



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 3 OF 2020

ORGANICS 4 ORPHANS INTERNATIONAL.....PLAINTIFF

VERSUS

THRIVE FOR GOOD FOUNDATION.....1ST DEFENDANT

DALE PATRICK BOLTON.....2ND DEFENDANT

LINDA BOLTON.....3RD DEFENDANT

STEVE PIPPIN.....4TH DEFENDANT

PAUL WEIGEL.....5TH DEFENDANT

SOMY WINARDI.....6TH DEFENDANT

JAMES WOLLER.....7TH DEFENDANT

KERRI ROBERTS.....8TH DEFENDANT

AMBROSE LEMAIYAN MOOTIAN.....9TH DEFENDANT

RAPHAEL MUNENE.....10TH DEFENDANT

RACHEL NGURI.....11TH DEFENDANT

JACOB LOTODO.....12TH DEFENDANT

JAPHETH LANGAT.....13TH DEFENDANT

STEPHEN MASATU.....14TH DEFENDANT

EZEKIEL ABURE FESTO.....15TH DEFENDANT

ESTHER SIRET.....16TH DEFENDANT

JOYCE JUMA.....17TH DEFENDANT

RULING

1. The amended notice of motion dated 4/3/2020 and filed in court on the same date has been brought by the plaintiff under **Section 3A** and **63(e)** of the **Civil Procedure Act**. The plaintiff seeks the following orders:-

(1) ...spent

(1B) The orders of stay of proceedings given on 6th day of February, 2020 be lifted.

(2) That the Notice of Change of Advocates dated 5/2/2020 filed by M.M. KIMULI & CO. ADVOCATES on the 6/2/2020 be expunged from the record of the case file.

(3) Costs of this application be paid by MORRIS MUTUA KIMULI ADVOCATES personally.

2. The application is supported by the affidavit of **Boaz Oduor Ogollah**, who describes as the C.E.O. of the plaintiff's and also secretary to the board of directors, sworn on 4/3/2020. Two supplementary affidavits of **Douglas Kanaibei Makokha** the current Secretary/C.E.O. of the plaintiff's Board of Directors was sworn on 21/10/2020 and on 1/2/2021.

3. The basis for the application is the allegation that the plaintiff has never instructed M.M. Kimuli to be its advocate in the case; that the said firm of advocates acts for the defendants alongside the firm of Munyao & Kayugira & Co. Advocates who often represent the 2nd and 3rd defendants and that Kraido and Co. Advocates are legitimately appointed to handle the instant litigation. It is also alleged that the 2nd and 3rd defendants were removed from the board of the plaintiff on 13/11/2018 pursuant to a directive of the NGO Coordination Board to the effect that donors to the plaintiff organization should not sit as directors of the same organization.

1. In response to the application the 9th defendant filed two replying affidavits one sworn on his own behalf and on behalf his co-defendants on 8/10/2020 and on 21/1/2021 respectively. Exhibited in the affidavit of 8/10/2020 is a copy of a decree in **Nairobi High Court Commercial and Tax Division Misc. Appl. E828 of 2020 Organics 4 Orphans International and 3 Others -vs-Boaz Oduor Ogola and Another**. That decree states in part that:-

(d) That a declaration is hereby made that the founders of the first claimant are the 2nd and 3rd claimants with the 1st respondent as their paid agent undertaking the registration on their behalf

(e) That a declaration is hereby made that the 1st and 2nd respondents were employees of the 1st claimant whose services were already terminated.

(f) That a declaration is hereby made that the changes of the constitution of Organics 4 Orphans International and introduction of new board members to the said organization done pursuant to or to give effect to the minutes of a purported meeting dated 25/7/2018 are invalid null and void.

(j) That a declaration is hereby made that the parcels of land known as LR. 2116/XVIII/947(I.R.NO.43777) and LR No. 2116/1090 (I.R.NO.57922) belong to the 1st claimant.

(k) That an order is hereby made that the 1st respondent releases the original certificate of title for the parcels of land known as LR. 2116/XVIII/947(I.R.NO.43777) and LR. No. 2116/1090 (I.R.NO.57922) to the 2nd and 3rd claimants or their nominees within 30 days from the date of service of this order.

(j) That an order is hereby made permanently restraining the 1st and 2nd respondents from accessing the Organics 4 Orphans Training Centre at Milimani Estate Kitale on LR. 2116/XVIII/947(I.R.NO.43777) and Eden Guest House on LR. No. 2116/1090 (I.R.NO.57922) or exercising control over the said properties or in any other way, interfering with the operations and projects of Organics 4 Orphans International.

2. It is clear from the above decree that there were arbitration proceedings that ended in favour of the 2nd and the 3rd defendants in this suit.

3. The supplementary affidavit of **Douglas Kanaibei Makokha** dated 21/10/2020 was filed pursuant to leave granted by the court on 13/10/2020. It reiterated that the plaintiff's board of directors "*as reconstituted*" was comprised of 6 persons who did not include the 2nd and 3rd defendants. Minutes of 24/8/2020 held at Iroko hotel in Kitale were attached. In the affidavit, the deponent described himself as the current secretary/chief executive officer of the plaintiff's board of directors. A closer look at the minutes exhibited in the affidavit show that Boaz Ogola had stepped down from that position during that meeting. It is reiterated in the affidavit that Kraido & Co. Advocates are the properly appointed counsel to represent the plaintiff in the matter.

