



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

Civil Case 123 of 2008

PHILIP KATHUKYA NYUMBA 1ST PLAINTIFF

MARGARET KIMWELE 2ND PLAINTIFF

MASYUKI MUNYWOKI 3RD PLAINTIFF

PATRICK MUSINGA NGUTHU 4TH PLAINTIFF

DANIEL MWENDWA MUNYOKI 5TH PLAINTIFF

VERSUS

COUNTY COUNCIL OF KITUI DEFENDANT

RULING ON A PRELIMINARY OBJECTION

1. The only issue raised in the Objection is whether an interlocutory injunction can issue against a local authority established under the Local Government Act, Cap 285 Laws of Kenya. In support of the contention that it cannot issue, counsel for the Defendant has referred me to the decision of Ang’awa J in Ali & 3 Others versus City Council of Nairobi (2003) KLR 596 where the learned judge held inter alia that no injunction can issue against a local authority because it is akin to issuing an injunction against government.
2. Counsel for the Plaintiff on the other contends that local authority is not government as defined by section 2 of the Interpretation and General Provisions Act and can be sued and be sued in its name. He placed reliance on the decision of Lesiit J in Onesmus Masika & 9 Others vs Town Clerk, Town Council of Matuu H.C.C.C. 47/2006 where the learned judge held that the Town Council of Matuu could be sued as a corporate body.
3. My view is as follows:-
4. Section 16 (2) of the Government Proceedings Act provides as follows:-

“16. (1).....

16. (2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government.”

5. Further, section 28 (3) of the Local Government Act provides as follows:-

“28. (3) Every county or town council shall, under the name of “the County Council of” or “the Town Council of”, as the case may be, be each and severally a body corporate with perpetual succession and a common seal (with power to alter such seal from time to time) and shall by such name be capable in law of suing and being sued, and acquiring, holding and alienating land.”

6. Government is defined in section 3 (1) of the Interpretation and General Provisions Act as:-

“3. (1) “the Government” means the Government of Kenya;”

7. Clearly, when one reads all the above sections together, there is no explicit provision that no injunction can issue against a local authority. I say this because once a local authority can be sued in its name, then I do not see that Order XXXIX Rule 1 of the CPR is not applicable to it. If it can acquire, hold and alienate land as is provided for under section 28 (3) aforesaid, then that Rule can properly be invoked. For avoidance of doubt, it provides as follows:-

“Where in any suit it is proved by affidavit or otherwise-

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b. that the defendant threatens or intend to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

This is also in line with the Statement in Constitutional and Administrative law, 8th ed. by Paul Jackson and Patricia Leopold at page 724 that injunctions can issue against local authorities.

8. I am therefore in agreement with Lesiit J in Onesmus Masika (supra) and I am aware that I recently issued an injunction against the Defendant, Town Council of Matuu in that case pending hearing of the suit.

9. I am certain that the objection is misplaced and is overruled with costs to the Plaintiff.

10. Orders accordingly.

Dated and delivered at Machakos this 24th day of November 2008.

ISAAC LENAOLA

JUDGE

In presence of: Mr Musyoki for Plaintiff

Mr Kamolo h/b for Defendant

ISAAC LENAOLA

JUDGE