



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 1358 of 2005

DENNIS OLOLOIGERO & 2 OTHERS PLAINTIFFS

VERSUS

THE ART OF VENTURES LTD & 2 OTHERS..... DEFENDANTS

RULING

By a suit filed on 11th November, 2005, the plaintiffs sued the defendants seeking a permanent injunction to “restrain the defendants by themselves, their servants and or agents from withdrawing any money from the 2nd defendant’s account No. 0621231002292 at K.C.B Narok Branch, in the name of OLARE LUMUNYI WILDLIFE TRUST”. The plaintiff also wanted “a mandatory injunction to issue compelling the 1st and 2nd defendants to convene a meeting to work out a policy and procedure for distribution of the revenue collected by the 1st defendant among the organizations forming the Olkinyei Group Ranch”.

Prayer (b) of the plaint sought an “account to be taken of all monies paid by as income of a tourist resort/establishment on the portion of land forming part of CIS-MARA/OLKINYEI/1, and or its derived titles wherein the plaintiff members have a possessory title”.

Grounded on the plaint was an application for injunction to “restrain the 1st defendant from transferring to the 2nd defendant bank account or accounts or handing over to the 2nd defendant cash, bankers cheques or draft for conservation fees or any part thereof collected by the 1st defendant....”

Counsel for the 1st defendant, W. Kilonzo raised a notice of preliminary objection to the hearing of the Chamber Summons to the effect

“that the plaintiffs/applicants lack the legal capacity to commence or maintain the present proceedings since they represent an unlawful society in law”.

Arguing the preliminary objection in court Mr. W. Kilonzo for the 1st defendant submitted that the plaintiffs lack the capacity to sue as they represent an unlawful society, namely Olare Lumuny Dispersal Conservation described in the affidavit in support of the application as a CBO (Community Based Organization).

Paragraphs 3 of the same affidavit reads,

“That the plaint is constituted by members of the former Olkinyei Group Ranch which has since been dissolved....”

Annexed to the affidavit is a list of 464 members of Olare Lemuny Dispersal Conservation (CBO).

Mr. W. Kilonzo referred court to Sec. 9 of the Society’s Act which provides,

“Every society shall, in the prescribed manner and within 28 days after the formation thereof, make application to the Registrar for registration or for exemption from registration under the Act”.

The Society’s Act at pages 36. and 37 thereof, has form C which is the Certificate of Registration, and form D which is the Certificate of Exemption from Registration.

Mr. W. Kilonzo submitted further that in the absence of either of the 2 certificates, such a Society is unlawful as described in Sec. 4 of the Act which says,

“Every Society which is not a registered Society or an exempted Society is an unlawful Society”.

He again referred to annexure JL3, a Certificate of Registration of Olare Lemuny Dispersal Conservation, issued by the Ministry of Gender, Sports, Culture and Social Services, Narok District Society Development Committee. He attacked this certificate submitting that under the Society’s Act only the Registrar of Society’s can issue a certificate.

Again he referred the court to Sec. 45 a and b of the Society’s Act on **“general presumption”** and urged the court to strike out the application and suit.

Mr. Onguto for the 3rd defendant supported the submissions of Mr. Kilonzo. He also referred to the grounds of opposition he filed.

Mr. Simiyu for the 3rd defendant, too associated himself with the submissions of Mr. Kilonzo.

Mr. Kinyanjui submitted in reply that where facts are in dispute, preliminary objection cannot be taken. He relied on the authority of **MUKISA BISCUITS** at para (b). he also referred to an annexure in the form of a letter dated 3rd June, 1997, which dissolved the group ranch. He submitted further that the plaintiffs are members of the dissolved group ranch which have convened themselves for the purposes of this suit.

Mr. Kinyanjui referred to Sections one and 13 of Cap. 287, and also Rule 10 of Order 1 of the Civil Procedure Rules. But in a rejoinder, Mr. W. Kilonzo reiterated that as the plaintiffs failed to register a society and also failed to file a representative suit, there is no proper party before the court. That failure to comply with Sec 9 of the Society’s Act cannot be cured by Rules of the Civil Procedure Code.

I have considered the submissions by all learned counsel, which show that the plaintiffs are NOT registered under the Society’s Act as they are not members of a group ranch, which has hitherto been dissolved.

They are members of Olare Lemuny Dispersal Conservation (CBO). The question is, what is the legal status of a CBO, such as the one the plaintiffs have formed and sued under? A Certificate of Registration of the Olare-Lemuny Dispersal Conservation CBO has been annexed. Such Registration is under the Ministry of Gender, Sports, Culture and Social Services.

The plaint at para 5 states,

“At all material times the plaintiffs are officials of the Olare Lemuny Dispersal Conservation Community Based Organization consisting of individuals.....”.

The plaintiffs have, in my view, changed their status from being members of a group ranch namely Olkinyei Group Ranch which was registered under the Society’s Act to being members of Olare Lemuny Dispersal Conservation, a Community Based Organization, registered under the Government Ministry.

The certificate the plaintiffs have is not recognized under the Society’s Act because it was not issued in accordance with Sections 9 and 10 of the said Act.

The said Certificate of Registration issued by the Ministry of Gender, which Certificate is annexed to the supporting affidavit to the application, does not show the legal status of Olare Lemuny Dispersal Conservation (CBO). This is the crux of the application herein, and in fact, the reason why the objection has been raised by Mr. W Kilonzo for the 1st defendant.

Mr. Kinyanjui referred the court to Order 1 Rule 8 of the Civil procedure Rules as being relevant to his suit and indeed the application.

The footnotes to Rule (1) reads, “**One person may sue or defend on behalf of all in same interest**”.

Indeed the plaint herein at para eight reads in part,

“..... the members constituted themselves into the plaintiff Community based organization as well as other such groups”.

My understanding of Order 1 Rule (8) quoted above is that the plaintiffs suing on behalf of several others having the same interest must have the “**legal capacity to sue**”, to begin with.

The portion of para 8 of the plaint quoted above shows that some members of the dissolved Olkinyei Group Ranch constituted themselves into the “**plaintiff community based organization**”, and filed a suit.

Without defining their legal status, I am unable to find that they come within Order (1) Rules (8) and 10 of the Civil Procedure Rules.

Again reference was made to Cap 287, the Land Group Representative Act. I read the provisions of the Act but have not found them relevant to this case because the registered group ranch has since been dissolved. I am also unable to find that the decision of **MUKISA BISCUIT MANUFACTURING CO. LTD.**, is relevant to the legal point raised in the preliminary objection.

I am satisfied from the evidence I have considered so far, that the plaintiffs/applicants herein “**lack the legal capacity to commence OR maintain the present proceedings, since they represent an unlawful society in law**”. I therefore proceed to strike out the pleadings filed – i.e. the plaint and chamber summons applicaiton and award costs of the striking out to the defendants/applicants.

Dated at Nairobi this 12th day of April, 2006.

JOYCE ALUOCH

JUDGE