



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE**  
**Civil Suit SUIT 33 of 2007**

**JOEL BOB SIRENGO & 14 OTHERS =====PLAINTIFFS**

**V E R S U S**

**HON. DAVIES W. NAKITARE ===== DEFENDANTS**

**R U L I N G**

**The plaintiffs are members of the Saboti Constituency Development Committee, whilst the defendant is the patron of the said Committee.**

The 1st plaintiff is also the Chairman of the Committee; whilst the 2<sup>nd</sup> Plaintiff is the Vice-Chairman; the 3<sup>rd</sup> Plaintiff is the Secretary; and the 4<sup>th</sup> Plaintiff is the Treasurer to the Committee.

All the plaintiffs have joined together to institute proceedings, seeking a declaration that the defendant's directive, disbanding the Saboti

Constituency C D F Committee is null and void, as it was in contravention of the Constituency Development Fund (CDF) Act, 2003.

The plaint also seeks a permanent injunction to restrain the defendant from plans or projects of the Committee until it completes its statutory term of office.

Simultaneously with the plaint, the plaintiffs filed an application pursuant to the provisions of Order 39 rules 2, 3 (1) and 9 of the Civil Procedure Rules.

Through that application the plaintiffs sought an interlocutory injunction to restrain the defendant from interfering with, altering, terminating, revoking or otherwise disbanding the Saboti CDF Constituency Committee until the suit was heard and determined.

The plaintiffs also asked the court to restrain the defendant from imposing, appointing or constituting a new CDF Committee for the Saboti Constituency, or from interfering with the projects already set up by the plaintiffs. They also want the defendant to be restrained from imposing new projects or from interfering with the Committee's Bank Account at Kenya Commercial Bank, or from opening any new account for the Constituency Development Fund.

When the application first came up for hearing, under a certificate of urgency, the court did certify it as urgent, and also ordered that the status quo then prevailing, as at 15<sup>th</sup> March 2007, be maintained until the application came up for hearing on 20<sup>th</sup> March 2007.

It is instructive to note that notwithstanding service of the Plaint, Summons to Enter Appearance, the

application for injunction and the affidavit in support thereof, the defendant failed to file any replying affidavit or grounds of opposition. The defendant also failed to attend court for the hearing of the application for injunction. In effect, the application was not challenged at all.

In the circumstances, the court accepts the plaintiffs' uncontroverted statements as being a factual recitation of the events giving rise to this case. Accordingly, I find that on 26<sup>th</sup> October 2006, the defendant disbanded the Saboti Constituency Development Fund Committee which was then in existence. Thereafter, on 10<sup>th</sup> November 2006, the defendant constituted a new committee.

On 14<sup>th</sup> February 2007, the defendant issued to the plaintiffs, letters notifying them that they had each been appointed as members of the Saboti Constituency Development Committee. The said letters indicated that the appointments were made by the defendant in his capacity as the Area Member of Parliament, under powers conferred upon him by section 23 of the CDF Act.

Following the appointment of the plaintiffs to the committee, they held a meeting, in the presence of the defendant, as patron of the committee.

However, before the committee could commence the implementation of the agenda, the 3<sup>rd</sup> plaintiff herein sued the defendant for having removed him from the previously constituted committee.

That dispute was resolved at a meeting held on 23<sup>rd</sup> February 2007, when the 3<sup>rd</sup> plaintiff was reinstated as the Secretary to the Committee. The terms of the said compromise were recorded in **Kitale Misc. Civil Application No.138 of 2006.**

On 28<sup>th</sup> February 2007 the committee held a meeting and resolved to disburse funds to various projects. That action did not find favour with the defendant, who was still opposed to the 3<sup>rd</sup> plaintiff being the Secretary to the committee.

In the meantime, the defendant had, on 29<sup>th</sup> January 2007, written to the Manager of Equity Bank, requesting him to open an account for the Saboti Constituency Development Fund. He did cite the following four persons as the designated signatories;

***“ 1. The District Accountant, Trans-Nzoia West District.***

***2. The District Development Officer.***

***3. Joseph Masika Wanyama Saboti CDF Treasurer***

***4. Brownley Oyalo, Saboti CDF Office Manager.”***

The plaintiffs rejected the recommendation of the defendant.

In my considered view, the plaintiffs had every right to reject the said recommendation, as it was inconsistent with the letter and the spirit of the Constituency Development Fund Act. I say so because by virtue of Section 23 (1) of the Act, a Constituency Development Committee for every constituency shall have a maximum of fifteen (15) members.

Therefore, once the defendant had established a committee which was made up of fifteen members, he had no authority to add any more persons to that committee.

Brownley Oyalo was not amongst the fifteen members of the committee. Accordingly, the defendant

erred when he recommended not only that he be a signatory to the CDF account, but also that he be the mandatory signatory.

