



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 1025 of 2004**

**HARJI KARSAN PATEL .....**  
**.....PLAINTIFF**

**VERSUS**

**KUNVERJI NARAN KERAI**

**PARBAT PREMJI VEKARIA**

**JADVJI LALJI (the Chairman, Vice-Chairman and Secretary respectively of Shree Cutch Satsang**

**Swaminarayan Mandir (Temple), Nairobi ) .....**  
**....DEFENDANTS**

**R U L I N G**

Harji Karsan Patel, the Plaintiff in this case, is a member of a Hindu religious organization in Nairobi called Shree Cutch Satsang Swaminarayan Mandir (Temple) registered under the Societies Act [Cap.108].

The Defendants are also members of the Society and its office bearers.

The Society has a Temple on Kirinyaga Road, Nairobi, with a membership of between 1,500 and 2,000 members. There is a Working Committee responsible for the administration of the Society made up of twenty members including the Plaintiff.

On the 5<sup>th</sup> August 2005, the Working Committee met and passed three Resolutions to wit –

- (a) To invite East Africa Temple to participate in its annual functions.
- (b) To change the dates of annual celebrations.
- (c) To call on extraordinary general meeting of the Society on the 8<sup>th</sup> August 2004 to pass those resolutions.

The Plaintiff attended the meeting of the Working Committee held on the 5<sup>th</sup> August 2004 and participated in the proceedings. He objected to the measures proposed to be taken but was apparently

outvoted. The Plaintiff's objections were ignored and the Society's extraordinary general meeting was held and the 8<sup>th</sup> August 2004 and the resolutions proposed by the Working Committee were passed. The Plaintiff again attended that meeting.

The Plaintiff felt aggrieved by the actions of the majority of the members and filed a suit against the Society on the 29<sup>th</sup> September 2004. That Plaintiff was subsequently amended on the 17<sup>th</sup> October 2005 after all the Defendants had filed their Defences. In the Amended Plaintiff, the Plaintiff seeks a multiplicity of reliefs, namely –

- (a) a declaration that the meeting of the Working Committee held on the 5<sup>th</sup> August 2004 and the resolutions passed thereat were *null* and *void* and of no legal effect.
- (b) A declaration that the Extraordinary General Meeting held on the 8<sup>th</sup> August 2004 and the resolutions passed thereat were *null* and *void* and of no legal effect.
- (c) A permanent injunction restraining the Defendants from giving effect to those resolutions.
- (d) An order of injunction restraining the Society from merging with East Africa Temple.

The Defendants filed an Amended Joint Defence on the 25<sup>th</sup> November 2005 and denied the Plaintiff's claim in its entirety. On the 1<sup>st</sup> December 2005, the Plaintiff filed a Chamber Summons under Order 39 rules 2 and 3 of the Civil Procedure Rules seeking orders that annual celebrations of the Society be held on the 25<sup>th</sup> and 26<sup>th</sup> December every year as before. The application is supported by eight grounds and the Plaintiff's own affidavit dated the 28<sup>th</sup> November 2005. The application is opposed on Grounds of Opposition filed on the 6<sup>th</sup> December 2005 and a Replying Affidavit sworn by Parbat Premji Vekaria, the Second Defendant.

That is the application which came before me on the 26<sup>th</sup> January 2006 but before I could hear it, I had to deal with a preliminary objection raised by Mr. Goswami learned counsel for the Defendants, notice of which he had given on the 6<sup>th</sup> December 2005. The objection is that the Plaintiff's suit against the Defendants being a suit in their representative capacity is a nullity for non compliance with the provisions of Order 1 rule 8 of the Civil Procedure Rules. That rule states –

**“8(1) Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued, or may be authorized by the court to defend in such suit, on behalf of or for the benefit of all persons so interested.”**

I would have thought that the right time to raise this objection would have been either at the trial or on an application to strike out the Plaintiff but as Mr. Sarvia, learned counsel for the Plaintiff, did not object, I have to deal with it now.

Mr. Goswami submitted that since the Defendants have been sued in their individual and official capacities, if the application succeeds, the members' rights of association and their right to celebrate would be affected. And so, he says, this being a representative suit, the Plaintiff should have sought leave of the court before bringing it.

Mr. Sarvia submitted that the objection is misplaced. He said that under Order 1 rule 8 aforesaid on which the objection is based, leave of court is required only to defend in a representative suit. Secondly, learned counsel pointed out that the Plaintiff has brought this suit as an individual member of the Society, and that he has not claimed anywhere in his Amended Plaintiff that he instituted this suit on behalf or for the benefit of anyone else.

With respect, I accept the position taken by Mr. Sarvia. As a member of the Society, the Plaintiff has a right to contest or challenge any decisions taken by the Working Committee or resolutions passed at the

Extraordinary General Meeting of the Society. He does not require or need leave of the court to exercise that right on his own behalf as he is not claiming or purporting to be doing so on behalf of any other person or persons whomsoever. And even if such a suit is brought, there would be no need to invite the general membership of the Society to defend it because that is the duty and responsibility of the registered officials of the Society. In this regard, and with respect, I found no assistance in the cases cited by Mr. Goswami.

The result is that the Preliminary Objection dated and filed on the 6<sup>th</sup> December 2005 fails and it is ordered that the same be and is hereby dismissed with costs to the Plaintiff.

Dated and delivered at Nairobi this Seventieth day of February 2006.

**P. Kihara Kariuki**

**Judge**