



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL SUIT NO. E001 OF 2021

COLLINS AJWANG (Suing as the Chairman –**NATIONAL NURSES ASSOCIATION OF KENYA – KISUMU BRANCH**.....**1ST PLAINTIFF/APPLICANT**
EMILY ACHIENG OGWANG (Suing as the Branch Treasurer –**NATIONAL NURSES ASSOCIATION OF KENYA – KISUMU BRANCH**.....**2ND PLAINTIFF/APPLICANT**

VERSUS

ALFRED OBUYA OBENGO (Sued as the Chairman –**NATIONAL NURSES ASSOCIATION OF KENYA**).....**1ST DEFENDANT**
JACINTA MOKI (Sued as the National Treasurer – **NATIONAL NURSES ASSOCIATION OF KENYA**).....**2ND DEFENDANT**
STEVEN NJOROGE NGANGA(Sued as the National Secretary –**NATIONAL NURSES ASSOCIATION OF KENYA**)..... **3RD DEFENDANT**
JOSEPH MIRERE(Sued as the Chairman of the Professional Conduct & Discipline Committee – **NATIONAL NURSES ASSOCIATION OF KENYA**).....**4TH DEFENDANT**
NATIONAL NURSES ASSOCIATION OF KENYA (Sued through its Chairman, Treasurer as its officials) **5TH DEFENDANT**

RULING

The application before me is dated 21st December 2020. It is an application which was brought by the Plaintiffs against the 1st, 2nd, 3rd and 5th Defendants.

1. The application sought orders directing the Respondents to;

“unconditionally unfreeze and/or Release the Bank Account held by the NATIONAL NURSES ASSOCIATION OF KENYA – KISUMU BRANCH, National Bank of Kenya, Kisumu Branch, Account No. 01242023801300.”

2. The said application was supported by the affidavit of the 1st Plaintiff, **COLLINS AJWANG**, who had brought the suit in his capacity as the Chairman of the Kisumu Branch of the **National Nurses Association of Kenya**.

3. It was the Plaintiff’s case that there were no valid grounds upon which the Respondents could freeze the account in issue. However, the

Respondents had, on 29th June 2020, frozen the account in issue.

4. As a consequence of the said freeze, the Kisumu Branch of the Association were unable to pay rent for their offices, resulting in the landlord kicking them out.

5. The Plaintiffs also said that the freezing of the bank account had made it impossible for the Association to pay Allowances to the officials.

6. Therefore, the Plaintiffs asserted that;

“..... the Respondents action if not restrained by this Honourable Court, it will embolden the 1st defendant to keep on inciting the National Office against Kisumu Branch Office, so that the rights of the 1st plaintiff will continuously be violated without any recourse, which shall set a very bad precedent.”

7. On the other hand, the Respondents said that the action complained about was fair, as the Kisumu Branch of the Association had failed to submit Annual Returns for a period of 5 years.

8. In a swift rejoinder, the Plaintiffs pointed out that they had only been in office from 8th December 2016, and therefore they cannot be accountable for the alleged failure over 5 years.

9. During the time when the Plaintiffs have been in office, they had filed Quarterly Reports, and Annual Returns. If anything, the Plaintiffs believe that it was the National Office of the Association that owes money to the Kisumu Branch.

10. The Plaintiffs were convinced that there are no financial misappropriations at the Kisumu branch, and that the 1st Respondent was;

“..... cunningly edging the 1st plaintiff out from the Chairmanship of NNAK – KISUMU Branch to ensure that by the time the elections which are due are held, the 1st plaintiff can't be able to contest the position of the National Chairman to which he has declared an open interest in.”

11. But the Respondents assert that their actions were properly founded upon the Constitution of the Association, and that the 1st Plaintiff was accorded an opportunity to be heard.

12. However, the Plaintiffs assert that the steps taken, in the name of the disciplinary process, was illegal as it was in contravention of the Constitution.

13. The Plaintiffs assert that the National Executive Council can only suspend a member pursuant to a recommendation from the Branch leadership. Therefore, as no recommendation has emanated from the Kisumu Branch, and also because there was no evidence that such recommendation was deliberated upon by the Adhoc Committee, the Plaintiffs deem the actions of the National Executive Council to be seriously flawed.

