



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

Civil Case 276 of 2006

KIMANI WANYOIKE1ST PLAINTIFF

PETER MUGEKA MAINA.....2ND PLAINTIFF

BONIFACE ISAAC MUTURI.....3RD PLAINTIFF

VERSUS

JOHN NJOMO KAMAU.....1ST DEFENDANT

STEPHEN GICHERU MWANGI.....2ND DEFENDANT

ESTHER NYAMWATHI NGANGA.....3RD DEFENDANT

MAINA GITHII.....4TH DEFENDANT

MARGARET WANGECHI.....5TH DEFENDANT

R U L I N G

On 26th May 2006, these proceedings were commenced by way of a Plaint of the same date. On that same date, there was filed an application by the Plaintiff, seeking injunctive relief.

As at the said date, the Plaint and the application were both brought in the name of KENYA AFRICAN NATIONAL TRADERS AND FARMERS UNION (KANTAFU), as the Plaintiff.

Then, on 31st May 2006, an Amended Plaint was filed simultaneously with an Amended Application. The substantive amendment was the substitution of KANTAFU as the Plaintiff, with Messrs KIMANI WANYOIKE, PETER MUGERA MAINA and BONIFACE ISAAC MUTURI.

This ruling is in relation to the Amended Chamber Summons dated 29th May 2006. By that application, the plaintiffs seek to have the defendants restrained from entering onto or remaining at the applicant's offices, or transacting any business therein, managing or administering any of the plaintiff's assets.

It is common ground that there exist two separate entities, whose membership do overlap. The first of the said legal entities is KENYA AFRICAN NATIONAL TRADERS AND FARMERS UNION (KANTAFU). The second legal entity is KANTAFU COMPANY LIMITED.

As is evident from the names of the entities, one of them is a Union, whilst the other is a limited liability company. The said limited liability company was apparently incorporated after members of the Union passed a resolution to do so, on 10th April 1994.

It is the plaintiff's case that they are officials of KANTAFU, and that they have brought these proceedings in their capacities as the Chairman, Secretary and Treasurer respectively.

Although the plaintiffs originally challenged the legitimacy of the elections which led to the appointment of the defendants as directors of the company, the plaintiffs informed the court that they subsequently withdrew **HCCC No. 235 of 2006**, which was the case through which they had mounted that challenge. The withdrawal of the case was effected by the plaintiffs after the parties thereto had held fruitful discussions, under the chairmanship of the Provincial Commissioner, Nairobi.

My understanding, both from that submission by the plaintiffs, as well as from the letter from the Registrar of Companies dated 19th January 2006, is that, as at the time of hearing of the application before me, the plaintiffs did accept the defendants as the legitimate directors of KANTAFU COMPANY LIMITED.

Therefore, the real complaint that still persists is that the defendants had unlawfully entered the applicants' offices and ejected the said applicants. Subsequently, the defendants then prevented the applicants from conducting the affairs of the Union.

To my mind, there can be no doubt that there is a clear legal distinction between KANTAFU (the Union) and KANTAFU COMPANY LIMITED (the Company). Therefore, even if the defendants should be the legitimate directors of the company, that would not, by itself, given them authority to take over the offices, affairs or assets of the Union. Therefore, if I should find that they had done so, there would be no doubt that such actions were irregular.

But before delving into the facts, the defendants take the point that the suit, in its current form, is incompetent. They submit that there has been a clear mis-joinder and non-joinder of parties.

As far as the defendants were concerned, the dispute herein is as between the Union and the Company, as opposed to the officials of the two entities. Therefore, it is contended that the plaintiff should have been the Union, instead of its officials.

In that regard, I hold the view that the decision by the officials of the Union, to bring the suit in their own names is not necessarily fatal to the suit. Indeed, claims by Societies, Clubs and Unions are ordinarily brought by the officials of such entities. Therefore, the only possible shortcoming in the title to these proceedings might be the failure to indicate that the three named plaintiffs were suing for and on behalf of the Union. However, that defect would appear to have been cured, to some extent, by the description of the plaintiffs, (at paragraph 1a of the Amended Plaint), as being the officials of the Union.

Whilst it may be better to have indicated in the case title that the suit was brought for and on behalf of the Union, the failure to do so, ought not to be allowed to defeat the suit.

Meanwhile, as regards the contention that the defendant ought to have been the company, instead of its directors, I do find that that is debatable. I say so because it is possible that the plaintiffs do not actually, have a dispute with the company per se, but only with the persons who are alleged to have thrown out the plaintiffs. If that be the case, then the plaintiffs were right to have brought the action against the defendants in the manner they did here.

Having overcome that legal hurdle, the plaintiffs would now need to satisfy me that they have established a prima facie case with a probability of success. They also need to show that if the injunction was not granted they would suffer irreparable loss and damage, which could not be compensated in damages.

So, have the plaintiffs shown that the defendants unlawfully entered the Union's offices?

The said offices are said to be located at MARIAM ARCADE, Cross Road on L.R. No. 209/2278, Nairobi. However, apart from the deposition in the supporting affidavit of Mr. Kimani Wanyoike, the plaintiffs did not adduce any tangible evidence to show that they were entitled to occupy the offices in question.

If anything, the persons who have produced some evidence of entitlement to occupy the offices are the officials of the Company. The nature of evidence produced is very interesting as it shows that the Landlord, Madatali Chatur trading as Chatur Radio Service, had let out Rooms 1 to 8, on the 1st Floor of Mariam Arcade, to the Company. For instance, on 19th August 2005, the said Landlord wrote to Mr. Kimani Wanyoike, in his capacity as the chairman of the Company. Also, the **“Tenancy Letter of Offer”** dated 6th February 2002 was clearly addressed to KANTAFU COMPANY LIMITED. And finally, the electricity bill for the suit premises was issued by the Kenya Power and Lighting Company Limited, to KANTAFU COMPANY LTD.

All those pieces of evidence indicate that the tenant of the suit premises is the company.

Perhaps it is for that reason that when the 1st plaintiff was still the chairman of the company, he occupied the premises.

In the circumstances, I find that the plaintiffs have failed to satisfy me, on a prima facie basis, that they are entitled to be in occupation of the suit premises. Consequently, I am unable to accept the plaintiffs' contention that the defendants' occupation of the said offices was either irregular or unlawful. That being the case, there is no lawful basis for directing the defendants to hand over the offices to the plaintiffs.

Also, as regards the motor vehicle KAB 059U, the logbook indicates that the owner thereof is KANTAFU COMPANY LIMITED. The plaintiffs did not justify their claim to the said vehicle. Therefore, there is no justification for imposing any restriction on the defendants, in their capacity as directors of the company, in dealing with the said motor vehicle.

Finally, the plaintiffs have not demonstrated that the defendants or any of them were administering the property or assets of the Union.

Accordingly, there are no merits in the Amended Chamber Summons dated 29th May 2006. It is therefore dismissed, with costs to the defendants.

Dated and Delivered at Nairobi this 17th day of October 2006.

FRED A. OCHIENG

JUDGE