



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT NO. 13 OF 2018

JACOB ZUMA OWUOR

ZACHEOUS OUMA AJWANG

**JOSHUA OGOLA ONYANGO (SUING AS THE CHAIRMAN SECRETARY AND TREASURER
OF KISUMU CENTRE JUA KALI ARTISANS ASSOCIATION)APPLICANTS**

VERSUS

LEONARD OUTA APUT1ST RESPONDENT

CHARLES OGINGA ONDIEGE2ND RESPONDENT

JOSHUA OTIENO ABIDHA3RD RESPONDENT

RULING

1. On 29th May 2018 these proceedings were commenced by a Plaintiff which was filed in Court by the following three persons, who indicated that they were suing in their capacity as the Officials of the Kisumu Centre Jua Kali Artisans Association;

- i. Jacob Ouma Owuor – Chairman;**
- ii. Zacheous Ouma Ajwang – Secretary; and**
- iii. Joshua Onyango Ogola – Treasurer**

2. The substantive reliefs sought in the Plaintiff were for;

- a. A permanent Injunction to bar the defendants *from calling or conducting elections of the Association;***
- b. A declaration that the plaintiffs have a right, *as the Association's elected officials, to serve until the end of their term;***
- c. A declaration that any election conducted by the *defendants was irregular and therefore a nullity.***

3. Simultaneously with the Plaintiff the Plaintiffs filed an application, seeking an injunction to restrain the defendants from conducting the elections scheduled to take place on 29th May 2018.

4. When the application first came up before me on 29th May 2018, I declined to grant any *ex parte* orders. However, I directed that the application be heard on the next day.

5. Regrettably, when the matter came up on 30th May 2018, the respondents had not been served. For that reason, the application was adjourned to 31st May 2018.

6. When the parties appeared before me on 31st May 2018 they confirmed that the elections had already been conducted on 29th May 2018.

7. The Applicants informed the court that they were now desirous of obtaining a court order to stop the registration of the officials who had been elected during the disputed elections.
8. At that point, the court pointed out to the Applicants that the application which had sought to stop the elections, appeared to have been overtaken by events.
9. The Applicants told the court that they were now seeking leave of the court, to amend the application.
10. The court granted leave to the Applicants to amend their application. The court further ordered that the status quo prevailing on 31st May 2018, be maintained until 6th June 2018.
11. On 6th June 2018, the plaintiffs amended application was fixed for hearing on 21st June 2018.
12. Meanwhile, the 2nd Applicant, Zacheous Ouma Ajwang, notified the court that he was withdrawing from the case. He said that he was ready to hand over to the newly-elected officials.
13. The 3rd Applicant also withdrew from the case, culminating in there remaining only one Applicant.
14. This Ruling is on the Amended Application dated 6th June 2018, which sought;

“..... a temporary order of injunction restraining the officials voted in on 29th May 2018 as Chairman, Secretary and Treasurer, from being registered as the officials of Kisumu Center Jua-Kali Artisans Association.”

15. The parties filed written submissions.
16. First, the Applicant submitted that the meeting convened by the Chief of Kisumu Town, Mr. Willis Onyona was not a meeting of the Jua Kali Artisans Association (*“the Association”*). He said that meeting was only a Chief’s Baraza.
17. Consequently, any resolutions which were passed at the said meeting, on 25th November 2016, were illegal ab initio.
18. Apparently, the meeting resolved to appoint a Probe Team, which was to investigate the allegations that the Association’s officials had embezzled Kshs 7.2 Million.
19. According to the Applicant;

“The said probe team did not find the allegation embezzlement of 7.2 Million to be factual. The probe team did not find us culpable of any offence or allegation, as had been raised by the area MCA and his allies.”

20. If the Applicant is right, concerning the findings made by the probe team, that would imply that the Applicant was convinced that there should have been no elections at the time when they were held.
21. Nonetheless, in the application before me, the Applicant did not seek to quash the decision of the probe team.
22. Therefore, whether or not the decision to hold elections should have been quashed by this court, is not an issue that was canvassed before me.
23. The Applicant also asked me to make a finding that the Chief had no power to call for a Special General Meeting.
24. However, the Chief was not a party to these proceedings, and was therefore not accorded an opportunity to be heard. In the circumstances, it would be against the tenets of fair play, to determine whether or not the Chief had the requisite mandate to call for the Special General Meeting, as the Chief had not been given an opportunity to be heard on that issue.
25. Although the Applicant submitted that the Constitution of the Association had only empowered the Chairman to call for either Elections or for a meeting to discuss Elections, I find that the Constitution does not give to the Chairman the sole and absolute mandate to call for Annual General Meetings or for meetings to discuss elections.
26. The only mandate that vests in the Chairman is that he;

“... shall, unless prevented by illness or other sufficient cause, preside over all meetings of the committee and at all general meetings and shall prove any emergency case.”

27. Thus, the Chairman presides over the meetings.
28. Nowhere is it stated that the Chairman shall be responsible for calling Annual General Meetings.

29. In this instance, there was no Annual General Meeting.

30. The meeting held on 26th April 2018 was a Special General Meeting.

31. Pursuant to the Constitution, Clause 8B;

“A special general meeting may be called for any special purpose by the committee.....”

32. In the alternative, members may requisition for a special general meeting, for a specific purpose.

33. In the circumstances, there is no merit in the Applicant’s contention that it is only the Chairman who had the mandate to call for the special general meeting.

34. I further find that the Applicant did not seek orders to quash the decisions passed at the special general meeting.

35. One of the decisions made was that there would be elections.

36. In my considered opinion, the decision that elections would be held on a particular date, is not, of itself part of the process of the said elections.

37. The process incorporates factors such as the registration of voters, campaigns by candidates; preparation and distribution of electoral materials; security during electioneering and also at the venue of voting; and safety of electoral materials before, during and after voting.

38. The Applicant has not made out any case which could lead the court to find that there was any reason in law to warrant the grant of an order to bar the registration of the officials who were elected on 29th May 2018.

39. In the result, the application dated 29th May 2018, which was amended on 6th June 2018 was without merit. It is therefore dismissed, with costs being paid by the 1st Applicant, (Jacob Juma Owuor), to the Respondents.

DATED, SIGNED and DELIVERED at KISUMU this 1st day of November 2018

FRED A. OCHIENG

JUDGE