In this case the defendant is said to have purported to enter into contracts with third parties, without the consent or knowledge of the committee. Such contracts are said to include;

**(a) Purchase of one Land Rover Defendant 110 Station Wagon, at K.Shs.3, 017,100/=.**

**(b) Purchase of a Motor Grader, at K.Shs.18, 005,520/=;**

**(c) Purchase of a Passenger Taxi Ape Piaggio, inclusive of the training of a driver, at KShs.3, 319,999/=; and**

**(d) Purchase of plastic storage tanks, with a capacity of 24,000 litres, at KShs.1, 000,000/=.**

The question that arises is as to the role of the Member of Parliament in the process of entering into a contract for and on behalf of the Constituency Development Committee. By virtue of Section 12 (1) of the Act, the Member of Parliament for the constituency is mandated to submit the list of proposed constituency based projects. He is supposed to do so before the end of February in each year or such other month as may be determined by the Minister for Finance, in order to ensure timely inclusion of the projects in the annual Government budget of a particular financial year.

By virtue of Section 23 (2) of the Constituencies Development Fund Act, the Member of Parliament is required to convene locational meetings in the first year of his election, and at least once every two years thereafter, to deliberate on development matters for the location, the constituency and the district.

It is the locations which have been mandated to come up with a list of priority projects to be submitted to the Constituency Development Committee.

Pursuant to Section 23 (4) of the Act, the committee is mandated to deliberate on project proposals from all locations in the constituency and other projects which the committee considers beneficial to the constituency. After such deliberations the committee is required to draw up a priority projects list, out of which the elected Member of Parliament is then to submit a list to parliament, in accordance with section 12 of the Act.

In a nutshell, the Member of Parliament is not supposed to come up with his own list of projects for his constituency. He is expected to await a list of priority projects, both immediate and long term, from the committee.

Inasmuch as the defendant appears to have made out his own list of priority projects, he must be told in no uncertain terms, that he was not right. He should have sought to influence the locations within his constituency, to appreciate the importance of the projects. Alternatively, he should have sought to persuade the Constituency Development Committee that the projects which he was proposing would be beneficial to the constituency.

The defendant appears to have been well aware of the role of the Committee, because when he notified each of the plaintiffs of their nomination to the committee, he told them that they;

***“will also ensure no corrupt deals are carried out; all the requirements of the CDF Act are followed and make sure that all the people of Saboti Constituency benefit in terms of development ...”***

It is the role of the committee, and not that of the Member of Parliament to ensure that the Constituencies Development Fund was used for the development of the constituency.

Pursuant to Section 45 (1) of the Constituencies Development Fund Act, a constituency account shall be opened and maintained for every constituency, at any commercial bank approved by the Minister for Finance. The account shall be known by the name of the constituency for which it is opened, and all funds shall be kept in that account.

There can be no doubt that the statute deliberately set in place strict rules for the protection of funds. One such rule is that there shall be one account.

Therefore, when the defendant asked Equity Bank to open an account for the Saboti Constituency Development Fund, whilst there was already an account at Kenya Commercial Bank, Kitale Branch, that too was improper.

The plaintiffs were prompted to institute these proceedings by the defendant's reported disbanding of the committee. The report of the said action was carried in the "Daily Nation" Newspaper dated 9<sup>th</sup> March 2007.

By virtue of the Constituencies Development Fund Regulations, 2004, members of the Constituency Development Committee, other than members of parliament, councilors and ex officio members, shall hold office for a period not exceeding two years and shall be eligible for re-appointment for one further term of two years. That is so provided for in regulation 11.

Regulation 12 (2) provides for the circumstances in which any member of the Constituency Development Committee may be removed from office. Those circumstances are;

- (i) Missing three consecutive meetings of the Committee without permission of the Chairman; or**
- (ii) If a member is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or**
- (iii) If a member is convicted of an offence involving dishonesty, fraud or moral turpitude; or**
- (iv) If a member is convicted of a criminal offence and sentenced to imprisonment for a term exceeding 6 months or to a fine exceeding Kshs.10, 000/= or to both; or**
- (v) If a member is incapacitated by prolonged physical or mental illness; or**
- (vi) If the member is otherwise unable or unfit to discharge his functions.**

To my mind, by specifying the particular instances in which a member of the committee may be removed from office, the regulations must be deemed to imply that members of the committee ought not to be removed in any other circumstances. Therefore, for the defendant to purport to remove all the plaintiffs from their office as members of the Saboti Constituency Development Committee, without demonstrating how each such removal was in accordance with the regulations, is improper.

The regulations were formulated with a view to insulate members of the Constituency Development Committees from subjective manipulations of politicians. Indeed, I dare say that such committees are not answerable to the members of parliament. They are only answerable to the constituents.

Accordingly, I find that the application before me is well merited. Prayers (b) (c) and (d) of the application dated 14<sup>th</sup> March 2007 are granted as prayed.

**Dated and Delivered at KITALE, this 9th day of May, 2007**

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**FRED A. OCHIENG**

JUDGE