



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Civil Case 59 of 2005

KIMANI NGUNJIRI.....PLAINTIFF

VERSUS

DAVID MANYARA.....RESPONDENT

RULING

The respondent filed a notice of preliminary objection to the plaintiff's suit and prayed that the same be struck out on the following grounds:-

1. That the whole suit is bad in law as it offends the express provisions of the **K.A.N.U.** (Kenya African National Union) constitution and in particular article 23 thereof.
2. That the whole suit is bad in law as it discloses no cause of action against the defendant.
3. The plaintiff has no capacity to sue in the instant suit.

The respondent did not oppose the said preliminary objection and neither did he attend court inspite the fact that the hearing date for the said application was fixed by consent, having been adjourned on the plaintiff's instance on the date when it first came up for The applicant and the respondent herein are both members of KANU and are therefore bound by the party's constitution.

Article 23 of the said constitution deals with dispute resolution of the party affairs and paragraphs 1 and 2 thereof state as follows:-

“1. No member, as a condition – precedent for membership of the party, shall resort to a court of law for the resolution of any dispute arising out of the conduct of any party matter, issue or affairs, unless the machinery here established has been exhausted.

2. If the dispute in question arises out of or relates to the outcome or the conduct of any nominations for elections or elections within the party or any matter connected therewith, the aggrieved member shall refer the same to the Election Appeals Tribunal established under this Article and in the case of any other dispute it shall be referred to arbitration as provided under this Article”. (emphasis supplied)

Paragraph 4 provides that the National Chairman of the party in consultation with the National Executive Council shall establish such number of arbitration panels from time to time as circumstances may warrant to arbitrate on disputes as specified in clause 2 of Article 23. Such arbitration panels may be established at national level if the dispute is of national proportions or may be established at branch level if the dispute

is locally confined.

The property in dispute is owned by the party, **KANU**, and as earlier stated, the plaintiff and the defendant herein are both members of that political party and are therefore subject to the party's constitution and regulations. That being the case, the plaintiff should have written to the National Chairman and requested him, in consultation with the National Executive Council to establish an arbitration panel to deal with the dispute in issue instead of rushing to court in violation of the constitution.

I agree with the submissions of the applicant's learned counsel, Mr. Ogola, that matters that touch on a constitution of a body are domestic matters which should be dealt with under that body's constitution. Courts of law should not interfere with domestic matters of an organization that can be resolved simply by applying express provisions of the body's constitution especially where the constitution stipulates the mode of resolving disputes. However, where the rules of natural justice are being breached the court can interfere but that is not the case in this matter. Article 23 of the KANU constitution clearly shows that the party did not want its members to resort to courts of law for the resolution of disputes arising out of the conduct of any party matter, issue or affair unless the dispute resolution machinery as spelt out thereunder had been exhausted.

In **HINGA & ANOTHER VS P.C.E.A.** [1986] K.L.R. 317 the court dismissed the suit as having been rushed to court when the procedure as laid down in the Church's constitution had not been exhausted and so the court held that the case had been taken to court prematurely.

Mr. Ogola also cited this court's decision in **JOSEPH MUYA & OTHERS VS RUTH SCHAEFER & OTHERS**, HCCC 100 of 2004 (unreported) wherein the court struck out a suit which had been filed in contravention of express provisions of a constitution of the self help society.

I hold that the plaintiff's suit is unsustainable as it was filed in contravention of Article 23 of the KANU constitution. That is sufficient to dispose of this suit but there is another issue which I need to consider briefly. The plaintiff did not show in his pleadings that he had *locus standi* to institute this suit. The property in dispute is registered in the name **KENYA AFRICAN NATIONAL UNION, NAKURU BRANCH**. Article 29 of the party's constitution states that all land, buildings and other immovable property acquired by the party shall be vested in the names of five Trustees elected as provided under the constitution. It further states that the Trustees may sue or be sued in their capacity as Trustees of the party. It is also the Trustees who are supposed to maintain, collect rents, pay out goings, repair and keep a list of the party's properties. The plaintiff brought this suit as a KANU Chairman for Subukia Branch but not as a Trustee of the party. While it is doubtful whether any of the parties to this suit have any right to manage the suit premises in light of the very clear provisions of the party's constitution regarding maintenance of the party properties, it can be stated with certainty that the plaintiff did not have capacity to institute this suit as he is neither a Trustee of the party nor was he authorised by the party's trustees to do so.

The question of *locus standi* in a suit of this nature is very important because an individual member of a party cannot just wake up and purport to file a suit in court for the benefit of the party or a branch thereof without appropriate legal authority to do so. I have also looked at the prayers in the plaint and realised that they do not disclose any substantive claim which the plaintiff has as against the defendant. The prayers are worded as those of a party seeking some interim orders pending the hearing and determination of a suit. They are as follows:-

“REASONS WHEREFORE the plaintiff prays for judgment against the defendant for:-

(a) An urgent temporary injunction restraining the defendant his agents, servants and/or employees from interfering with the plaintiff running and management of the property known as L.R. No. 9/31 Nakuru Town while pending the hearing and determination of this

(b) An urgent temporary injunction restraining the defendant his agents, servants and/or

employees from interfering with the account number 2025636600 Cooperative Bank Nakuru pending the hearing and determination of this suit.”

There is actually no valid suit before this court if all that the plaintiff is praying for are the interim orders as aforesaid. Those are prayers which can only be made in an appropriate application for interlocutory injunctive orders but not in a main suit. What is supposed to be determined when the suit itself is listed for hearing has not been disclosed. All in all, I uphold the defendant's preliminary objections and strike out the plaintiff's suit as being bad in law for the reasons stated herein. The defendant will have the costs of the suit including the costs of this application.

DATED, SIGNED & DELIVERED at Nakuru this 14th day of June, 2005.

D. MUSINGA

JUDGE

14/6/2005