



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO.29 OF 2003

MOHINDER SINGH SOHAL 1ST PLAINTIFF

JAGJIT SINGH PANDAL 2ND PLAINTIFF

VERSUS

SURJIT SINGH SAGOO 1ST DEFENDANT

JASVINDER SINGH OBEROI 2ND DEFENDANT

SUDARSHAN SINGH DADYALLA 3RD DEFENDANT

AND

GURDEV SINGH BIRDIAPPLICANT/INTERESTED PARTY

RULING

In a plaint filed on 12th February 2003, the Plaintiff Mohinder Singh Sohal and Jagjit Singh Pandal are suing Surjit Singh Sagoo, Jasvinder Singh Oberoi and Sudarshan Singh Dadyalla as the Chairman, Vice Chairman and Secretary respectively of Siri Guru Singh Sabha Mombasa. They are seeking two declarations, injunctions, and costs against the Defendants. There was also an application brought together with the same plaint and which is now partly heard.

The applicant in this application dated 28th February 2002, Mr. Gurdev Singh Birdi has brought this application seeking three orders. These are first that he be joined as a co-defendant in this suit; secondly that pending the hearing and determination of this application there be a stay of proceedings herein, and thirdly that the elections of the office bearers of Siri Guru Singh Sabha scheduled to be held at annual meeting to be held on or before 15th March 2003 or on any other date be stayed till the determination of this suit. The grounds for the application are that the applicant is a member of the Siri Guru Singh Sabha and has direct interest in the outcome of this suit; that the applicant is among the members that requisitioned in writing for the convening of an Extra-ordinary General Meeting of the Society that resulted in the Executive Committee scheduling the holding of the meeting on the 17th February 2003; that calling off of the meeting as a result of the court order obtained by the Plaintiffs directly infringed the constitutional rights of the applicant; that joining of the Applicant to the suit shall enable the applicant to defend and protect his rights as contained in the constitution of the society; that applicant is a necessary party to the suit and that no prejudice will be caused to the Plaintiffs and the Defendants in this suit. The application is supported by an affidavit which mainly states that the applicant needs to be joined as a party to enable him protect his constitutional rights.

The Plaintiffs opposed the application although they did not comply with Order 50 Rule 16 (1) of the Civil Procedure Rules in that they did not file and serve either a Replying affidavit or statement of

grounds of opposition. However, as the application was coming up for inter parte hearing on 4th March 2003 and it had been filed on 28th February 2003, I did allow the Plaintiff to address me on the application. Their learned counsel Mr. Nowrojee raised mainly three issues. These were that under Clause 30 of the Society's Constitution, the Trustees, who are also the Chairman, Vice Chairman and Hon. Secretary were the ones to sue and to be sued and although the applicant here is one of the people who requisitioned the Extra- Ordinary General Meeting of the Sabha, once his requisition was considered and acted upon by the Council, the requisition had been subsumed under the Councils decision and his interests would therefore be taken care of by the Council as once the Council had decided on the Requisitions, it ceased to exist and the decision of the council is what remained and lastly that the application has been filed late and no explanation has been offered for that lateness in filing the application. The applicant knew about the meeting which was earlier on scheduled for 17th February 2003 and yet he filed this application eleven days later on 28th February 2003.

The Respondents learned council Mr. Omwenga supported the application, although he too did not file any affidavit. He submitted that the requisition was not considered by the Council and in any case consideration of the requisition could not in itself have taken away the applicants rights.