4. It is further deponed that on 5/8/2020 the High Court sitting in Kapenguria restrained Scola Nduku Munyao Advocate and Morris Mutua Kimuli Advocate from holding out as agents of the organization to any court or tribunals or purporting to be advocates retained by the plaintiff organization and representing the plaintiff organization in this suit and other cases. A copy of order to that effect is exhibited as "**DKM6(c)**". Those orders, are said to have been disobeyed by the two advocates and contempt proceedings were commenced before Hon. Justice H. Chemitei. It is also stated that the description of Ambrose Lemaiyan Mootian as the CEO/Secretary to the board is also in contempt of the same orders. It is averred the 2nd and 3rd defendants were mere intermediaries who were invited to be honorary chairman and treasurer of the organization but who were removed from their positions in 2018 pursuant to the directive of the NGO's Coordination Board dated 13/7/2018 which is annexed to the affidavit. I have examined letter marked "**DKM9 (a)**". **Paragraph 4** on the first page of the letter states as follows:

"Your donors are your board members. This goes against the tenets of good governance, accountability and conflict of interests"

5. It is therefore deponed that the consent dated **9/10/2020** filed by M.M. Kimuli & Co. Advocates and Munyao Kayugira & Co. Advocates is filed without authority and contrary to the orders of Hon. Justice Ruth N. Sitati issued on **5/8/2020** at Kapenguria.

6. A further affidavit replying affidavit of **Ambrose Lemaiyan Mootian** filed on **25/1/2021** states that an arbitration award was filed and adopted in **Milimani High Court Commercial and Tax Division Misc. Appl. E0828 of 2020** and the decree was extracted and served upon Mr. Kraido Advocate among others and to date no appeal or review has been filed against the decree. It is also alleged that there are contempt proceedings pending against Mr. Kraido, Mr. Boaz Oduor and Mr. Douglas Kinaibei before the High Court in Nairobi for failing to comply with those orders and for continuing to prosecute **Kapenguria High Court Civil Suit No. 2 of 2020** in the name of the plaintiff against the terms of the decree. The deponent further states that the Hon Justice Chemitei, in determining application filed in the Kapenguria case, found as follows:

a. The decision by Hon. Justice Majanja vide case No. E828/2020 made a final decision on the founders and leadership of the plaintiff organisation. There has not been a challenge to the above decision and to that extent the same remained valid and it barred Mr. Ogollah and Mr. Kinaibei from dealing with the plaintiff, its assets as well as the general running of it and they were ordered to handover its assets.

b. Boaz Oduor Ogollah and Douglas Kinaibei Makokha, their representative and agents are hereby restrained from dealing with the plaintiff in any way and any assets they may be holding should be released to the plaintiff forthwith.

c. That the defendants shall have the costs of this application to be borne by the said Boaz Oduor Ogollah and Douglas Kinaibei jointly and severally.

d. That in the circumstances, the decree of the court issued in Milimani Commercial Misc. Appl. No. E828/2020 fully and finally resolved the question as to who the legitimate officials in control of the plaintiff organisation these being Dale and Linda Bolton. The same was reiterated and re-emphasized in Kapenguria High Court Civil Case No. 2 of 2020. The two decisions also barred Mr. Boaz Ogollah, Mr. Douglas Kinaibei, their representatives, appointees or agents from dealing or interfering with the plaintiff in any way.

Submissions

7. Not surprisingly, two sets of submissions professedly of the plaintiff herein but of diametrically opposed points of view were filed, one on **26/10/2020** by Kraido & Co Advocates and another one on **25/1/2021** by M.M. Kimuli & Co Advocates. I have considered those submissions

Determination

8. The main issues that arise in the instant application are whether the orders of stay of proceedings given on **6th February, 2020** should be lifted, whether the Notice of Change of Advocates dated **5/2/2020** filed by M.M. Kimuli & Co. Advocates on the **6/2/2020** should be expunged from the record of the case file and whether the costs of this application be paid by Morris Mutua Kimuli Advocates personally.

9. A perusal of the history of the relationship between several persons seeking the control of the plaintiff organization will easily determine the instant application; Boaz Oduor Ogollah and Douglas Kinaibei Makokha and their associates on the one hand struggle against Dale Patrick Bolton and Linda Bolton for the stewardship of the plaintiff.

10. The question to be asked is whether of all the formal contests the two sets of adversaries have had in court any has finally decided who should be at the helm of the plaintiff organization. The answer that this court gets from a perusal of the litigation records presented by the two contesting sides is that the decision in **Milimani High Court Commercial and Tax Division Misc. Appl. E0828 of 2020** finally decided the status of Boaz Oduor Ogollah and Douglas Kinaibei Makokha and their associates *vis a vis* the plaintiff organization in that decision wrested control of the reins of power from Boaz Oduor Ogollah *et al* and proclaimed them employees of the plaintiff organisation whose services were already terminated. It is clear that save for a successful appeal overturning those orders it would not be possible to see Boaz Oduor Ogollah and his group in any other light than that of persons already excluded from control of the plaintiff.

11. Although Boaz Oduor Ogollah and his group maintain that the Kapenguria case resulted in orders against Dale Patrick Bolton's group it is clear that the Hon. Justice H.K. Chemitei in his decision deferred to the decision of Majanja J given earlier in **Milimani High Court Commercial and Tax Division Misc. Appl. E0828 of 2020** analysed hereinabove. Though the Boaz Oduor Ogollah have intimated that they intend to appeal, and that they have filed a Notice of appeal against the Kapenguria decision, the definitive orders in **Milimani High Court Commercial and Tax Division Misc. Appl. E0828 of 2020** remain in force. They therefore remain excluded from running the plaintiff organization. Consequently if the firm of Kraido & Co. Advocates have taken instructions from Boaz Oduor Ogollah and his group in this suit, they cannot be deemed to have proper instructions of the plaintiff to handle this litigation.

12. The upshot of foregoing is that the application dated **4/3/2020** by filed by Kraido & Co. Advocates has no merit and the same is hereby dismissed with no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 25TH DAY OF FEBRUARY, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE.