



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI
MISC APPL NO. 1134 OF 1999

KAYOLE BIDII JUA KALI ASSOCIATION.....APPLICANT

VERSUS

THE REGISTRAR OF SOCIETY..... RESPONDENT

RULING

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 sub-dividing allocating and transferring land reference no. Kayole service scheme A- 1602 It is alleged that the six respondents were unlawfully elected as officials of Kayole Bidii Jua Kali Association and that they are unlawfully sub-dividing the land.

This suit was instituted as a judicial Review application. Notice of motion dated 24.9.99 asked that the decision of Registrar of societies made on 19.8.99 to register new officials of the Association be quashed. A consent letter signed by counsel for applicant (Association) and respondent (Registrar of Societies dated 31.1.2000) was filed in court on 9.2.2000 asking that application for order of certiorari be marked as settled and that Registrar of societies do care for elections within 30 days. The consent letter was recorded as order of the 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 consent order entered on 15.2.2000 be reviewed. That application is fixed for hearing on 23.5.2000. So it is clear that this suit is 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 The application for judicial review has been withdrawn though there is a pending application to review the order allowing withdrawal and ordering fresh elections.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 sub-divisions 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 and with costs and strike out the application for injunction dated 10.5.2000 with costs.

E. M. Githinji

Judge

22.5.2000

Mr. Mbogua present

Mr. Nyandieka present

23.5.2000

Githinji J.

Mr. Nyandieka present

Mr. Kimani & Ngure for 2nd Respondent present -

James Kibe

Mrs Nyiha for Registrar of Societies absent (not served)

Mr. Nyandiek

I apply to withdraw the application dated 17.4.2000 on the ground that the consent 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.

E.M. Githinji

Judge

Mr. Kimani

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

E. M. Githinji

Judge

Mr. Nyandieka Then I will proceed with the applicant

Court

Mr. Kimani consults Mr. Ngure and then says: No objection to withdrawal of application with no orders as to costs.

E.M. Githinji

Judge

Order: As prayed by Mr. Nyandieka and by consent application dated 17.4.2000 is withdrawn with no orders as to costs

E. M. Githinji

Judge

23.5.2000