

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL SUIT 154 OF 2007

DANIEL WAITHAKA MWANGI.....PLAINTIFF

VERSUS

NARC-KENYA.....1ST DEFENDANT

RAPHAEL TUJU.....2ND DEFENDANT

MUKHISA KITUYI.....3RD DEFENDANT

MORRIS DZORO.....4TH DEFENDANT

ERASTUS KIHARA MUREITHI.....5TH DEFENDANT

SAMUEL MUREITHI WAHOME.....6TH DEFENDANT

STEPHEN MAINA KANYORO.....7TH DEFENDANT

RULING

The plaintiff sued the 1st defendant together with the 2nd, 3rd & 4th defendants. He averred in his plaint that the 2nd, 3rd & 4th defendants were Chairman, Secretary and Treasurer respectively of the 1st defendant. However, when the plaintiff served the application on the said defendants, one Jonathan Muema Maingi filed a replying affidavit. In the said affidavit he stated that he was the chairman of the 1st defendant. The plaintiff now accepts that the officials of the **NARC-KENYA** party are Jonathan Muema Maingi – Chairman, Margaret Wairimu – Secretary General and Marani Antony Paul as the Treasurer. He now wishes to enjoin them as parties to this suit. He has invoked the provisions of **Order 1 rule 10(2)** of the **Civil Procedure Rules** which provides as follows:-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been enjoined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions in the suit, be added.”

The defendants have opposed the oral application made by the plaintiff to enjoin the said three officials as parties to this suit.

I have carefully considered the rival submissions made by the parties to this application. I am aware that this suit potentially concerns the election of the people’s representative in parliament. For the interest of justice and for the purposes of determining the real issues in controversy, I think it would be just and fair to enjoin the said three officials as parties to this suit. It seems that the plaintiff was under misapprehension that the 2nd, 3rd & 4th defendants were the officials of the 1st defendant. Now that he has been made aware, he wishes to make amends by enjoining the relevant parties to the suit. This court

has however noted that the plaintiff is guilty of laches. He was indolent. He has been aware since the 2nd August 2007 who the officials of the 1st defendant were but chose not to make an appropriate application before court. For that reason, I will condemn the plaintiff to pay the costs of this application to the defendants. I will allow the application made by the plaintiff. Jonathan Muema Maingi, Margaret Wairimu and Marani Antony Paul are enjoined as the 8th, 9th and 10th defendants respectively. However since the Interim Orders were issued when they were not parties to the suit, the said Interim Orders are hereby vacated.

DATED at NAKURU this 4th day of SEPTEMBER, 2007

L. KIMARU

JUDGE