



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 335 of 2004

EDWARD KINGS ONYANCHA MAINA.....PLAINTIFF

VERSUS

THE FORD PEOPLE PARTY OF KENYA.....1ST DEFENDANT

SIMEON NYACHAE.....2ND DEFENDANT

KIPKALYA KONES.....3RD DEFENDANT

JOHN NYANGERI SIMBA.....4TH DEFENDANT

REUBEN OYONDI.....5TH DEFENDANT

ELECTORAL COMMISSION OF KENYA.....6TH DEFENDANT

ALICE MUYONGA.....7TH DEFENDANT

RAMADHAN MUSTAFA.....8TH DEFENDANT

THE REGISTRAR OF SOCIETIES.....9TH DEFENDANT

RULING

Edward Kings Onyancha Maina, the plaintiff in this suit made this application purportedly under the provisions of **Sections 3A and 89 of the Civil Procedure Act, Order XXXIX Rule 2(3) of the Civil Procedure Rules and Sections 20 to 29 of the Societies Act** seeking the following orders of this court:-

(i) *That the election returns following the National Delegates Congress meeting of the 10th of December 2004 at Jumuia Conference and Country Home Limuru by the defendants jointly and severally be declared null and void.*

(ii) *That the defendants by themselves or, their agents and or their servants be restrained by means of a temporary injunction from presenting the returns of the elections purportedly held on the 10th*

of December 2004 to the Registrar of Societies pending the hearing and determination of the suit filed by the plaintiff.

The application is supported by the annexed affidavit of the plaintiff, Edward Kings Onyancha Maina, and the grounds stated on the face of the application. The application is opposed. The 1st – 5th defendants and the 8th defendant have filed grounds in opposition to the plaintiff's application. The 2nd defendant, Simeon Nyachae, the party leader of the Ford People Party swore a lengthy replying affidavit in opposition to the plaintiff's application.

The gist of the plaintiff's submissions is that he was aggrieved by the outcome of the elections held on the 10th of December 2004 by the Ford People Party. The plaintiff submitted that the said elections were held in contravention of the **Societies Act** and the Constitution of the Ford People party. He submitted that the audited accounts of the party were not presented to the delegates before the said elections, neither were external auditors appointed. He further submitted that the annual general meeting which elected the twenty four officials of the party was held in contravention of the party's constitution. The plaintiff argued that although he was not a delegate from Nakuru District, as a member of the Ford People party, he was entitled to present his nomination papers for any post during the elections of the party. The plaintiff submitted that although he had presented the nomination papers for the treasurer's position, his name was deliberately omitted from the ballot paper.

He argued that his efforts to raise the issue on the floor of the meeting were thwarted by the officials of the Ford People party who ejected him from the venue of the national delegates conference. He stated that he was handled in the most inhumane manner and was mistreated without any regard to his feelings. He was of the view that his constitutional right to association had been infringed by the defendants. He further submitted that although the party's constitution provided for a machinery to appeal, the said provision was ineffective as the same people who barred him from being put on the ballot were the same people who were stated to be the arbitrators of disputes resulting from the election. The plaintiff further argued that although the Registrar of Societies had registered the officials of the Ford People party who were purportedly elected on the 10th of December 2004, the said fact was not a bar to this court to make appropriate orders to address the issues raised by the plaintiff and give him legal redress.

In reply, Mr Nyachae, Learned Counsel for the respondents submitted that the plaintiff's application had been overtaken by events. He submitted that the officials of the Ford People party who were elected on the 10th of December 2004 at the national delegates conference had already been registered by the Registrar of Societies. He submitted that the annual general meeting of the Ford People party which was held on the 10th of December 2004, was a special annual general meeting which had been specifically called to elect the national officials of the party. According to Mr Nyachae, the requisite notices had been issued and the agenda circulated. The agenda did not include the tabling of the accounts of the party. Learned Counsel submitted that the plaintiff, not being a delegate, was not entitled to present his nomination for any national post of the party. In any event, he argued, if the plaintiff was aggrieved by the conduct of the said elections, there was an internal machinery provided by the party's constitution which laid down a procedure for settling disputes. He submitted that the plaintiff had not availed himself to this dispute resolution machinery as laid down by the party's constitution before filing the suit against the party. He argued that the plaintiff had not exhausted the dispute resolving machinery as established by the party's constitution. He further submitted that some of the prayers sought by the plaintiff in the application could not be granted because the granting of the same would amount in law in the suit being finalised without the court having the benefit of hearing the evidence adduced by the parties to the suit. Learned Counsel submitted that the plaintiff had not been candid and had not disclosed what had actually transpired at the national delegates conference held on the 10th of December 2004. As the plaintiff was seeking an equitable remedy, he was required to come to court with clean hands, which was not the case. The defendants urged the court to dismiss the plaintiff's application with costs.

I have considered the submissions made by the plaintiff and the counsel for the defendants. I have also read the application and the affidavits filed by the parties to this application in support of their respective cases. The issue for determination by this court is whether on the evidence placed before me, this court

should grant the plaintiff the order of injunction sought. From the outset, I would like to state that Forum for Restoration of Democracy for the People (Ford People in short) is a society registered under the **Societies Act**. As a society, Ford People is owned by its members. The conduct of its affairs is regulated by its constitution. The courts will not interfere with the conduct of the affairs of a society unless it is established that the society in question conducted its affairs in breach of its own constitution. As a society, Ford People is comparable to a private members club. The conduct of its affairs is of no concern to the general public. It is only its bona fide members who can question the manner in which the said society is run.

In the instant application, the plaintiff, being a member of the Ford People party sought to contest the post of the national treasurer of the party. The plaintiff was not a member of the national delegates congress. According to **article 14 of the constitution of the Ford People party** only members of the national delegates congress can participate in the election of national officials of the party. The plaintiff, being aware of the provisions of **article 14 of the constitution**, still went ahead and presented his nomination papers to the party's secretariat. The nomination papers were rejected. The plaintiff was not however informed of this fact. In fact the officials of the party denied that the plaintiff had presented any such nomination papers. The plaintiff then attended the national delegates congress hoping that his name would have been put in the ballot paper. To his chagrin, he discovered that his name had been omitted. When he raised his concern, he was ejected from the national delegates congress as he was not a delegate. Being aggrieved, the plaintiff should have invoked **article 27 of the constitution** of the party which provides a machinery for disputes resolution. There is no evidence that the plaintiff submitted to the dispute resolution mechanism provided by the party's constitution. Instead the plaintiff rushed to this court.

As stated earlier in this ruling this court can only interfere with the conduct of the affairs of the Ford People party, a society, if it is established that it had breached its own constitution or the provisions of the **Societies Act**. Nothing has been placed before me to convince me that the defendants breached the constitution of the party when it conducted its elections of the national officials on the 10th of December 2004. While the plaintiff was anxious to make this court believe that his constitutional right to contest a position in the party had been infringed, it was incumbent upon the plaintiff to establish that he was qualified in the first place to contest for such a seat. He did not discharge this onus. It might be argued that **article 14 of the Ford People's Constitution** is undemocratic in that it bars the ordinary members of the party from contesting for national posts. Unfortunately that is a matter of internal management of the members of the Ford People party. The courts have no role to play. The plaintiff has conceded that the officials of the Ford People party elected on the 10th of December 2004 have already been registered by the Registrar of Societies as the officials of the party. This court would therefore be acting in vain if it issues the orders sought by the plaintiff. For the reasons stated, it is clear that the application filed by the plaintiff lacks merit. The same is dismissed with costs.

DATED at NAKURU this 15th day of February 2005.

L. KIMARU

JUDGE