



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NUMBER 240 OF 2015**

CALEB OTIENO ONGERE ..... 1<sup>ST</sup> PLAINTIFF/APPLICANT  
SPROSAA ANANDA OCHOLI..... 2<sup>ND</sup> PLAINTIFF/APPLICANT  
WALTER OCHIENO OBWANA..... 3<sup>RD</sup> PLAINTIFF/APPLICANT

VERSUS

THORUNN HELGADOTTIR..... 1<sup>ST</sup> DEFENDANT/RESPONDENT  
SAMUEL LUSIRU GONA..... 2<sup>ND</sup> DEFENDANT/RESPONDENT  
FREDRICK RAMGARHIA..... 3<sup>RD</sup> DEFENDANT/RESPONDENT  
ELIJAH BRIAN ODERA..... 4<sup>TH</sup> DEFENDANT/RESPONDENT  
DOILINE ONKWARE..... 5<sup>TH</sup> DEFENDANT/RESPONDENT  
JAMES OLUNYA ODUOR..... 6<sup>TH</sup> DEFENDANT/RESPONDENT

*(The officials of ABC Children's Aid Kenya)*

NGOS CO-ORDINATION BOARD..... INTERESTED PARTY

**RULING**

The Application for consideration by this Honourable Court is the Notice of Motion dated the 13<sup>th</sup> January, 2016 by the Plaintiffs/Applicants. The same is brought under Order 16 Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya.

The Applicants seeks the following orders inter alia: -

- 1) That the Executive Director of the Interested Party herein be issued with summons to attend

and/or produce the extracts of the minutes of the meeting that suspended the Board of ABC Children's Aid International and status report on the forensic Audit conducted by the Interested Party on ABC Children's Aid Kenya and the Defendants herein following the suspension of the board of officials.

2) That in the alternative and without prejudice to the above the Executive Director of the Interested Party be compelled to file and serve their pleadings and written submissions before the 28<sup>th</sup> January, 2016, been the date of the next hearing.

3) That the costs of this application be provided for.

The Application is premised on the following grounds inter alia that: -

1. The Interested Party has failed and/or ignored to enter appearance and/or file their respective suit papers and evidence to effectually and completely settle all questions involved in the suit despite being ordered to do so.

2. It is imperative that the Interested Party been the registrar of Non-Governmental organizations and expectedly an impartial body, submits all the evidence touching on this matter to enable the Honourable Court to effectually and completely adjudicate and settle all questions involved in this suit.

3. The Interested Party has via a directive issued on the 17<sup>th</sup> August, 2015 suspended the entire board of ABC Children's Aid Kenya which to date has not been lifted and/or new officials appointed therefore leaving the beneficiaries of ABC Children's Aid Kenya in a state of panic and disarray.

4. There is a status report on the forensic audit conducted by the interested party on ABC Children's Aid Kenya and the Defendants herein following the suspension of the board as per their letter of 24<sup>th</sup> August, 2015 whose contents shall enable the Honourable court deliberate over the matter.

5. The Defendants/Respondents shall not be prejudiced should the orders sought be granted by the court.

The Applicants have relied on the Affidavit of Caleb Otieno Ongere annexed to the Application and the summary of the facts as set out therein are as follows: -

The deponent is the principal of ABC Kariobangi Primary and Secondary Schools whose role is to oversee the running of the schools together with the Board of ABC Children's Aid Kenya and the suit herein touches on the management and conduct of ABC Children's Aid Kenya a Non-Governmental Organization registered by the Interested Party.

On the 2<sup>nd</sup> July, 2015, the Applicants herein filed on interlocutory Application which has been opposed by the Defendants and the same is awaiting disposal and parties were poised to appear before the Judge on the 28<sup>th</sup> January, 2016 to highlight their submissions with a view to disposing it off.

The Interested Party having been joined in these proceedings on the 12<sup>th</sup> October, 2015, was served with the pleadings in the matter but has failed to enter appearance and/or file the necessary paperwork to enable the Honourable court to effectually adjudicate upon and settle all the questions involved in the suit.

The Applicants' through their Advocates submitted that following the directive given by the court that parties do file written submissions for the Application dated 1<sup>st</sup> day of July, 2015, it is imperative that the Interested Party submits all the evidence touching on the matter to enable court to effectually adjudicate and settle all the issues in the suit.

The Applicants in particular pray that the Interested Party be compelled to supply the court with extracts of the minutes of the meeting that suspended the board of ABC Children’s Aid International and resultant status report on the forensic audit conducted by the interested party on ABC Children’s Aid Kenya following the suspension of the board.

When the Application came up for hearing on the 20<sup>th</sup> January, 2016, the counsel appearing for the 1<sup>st</sup> to 5<sup>th</sup> Defendants, a Mr. Wangula holding brief for Mr. Rahmajillo told the court that on their part, they are not opposing the Application and I did put that on record.

The Interested Party was enjoined in these proceedings vide an Application dated 5<sup>th</sup> October, 2015 which was made by the applicants herein and the orders were granted on the 12<sup>th</sup> October, 2015 and the court ordered that the Interested Party be served with the pleadings which has since been done.

I have perused the Application dated 5<sup>th</sup> day of October, 2015 to establish why it was necessary to join the Interested Party to these proceedings and what I gather is that the Defendants have produced in court, documents purporting to be authored/produced by the Interested Party.

Secondly, by virtue of the Interested Party’s functions and in particular **“to facilitate and co-ordinate the work of all National and International Non-Governmental Organizations operating in Kenya and to develop for the regulation of the Non-Governmental Organizations and their activities in Kenya”** it was critical for the Interested Party to be enjoined as a party to the suit.

It has also been deponed that there were some developments that took place after the filing of the suit that also made it necessary for the Interested Party to be enjoined and in particular, the Interested Party suspended the parallel Board of Schools purporting to run the NGO and further ordered a forensic audit of the NGO.

Having known why the Interested Party was brought into the suit, I now understand where the Applicants are coming from in making the application herein.

I am fully satisfied that the same has merits and it’s only fair and just that the orders sought herein are granted. The court do hereby make the following orders: -

- 1. That summons be issued to the Executive Director of the Interested Party to attend and/or produce the extracts of the minutes of the meeting that suspended the Board of ABC children’s Aid International and status Report on the forensic audit conducted by NGO’s Co-ordination Board on ABC children’s Aid Kenya and the Defendants herein following the suspension of the board officials. The said documents to be produced during the next hearing date for the Application dated 1<sup>st</sup> July, 2015.**
- 2. In the alternative and without prejudice to the orders issued above, the Executive Director of the NGO’s Co-ordination Board do file and serve their pleadings and written submission for the Application dated 1<sup>st</sup> day of July, 2015. The pleadings to be filed within ten (10) days upon service with the Order.**
- 3. Costs of the Application be borne by the Interested Party.**

Dated, signed and delivered at Nairobi this 11<sup>th</sup> day of February, 2016.

.....

L NJUGUNA

JUDGE

**In the Presence of**

..... ***For the Plaintiffs/Applicants.***

..... ***for the Defendant/Respondents.***

..... ***for the Interested Party.***