



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 1134 OF 1999

KAYOLE BIDII JUA KALI ASSOCIATION PLAINTIFF

V E R S U S

THE REGISTRAR OF SOCIETY DEFENDANT

P R O C E E D I N G S

3/9/99 Coram: Alouch, J.

Court Clerk - Kago

KIMANI

The Registrar of Societies has received the names and is about to Register them.

Alouch, J.

BY CONSENT

As the Registrar is about to register names after all election that is disputed. I certify the matter urgent, and I admit it for hearing during the court vacation.

I therefore proceed to grant leave to the applicant to file a substantive application.

As for the request that the leave so granted operate as a stay I direct that the application be served for hearing inter-partes on 8/9/99.

Alouch, J.

8/9/99

Coram: Khamoni, J.

Kabetu Court Clerk

Mr. Kimani for the Applicant

Asks for matter put aside until 11,00 am granted.

Khamoni, J.

Court at 1.00 Pm

Mr. Kimani for the Applicant

No Appearance for the Respondent

.MR. KIMANI:

I filed affidavit of service (filed).

Matter for interpartes hearing whether leave which has already been granted (Lady Justice Alouch) should operate as a stay. New officer only elected at an unlawful meeting. Names submitted to the Registrar on the 19/8/99 he purported to register the new officials as officer bearers.

True the Registrar has already registered the new officials. but should be prevented from holding them out as lawful officers of the applicants.

Khamoni, J.

RULING

Leave was granted by Lady Justice Alouch who directed that the questioning to whether or not that leave should act as a stay be decided after an intergrated hearing. This is the interpartes hearing whereby I am told the Registrar was served but has failed to appear.

I have therefore heard counsel for the Applicant. But from what he is telling me there is nothing really for stay since, the election complained of took place and the elected officials registered by the Registrar. For the Registrar to hold those officers as officials of the Association, that is something in his mind which an order of the court cannot stay.

It appears to me that this is a situation where the status quo will have to be maintained until the applicants succeed in their application for certiorari when an order of the court could be issued to quash the registration. In the final analyses therefore I rule that there is nothing to stay. The leave granted here in will not therefore operate as staying anything.

Khamoni, J.

24/9/99

Mr. Nyaga for Ndumu Kimani Mrs Advocates for the Applicant

Notice of motion dated 24/9/99 fixed for hearing on 6th December, 1999 at 9.00 am. Notice to issue.

15/10/99

Executive Officer

Mr. Irungu for Ndumu Kimani & Co. Advocates for the Applicant Case fixed for mention on 22nd October, 1999 before the Hon. P.D.R. at 9.00 a.m.

Notice to issue . Signed

Executive Officer

22/10/99

Coram: C.K. Njai, Principal Deputy Registrar

Court Clerk - Susan

Mr. Kimani for applicant

No Appearance for Respondent

COURT:

AT Mr. Kimani's request mention on 29/10/99.

28/10/99

Coram: C.K. Njai, Principal Deputy Registrar

Court Clerk - Susan

No appearance

COURT:

Stood Over Generally. Applicant to pay Court Adjournment Fees. 6/12/99

Coram: E. O'Kubasu, J.

Mr. Kimani for applicant

Mrs Njiha for Registrar of Societies

Court Clerk - Mwaura

MR. KIMANI

We have not been served with any grounds.

MISS NJIHA

I was instructed on Friday 3/12/99. I need to file my notice of appointment.

ORDER

Matter put off to 15/12/99. Today's cost to the Applicant.

O'Kubasu, J.

15/12/99

Coram: E.O. O'Kubasu, J.

Mr. Kimani for applicant

Mrs Njiha for Respondent

Court Clerk: Mwaura

ORDER:

By consent hearing on 20/1/2000

O'Kubasu, J.

20/1/2000

Coram: Kuloba, J.

Mr. Kimani for applicant

No appearance for Respondent

Court Clerk Mwai in attendance

MR. KIMANI:

I wish to apply for an adjournment as I wish to seek to amend pleadings which I think have a major defect.

R. Kuloba, J.

20/1/2000

ORDER:

For the reason stated by Mr. Kimani, Stood Over Generally.

R. Kuloba, J.

20/1/2000

9/2/2000

Upon reading a consent letter Ref: NK/K/269/99, dated 31st Jan, 2000, filed herein on 9th February, 2000 and signed by Ndumis Kimani * Company Advocates for applicant and C.K. Njiha (Mrs) Advocate for the respondent, the Following order is hereby recorded.

“By consent the application dated 24/9/99 be marked settled. The Registrar of Societies do call for elections of office bearers of Kayole Bidii Jua Kali Association. The same be held within 60 days.”

Dated this 15th day of February, 2000.

Signed

Deputy Registrar

3/2/2000 11.20 am.

Coram: Alouch, J.

Court Clerk - Kamau

Patronilla Njeru, the applicant in person

Patronilla - I want my lawyer to be present.

Alouch, J.

By Court - Further dates to be taken in the Registry by the applicant, when she is ready. The application is marked Stood Over Generally.

Alouch, J.

20/4/2000

Coram: Ang'awa, J.

Court clerk: Andanje

Mr. A. Nyandieka

I am for the applicant No.6 My certificate of urgency of 20/4/2000 as it doesn't comply with rules. Application to withdraw certificate of urgency granted with leave to file a fresh one.

M. Ang'wa, J.

20/4/2000

25/4/2000

Vacation Court

Ang'awa, J.

Court Clerk Andanje

Mr. A.O. Nyandieka for the applicant I pray I be heard during vacation on N.M. 17/4/2000 filed on 20/4/2000. Reason of urgency of C/S 25/4/200.

