misused

by the bona fide officials and the ex-parte orders obtained earlier, were obtained upon concealment of material facts.

5. I have carefully read the following Affidavits;

- i. Supporting Affidavits of Bishop Philip Makanga and Charles Wambua Munyasya sworn on 31/12/2008.
- ii. Replying Affidavit of Captain Damiano Audi Odhiambo sworn on 19/1/2009.
- iii. Supplementary Affidavit of Bishop Makanga sworn on 26/1/2009.
- iv. Further Affidavit of Captain Odhiambo sworn on 20/2/2009 and
- v. Further Supplementary Affidavit of Bishop Makanga sworn on 14/4/2009.

6. I have also read the annexures to the Affidavits and especially the letter dated 27/1/2009 from the Registrar of Societies addressed to M/s Mulondo, Oundo, Muriuki & Co. Advocates. In that letter, the officials of the society are said to be:-

- Chairman – Justus Njuguna Kwereka
- Secretary – Damiano P Audi Odhiambo
- Asst. Secretary – James Kamami
- Treasurer – Phillis Ndila
- Asst. Treasurer – Magdaline K Bush.

7. The letter is important because the register of the Registrar is prima facie evidence as to who the recognized officials of the Society are. It is not generally the business of courts to micro-manage societies because oversight and matters of elections and registration is a matter entirely in the purview of the Registrar. The Plaintiffs have challenged the Defendants' hold over properties of the society but without directly challenging their registration as officials, this court prima facie cannot, either in the Application or in the suit, grant the injunctions sought. I say this well aware that one Magdalene Bush has sworn an Affidavit on 31/12/2009 that she has never attended any meeting of the Society. That statement is challenged and at this stage, the issue is neither here nor there and the Registrar's record so far as I can see has not been challenged at all.

8. I raise the above issue because I have also seen a letter dated 22/5/2003 by Bishop Makanga aforesaid addressed to the Chairman of the Society. In that letter he states that he had resigned as General Secretary of the Society and that he was doing so "due to many commitments and demand in God's work". If that be so, and all he has said in answer is that no minutes to replace him have been exhibited, then prima facie I am not satisfied that he and his group have any legitimate positions in the Society.

9. I have deliberately refrained from addressing the issue of annual returns to the Registrar of Societies because that office is well versed with those issues and I agree with the Defendants that any member can access those records and directly make challenge to them without taxing this court with unclear matters at interlocutory proceedings.

10. Without belabouring the point further, an Applicant who comes to court with questionable *locus standi* and who has failed to challenge the registration of the Defendants as officials and yet wants this court to stop all operations of the Society cannot by any extension of the word be said to have shown "a prima facie case with a probability of success" as were the words of Spry V – P in Giella vs Cassman Brown Ltd (1973) E.A. 358.

11. In the Application before me, the Applicants have in fact only asked me to restrain access to the bank account elsewhere named above. No other property has been named although reference has been made to title No. L.R 10425. I am aware that in H.C.C.C 93/2009, a suit instituted by E.A. Portland

Cement, some of the parties in this suit including Bishop Makanga and Captain Odhiambo have been sued and on 31/3/2009 I restrained all dealings in that land. No other property seems to be in question and so if it is only the cash in the account that is an issue, the amounts thereof have not been disclosed and I cannot with certainty state that irreparable injury that cannot be compensated in damages may be occasioned if the injunction is not granted.

12. Lastly, on a balance of convenience, equity must favour registered officials and not members or persons whose status *vis-à-vis* the Society is unclear.

13. In the event, I decline to grant the injunction sought and the interim orders granted by Kubo J on 8/1/2009, are discharged and the Application dated 31/12/2008 is dismissed with costs to the Defendants.

14. Orders accordingly.

Dated and delivered at Machakos this 18th day of September 2009.

ISAAC LENAOLA

JUDGE

In presence of: Miss Kimiti for Mr Musyoki for Applicant

ISAAC LENAOLA

JUDGE