

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL SUIT NO. 322 OF 2003

**JOE KADENGE &
OTHERS**

**C/O OKUNGU & CO.
ADVOCATES**

**P.O. BOX 51491
NAIROBI.....
.....
.....PLAINTIFF
S**

VERSUS

MAINA KARIUKI

**HUSSEIN SWALEH,
MOHAMED
HATIMY**

**& KENYA
FOOTBALL
FEDERATION.....
.....DEFENDANT
S**

RULING

In this application filed on 8th April, 2003 the applicants who allege that they are members of the 4th defendant, a registered society, beseech this court to restrain the defendants who are officials of the 4th defendant and the 4th defendant from holding a meeting scheduled for 4th March, 2003 until the determination of this application or suit. As the matter was not likely to be heard before the said date, leave to hear the matter was granted.

The grounds on which the parties seek the restraining orders are said inter alia to be that the defendants had illegally and unlawfully convened the meeting as they are not the registered officials of the society; the intended items for discussions were contrary to S.20 of the Societies Act as no consent for same had been obtained from the registrar of societies and that they would suffer irreparable loss and damages if the meeting were allowed to proceed.

The principles on which the court acts in such matters are clear. In **Giella vs. Cassman Brown and 6 Ltd. (1973) E.A. 354**. Firstly the Applicants have to make out a prima facie case with a likelihood of success. Secondly it is not normal for the courts to act where a party is not likely to suffer a loss which cannot be adequately compensated by an aware of damages and finally if in doubt, the matter can be decided on a balance of convenience.

Looking at the dispute herein and in particular S.20(2) of the Societies Act it is observed that before a society amends its constitution it should apply to the Registrar for same and the application should be accompanied by minutes of the relevant meeting. This therefore presupposes a prior meeting such as the

one proposed herein and as such the defendants are breaching no law in holding a meeting before the Registrars consent is sought. This coupled with the fact that the court's do not make a practice of interfering with the internal matters of registered societies, would appear to militate against the existence of a prima facie with a likelihood of success.

It is also observed that the applicants are but a few of the members of the society. If their grievances are shared by the majority, then they will have their way at the meeting. If not then they will have to be heard at the meeting but must give way to the majority as is in true democracies. To do otherwise would be dictatorial and a tyranny of the few over the majority which is undemocratic is to be abhorred. The balance of convenience would therefore tilt towards allowing the members to exercise their democratic and constitutional rights of associating or dissociating with whoever they like at any time. In doing this the majority would be losing nothing but would have everything to gain as they would have a forum to air their grievances to their peers.

For the above reasons, I find that the applicants herein have not made out a case for the grant of the orders sought and I dismiss this application with no order as to costs.

Orders accordingly.

Dated and delivered this 9th day, April, 2003.

G.P. Mbitio

JUDGE