The respondent, Registrar of Society and one Kibe. They obtained orders from duty and execution on 20/4/2000. Applicants were office bearers. They stand to suffer irreparably. Should it be ex..... I have shown an affidavit.

Election is to be heard. One calling for elections. PW.3 he has said until a court order is served. An election to be held on 28/4/2000. Unless application is heard it will overtaken by events.

ORDER:

Application for leave to be heard during the vacation be and is hereby granted.

The Notice of Motion filed on 20/4/2000 and dated 17/7/2000 be heard before Hon Justice Khamoni on 27/4/2000. That the application be served on the respondent and on Ndunu Kimani personally.

Interpartes hearing on 27/4/2000.

M.A. Ang'awa

JUDGE

.....25/4/2000

27/4/2000

Coram: Khamoni V.J.

Kabiru Court Clerk

Mr. Nyandieka for the Applicants

Mr. Kimani for the 2nd Respondent

No Appearance for the 1st Respondent

MR. NYANDIEKA

1st Respondent served. There is a return of service. Although I have been served with replying Affidavit and grounds of objection now, I am prepared to proceed with the hearing of the Notice of motion dated 17/4/2000.

MR. KIMANI:

I do not mind to proceed.

M. Khamoni, J.

COURT:

As I will not have the time to hear long contested applications together with the short contested or uncontested application during this vacation time and this being a long and contested application, hearing of adjourned to 23/5/2000 before any judge.

An interim stay of execution granted in terms of prayer (2) in the

Notice of Motion.

Khamoni, J.

15/5/2000

Githinji, J.

Mr. Mbugua for respondents/Applicants - present

ORDER

Application dated 10/5/2000 to be served for hearing inter partes 18/5/2000.

Githinji, J.

18/5/2000

Githinji,

Mr. Mbugua for Applicant - present

Mr. Nyandieka for 6th Respondent - present

MR. NYANDIEKA

I will raise a preliminary objection. The point is that the application for injunction under order 39 is incompetent because there is no suit pending between the parties in the application. The application for injunction is based on our application for review coming for hearing on 23/5/2000. There is a counsel on record appearing for applicant. James Kibe Ndungu Kamau my learned friend has filed Notice of appointment and not Notice of Change of advocates according to order III strike out the entire application with costs as being unconnected. Costs on higher scale.

MR. MBUGUA

There is an application by 6th applicant praying for s..... for execution of consent orders dated 15/2/2000. The suit is still pending. It was not determined. That is why we have brought the application.

Secondly a litigant can seek services of an advocate while still retaining another. There is no bar to two advocates. Mr. Ndungu Kamau, is still on record. He has been served with its application. Disallow the application.

Githinji, J.

MR. NYANDIEKA

In Misc Application No. 1134/99. The present applicants are not parties. That applicant have not been made parties to the suit. Main suit is Judicial Review Application.

ORDER III

There is a difference before a party appointing an advocate and a party charging advocates until Notice for merge is served the order advocate is still on record and my is not properly on record.

Githinji, J.

ORDER

Ruling/hearing at 19/5/2000. Githinji, J.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C.C.C. NO. 1134 OF 1999

R U L I N G

This is a preliminary objection to the application for an order of injunction dated 10/5/2000. The order of injunction is sought to restrain the six respondents from selling - deviding allocating and transferring land reference No. Kayole service scheme. A- 1602 it is alleged that the six respondent were unlawfully elected as officials of Kayole Bidii. Jua Kali Association and that they are unlawfully sale-dividing the land. This suit was instituted as a Judicial Review application. A Notice of Motion dated 24/9/99 asked that the decision of the Registrar of Societies made on 19/8/99 to register new officials of the Association be quashed. a consent letter signed by counsel for application (Association) and respondent (Registrar of Societies dated 31/1/2000 was filed in court on 9/2/2000 asking that application forbider of certiorari be

marked as settled and that Registrar of Societies dofor within 30 days. The consent letter was rewarded as order of court on 15/2/2000. The six officials who had been elected filed an application dated 17/4/2000 asking for an order that the warrant order entered on 15/2/2000 be provided. That application is fixed for hearing on 23/5/2000. So it is clear that it is suit of about elections and not about land. There is no suit pending the application for judicial review has been withdrawn. Though there is a pending application to review the order allowing withdrawal and ordering fresh elections.

I therefore agree with Mr. Nyandieka that the application for injunction to restrain such decision has no foundation. In any case it has been brought in a dispute dealing solely with elections. The applicant should have filed a separate suit consequently. I uphold the preliminary objection with costs and strike out the application for injunction dated 10/5/2000 with costs.

Githinji, J.

Mr. Mbugua present

Mr. Nyandieka - present

22/5/2000

23/5/2000

Githinji, J.

Mr. Nyandieka - present

Mr. Kimani & Mr. Ngure for 2nd Respondent - present

James Kibe

Mrs Nyika the Registrar of societies absent (Not served.)

MR. NYANDIEKA

I apply to withdraw the application dated 17/4/2000 on the ground that the counsel Order that we are seeking to review has been overtaken by events as the 60 days have elapsed and the order cannot be implemented by the Registrar. This is subject to there being no order as to costs. If respondents insist on costs, then I am ready to prosecute the application.

Githinji, J.

MR. KAMAU:

Applicant cannot hold this court at ransom. We are entitled to costs. Let them proceed with the application.

Githinji, J.

MR. NYANDIEKA

Then I will proceed with the application.

COURT:

Mr. Kamau consults Mr. Ngure and then says:

No objection to withdrawal of application with no orders as to costs.

Githinji, J.

ORDER:

As prayed by Mr. Nyandieka and by court application dated 17/4/2000 is withdrawn with no orders as to costs.

Githinji, J.

23/5/2000