



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

1. NAJIB BALALA
2. SAM OKELLO
3. SAID ATHMANI
4. ALEXANDER MWANGEKA
5. KULDIP SODHI
6. AWADH SWALEH
7. DOMINIC LIVU
8. BEN SWAI
9. SAMMY GITAU
10. MARY STEVENS
11. SHAMSAN MIRAN
12. ABDALLA SALIM
13. RODGER DAINTY
14. SAID DADHIR

(All officials and members of the Management Committee of the Kenya National Chamber of Commerce and Industry (KNCCI) PLAINTIFFS

- Versus -

1. DAVID M. GITHERE
2. LABAN ONDITI RAO
3. ANDREW MATAZA
4. TITUS G. RUHIU
5. KENYA NATIONAL CHAMBER OF COMMERCE & INDUSTRY (KNCCI)

6. ABDALLA MIRAJ

7. SAID TAHIR

8. EUNICE NJERU

9. HERBERT MWACHALA

10. MEHURU SHAH DEFENDANTS

R U L I N G

On 16th April 2004 I delivered a ruling in this case granting the plaintiffs a temporary injunction restraining the defendants from interfering with the management of the National Chamber of Commerce and Industry, Mombasa Branch (the Branch) until this suit is heard and determined. The defendants contend that the wording of the ruling has emasculated their supervisory powers over the Branch. They have now applied under Order 39 Rules 2, 3 and 4 of the Civil Procedure Rules that the order be varied to allow them to continue supervising the Branch as before.

In the supporting affidavit of Titus G. Ruhui and the submissions by Mr. Mutiso, counsel for the defendants, it is stated that the plaintiffs have interpreted the order to mean that the defendants are shut out of the affairs of the Branch. As a result, it is further contended the Branch is now not making the monthly remittances as before and it is also not accounting for the Certificates of Origin issued to it by the head office. The application is strongly opposed. To the replying affidavit sworn by Alexander Mwangeka, the fourth plaintiff, are annexed copies of documents supposed to show that the defendants have and are still mismanaging the affairs of the National Chamber of Commerce and Industry and should therefore not be allowed to interfere with the Branch. It is further contended that the defendants are only interested in the finances of the Branch. In support of this contention one of the annexures to Mr. Mwangeka's affidavit is a letter dated the 19th April 2004 from T.G. Ruhui the Chief Executive of the Chamber instructing Consolidated Bank to continue freezing the Branch Account. Mr. Gikandi for the plaintiffs submitted that such letter coming soon after the ruling of this court shows that the defendants have no regard for the authority of this court. Mr. Mutiso apologized on behalf of his client and I hope he has warned his clients of the consequences of disobeying or giving misleading information regarding courts orders.

The plaintiff's prayer in the plaint is for a declaration that the defendants' purported dissolution of the management committee of the Branch and the suspension of the plaintiffs as members of the chamber is null and void and for an injunction restraining the defendants "from in any way whatsoever adversely dealing and/or running of the affairs of the Mombasa Branch ... and in any way whatsoever dealing and or interfering with the Accounts operated by the Mombasa Branch ..." at certain named banks. And their prayer in the injunction application was in similar terms that the defendants be restrained "from in any way dealing and/or interfering with the management of the Mombasa Branch ..." I granted the injunction but not in the exact terms of the plaintiffs prayer.

In the final order I stated that:-

"In the result I grant the injunction sought and order that the defendants are hereby restrained from interfering with the Management of the Branch until this case is heard and determined. The affairs of the Branch shall continue to be managed by the plaintiffs".

The plaintiffs extracted the order in terms of their prayer in the application for injunction that the defendants are restrained "from in any way dealing and/or interfering with the management of Mombasa Branch ..." The words "dealing and/or" are not in my order. However because I used the words "I grant the injunction sought" the plaintiffs may be right in interpreting that to mean that I granted the application as sought.

Having perused the defendants' application dated the 30th April 2004 together with the supporting affidavit as well as the replying affidavit and the annexures thereto and having considered the submissions by both counsel for the parties, I am satisfied that the defendants are entitled to a variation of the order of 16th April 2004. I therefore vary that order and restrict it to restraining the defendants including the Head Office of the National Chamber of Commerce and Industry from dissolving the management committee of the Mombasa Branch and/or suspending the plaintiffs from its membership until this case is heard and determined. In other words the situation obtaining before the said purported dissolution and suspension is restored until this case is heard and determined.

DATED this 4th day of June 2004.

D.K. Maraga

Ag. JUDGE