



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

CIVIL CASE 251 OF 2005

PAUL KAIBEI IGUCHU.....PLAINTIFF

VERSUS

KENYA PLANTATION AND

AGRICULTURAL WORKERS UNION.....DEFENDANT

RULING

By plaint dated 4th March 2005 the plaintiff brought this suit against the defendant seeking the following reliefs.

- a) A declaration that the defendant is liable to pay the plaintiff his monthly salary allowances from the date they stopped paying the same till the date the plaintiff ceases to be Branch Secretary in the defendant Ruiru Branch.
- b) An order for payment of the sums in (a) above to the plaintiff.
- c) An injunction restraining the defendant by itself its agents servants employees and/or otherwise howsoever from interfering with the plaintiffs quiet use and enjoyment of the branch offices in his capacity as the Branch Secretary.

Simultaneously with the plaint the plaintiff took out a Chamber Summons application seeking orders:-

1. That an injunction do issue compelling the defendant to allow the plaintiff to occupy and use its branch offices in Ruiru in his capacity as the Secretary General of the said branch pending the hearing of this suit and or pending further orders of this court.
2. That an injunction do issue restraining the defendant by itself, its agents, servants, employees and/or otherwise howsoever from interfering with the plaintiffs quiet use and enjoyment of the branch offices in this capacity as the Branch Secretary pending the hearing of this suit or pending further orders of this court.

The application is premised on the following grounds:-

- (a) That the Defendants' officials have misappropriated the plaintiffs monies in terms of his salary and allowances.
- (b) The Defendant has unlawfully and illegally ejected the plaintiff from its Ruitu Branch

Offices and failed to pay his salary and allowances as a Branch Secretary.

(c) The Defendant is acting in a manner that is infringing on the plaintiffs' rights and freedoms.

(d) That plaintiff is suffering and stands to suffer irreparable harm.

(e) The plaintiff needs offices to serve the workers that elected him in Ruiru yet the defendants officials have converted and diverted the same to their personal use.

(f) The Defendant's actions are causing grave harm, damage and loss to the plaintiff.

(g) The Defendant intends to persist in its unlawful actions herein unless restrained by this Honourable Court.

The application is supported by the plaintiff's affidavit sworn on 10th March, 2005. he basically swears to the facts annexed in the plaint namely that he was elected the Secretary General of the defendant.

On 21st March 2001 and he is still the registered Secretary General of the Defendant's Ruiru Branch, that he was forcefully ejected from the Defendant's Ruiru Branch Offices and guards were stationed at the gate to prevent him from getting access to the offices and the defendants also proceeded to withhold his salary and allowances.

The application is opposed by the respondent who has put in a replying affidavit sworn by Francis Wamwere the deputy Secretary General of the Defendant Union who has deponed that the plaintiff ceased to hold the position of Organizing Secretary of the Defendant Union, Ruiru Branch since July 2001 and his post was filed.

That the plaintiff has no locus standi to question the financial status of the union. That the defendant does not owe the applicant any monies by way of salary or allowances as he has been fully paid for the period that he worked.

That the applicant is not the registered Branch Organizing Secretary of Ruiru Branch and as such he cannot be allowed to use the union offices which are currently being used by the other union branch officials.

It is submitted on behalf of the respondent that the prayers sought that an injunction do issue compelling the defendant to allow the plaintiff to occupy and use its branch offices in Ruiru in his capacity as the branch Secretary and that the defendants be restrained from interfering with the plaintiffs' quiet use and enjoyment of the branch offices are not capable of being issued as the applicant has not been occupying the offices for 4 years now.

This applicant has admitted in grounds (b) of the application and has deponed to the same in paragraph 7 of the affidavit in support of the application. That he was forcefully ejected from the office in 2001 and has been out of 4 years. It is a cardinal principle of the law that the court cannot injunct what has already taken place. Prayer 2 cannot also be granted because the court cannot issue orders to restrain the defendant from interfering with the applicants' quiet use and enjoyment of the offices which he stopped occupying 4 years ago as this would amount to reinstatement to the union offices at the interlocutory stage.

For the foregoing reasons the application for injunction is dismissed.

The applicant will pay the respondent's costs.

Delivered at Nairobi this 23rd day of June 2005.

J.L.A. OSIEMO

JUDGE