14. In answer, the Respondents pointed out that;

“The decision of freezing the account was therefore taken as an interim measure to safeguard member funds from further alleged misappropriation, as found through a meeting of the Finance and Administration Committee (Annexure ASJ – 2 on the 1st, 2nd and 3rd Respondents Replying Affidavit, on the Minute 2/9/05/20 of the 19th Day of June 2020), pending a fair hearing before the Disciplinary Committee; where the plaintiffs would have had an opportunity to answer to the allegations; and show cause why the decision was unjust against them.”

15. The Plaintiffs submitted that although they were summoned to appear before the Respondents in Nairobi, that was done;

“..... after they had frozen our Bank account intentionally to ensure that the plaintiffs got financially paralysed and lack funds to finance the travelling expenses and other out of pocket expenses to Nairobi.”

16. The Plaintiffs' view was that the Respondents had invited them to travel to Nairobi;

“..... for a disciplinary process over nothing.”

17. As far as the Plaintiffs were concerned, the Respondents have failed to demonstrate, through their pleadings, that the alleged financial improprieties existed and that the same were attributable to the Plaintiffs.

18. In the circumstances, the Plaintiffs submitted that there was no basis upon which the Respondents could justify the freezing of the account in issue.

19. The Court was invited to hold that the ill-informed attempt to try and cripple the branch operations, with an intent of oppressing the 1st Plaintiff, at the expense of the whole branch, should not be condoned in a civilized society.

20. The law on the grant of injunctive reliefs is well settled. As submitted by the Plaintiffs, the onus rested upon them to establish a prima facie case with a probability of success. The Plaintiffs relied upon the following words which the Court pronounced in the case of **MRAO Vs FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS CIVIL APPEAL NO. 39 OF 2002**;

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which, on the material presented to the Court, a tribunal properly directing itself, will conclude that there exists a right which has apparently been infringed by the opposite party, as to call for an explanation or rebuttal from the latter.”

21. I have given due consideration to the application.

22. First, I note that the order sought in the application is similar to the substantive relief sought in the Plaint.

23. That would imply that if the order were granted pending the hearing and determination of the suit, the bank account in issue will already have been unfrozen before the suit was heard.

24. In my understanding, the Plaintiffs main complaint is that the Respondents took action by freezing the account without first according the Plaintiffs an opportunity to be heard.

25. However, I note that the Plaintiffs acknowledged that the Respondents had instructed them to appear before the Disciplinary Committee.

26. But the Plaintiffs complained that the failure by the Respondents, to provide funds for travel and funds for out of pocket expenses, made it impossible for the Plaintiffs to attend the meeting convened by the Disciplinary Committee.

27. Of course, as the bank account in issue had been frozen, the Plaintiffs could not obtain funds from it, for their use, to facilitate the travel to Nairobi, for the meeting.

28. However, I find that the Respondents had suggested an alternative means of securing funds that could have enabled the Plaintiffs to travel for the meeting.

29. In any event, the Plaintiffs have not indicated that the amount of money required was so enormous that they could not have managed to, in the first instance, pay for it from their own pockets.

30. In my considered opinion, the proper forum for determining whether or not the Plaintiffs or the Kisumu Branch of the Association had violated the Constitution of the Association, was the Disciplinary Committee and the National Executive Council, as provided for in the Constitution.

31. When a constitution stipulates the procedure to be utilized in handling issues, persons who are members of that association ought to first exhaust the channels provided in the constitution of the association.

32. I find that the Plaintiffs have not made out a prima facie case against the Respondents. I find that the Plaintiffs' main complaint appears to be that the 1st Defendant had some perceived malice or hatred against the 1st Plaintiff, and that he was misusing the various organs of the association, to fight the said Plaintiff. However, I find that the Plaintiffs have not made out a prima facie case with a probability of success.

33. I also find that the Plaintiffs have not demonstrated how they would suffer loss or damage which could not be compensated, if the orders sought were not granted, and if the suit were to finally succeed.

34. In the result, there is no merit in the application dated 21st December 2020: It is therefore dismissed.

35. The Plaintiffs will pay to the Respondents, the costs of the application.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 21ST DAY OF SEPTEMBER, 2021

FRED A. OCHIENG

JUDGE