I have considered the application, the affidavits in support of it, the constitution of the Society Siri Guru Singh Sabha and particularly Clause 30 to which I was referred by Mr. Nowrojee. I have also considered the able submissions by the learned counsels and the pleadings so far in the record particularly the plaint and the prayers in that plaint. I must emphasise that only prayer 2 of the application was urged and is what was considered. I do not see Clause 30 as being a bar to a person who feels his rights are at a stake in a case already filed in court and wants to be joined as a party to protect the same rights. In my humble opinion, Clause 30 only states who can sue if Siri Guru Singh Sabha wants to sue anybody for anything that concerns Siri Guru Singh Sabha. It also provides for who can be sued in case any person feels aggrieved by the actions of Siri Guru Singh Sabha. To that extent, Mr. Nowrojee is with respect right that they sued the three Defendants because those were the trustees of Siri Guru Singh Sabha and may have made certain decisions on behalf of the same Siri Guru Singh Sabha. However, having sued the right persons, can they block any other person who feels that the suit may affect him. In my view the guiding principle is spelt out in Order 1 Rule 3 as read together with Order 1 Rule 10(2). Order 1 Rule 3 states as follows:

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise.”

This is guidance to an intending plaintiff as to who he can join as Defendants at the inception of a case. However after the suit is filed then Order 1 Rule 10 (2) comes into play. It says:

“(2) The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit be added.”

In my mind, this rule allows the Plaintiff a second chance after filing his plaint to join a defendant who should have been joined at the beginning of the suit and it also gives the court the power to join a defendant after the suit has commenced if the court feels that a person should have been joined as a defendant so as to enable court to effectively and completely decide the suit. Such a person can under that provision apply to be joined as Defendant. Under these guidelines, the applicant Gurdev Singh Birdi had a duty to demonstrate to the court in what manner his presence before the court would be necessary in order to enable the court effectively and completely adjudicate upon and settle this matter. Alternatively,

he needed to satisfy the court that any right or relief in respect of the claim herein exists against him or that if he is not joined in this suit then the court may not come to a full, and effectual conclusion in this matter. What does he say in his Affidavit? That he is one of the members and second signatory to the Requisition of the Extra Ordinary General Meeting dated 27th January 2003, but he follows that immediately with the following statement at paragraph 4 of his affidavit:

“4. That I am informed by the Defendants herein which information I believe to be true that the Executive General Meeting of 7 th February 2003 approved the holding of the Extra - ordinary General Meeting on requisition and or scheduled the same for the 17 th February 2003 and a notice to that effect was posted at the Notice board of the SIRI GURU SINGH SABHA at the Sikh Temple on 10 th February 2003 as witness the annexed copy of the same marked “B”.

That in effect is admission that his request had been acted upon by the Executive Council Meeting which means it ceased (as Mr. Nowrojee rightly submitted) to be any longer his baby and became the baby of the Executive Council Meeting. Thus the applicant ceased to be the necessary party for the decision on the requisition as the Requisition had been taken over and acted upon by the Council (according to the Applicant) and the dispute is now on the action of the council and not on whether the Requisition should or should not have been made. Put another way the applicant’s presence before the court is no longer necessary in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in this suit, or at least the applicant has not demonstrated the same. At paragraph 8 of the supporting affidavit, the applicant says he is affected by this suit and orders obtained as they infringe on his constitutional rights as enshrined in the constitution of the Society. He has not stated how his constitutional rights are infringed by the orders obtained as the only order was interim order of injunction which was granted on 13.2.2003 which apparently stopped the meeting of 17th February 2003. That order only stopped a meeting of 17th February 2003. How is his being joined as a party going to help in effectual decision of that issue. The executive committee are the ones who were stopped and whether he is Defendant or not consideration of that issue will still be made and his absence will not make it difficult for the court to decide on that issue justly, nor will his presence make it easier for the court to decide it.

In my feelings, the applicant, if he is so interested could seek to be a witness in the case at the time of hearing. However, in the circumstances of this case, I am not satisfied that he has brought himself within the ambit of Order 1 Rule 10(2) under which he made the application.

Prayer 2 of the application dated 28th February 2003 is dismissed with costs to the Respondent. As prayers 3 and 4 of the application depended on whether the applicant is joined as a party to the suit or not they are no longer available as the prayer to join the applicant as a party has been dismissed.

They are also dismissed. Orders accordingly.

Dated at Mombasa this 10th Day of March 2003.

J.W. ONYANGO OTIENO

JUDGE