



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT NO. 23 OF 2014

JUDITH MAGUNDHO PLAINTIFF/APPLICANT

VERSUS

PATRISIA AKUMU APOLI1ST DEFENDANT/RESPONDENT

RISPER AUMA OSARE 2ND DEFENDANT/RESPONDENT

TURPHOSE OSEWE3RD DEFENDANT/RESPONDENT

THE COUNTY COMMISSIONER SIAYA4TH DEFENDANT/RESPONDENT

THE CHAIRMAN ELECTION BOARD MAENDELEO

YA WANAWAKE ORGANISATION 5TH DEFENDANT/RESPONDENT

RULING

On 11th July 2014 the Plaintiff/Applicant filed a suit seeking first a declaration that the Maendeleo Ya Wanawake Organization elections held in Siaya County on 8th July 2014 were flawed and marred with massive irregularities, second an order nullifying those elections and thirdly an order for repeat of the elections. Together with that suit she filed a Notice of Motion where she seeks a temporary injunction restraining the 1st, 2nd and 3rd Respondents from assuming office as Chairlady, Treasurer and Secretary of Maendeleo Ya Wanawake Organization Siaya County. The application is premised on grounds that the impugned elections were not conducted in line with the procedure laid down in the organization's constitution; that members who participated in the election had not been cleared by the organization and some were not even genuine members; that membership certificates presented by some of those who participated were fake; that the person elected as Chairlady was not vetted by the National office as required; that some of those elected into office were not life members; that some of those elected did not declare interest or even file nomination forms, and that only three out of the requisite six officials were elected. Further that majority of the members of the organization from Siaya were locked out and finally that it is only fair, just and prudent that the elections be nullified and fresh ones be ordered. She has reiterated these grounds in her supporting affidavit to which she has annexed a copy of the Maendeleo Ya Wanawake Organization constitution, a cleared Candidates Nomination list for Siaya County and two certificates of Life Membership.

The application was opposed. The 1st, 2nd and 3rd Defendants filed grounds of opposition in which they stated that the application was overtaken by events as the 1st, 2nd and 3rd Defendants had already assumed office and even participated in the organization's national event and secondly that the application was misconceived and does not lie in law. They urged that it be struck out.

The 4th Defendant did not file any response but the 5th Respondent responded by filing an application dated 19th January 2015 seeking orders to stay these proceedings and that the dispute herein be referred to her Disciplinary and Appeals Committee for resolution as provided under her constitution. Alternatively that the matter be referred to an Arbitrator. The gist of the 5th Defendant/Respondent's application is that Articles 12 (b) and 42 of the 5th Defendant's constitution provides for alternative dispute resolution and that the matter could also be referred to arbitration under Order 46 Rule 20 of the Civil Procedure Rules as a means of attaining the overriding objective envisaged under Section 1A and 1B of the Civil Procedure Act. Only the 1st, 2nd and 3rd Respondents expressed their opposition to that application. Their grounds of opposition are dated 18th March 2015.

On 27th May 2015 the Advocates for the parties consented to canvass the application by way of written submissions. They however omitted to state which of the two applications they were referring to. When the matter came before me on 8th July, 2015 only the submissions of Advocate for the Plaintiff were on record. I fixed the matter for ruling on 1st October 2015 and directed that the other parties were at liberty to file their submissions within thirty days. However none have been received.

Counsel for the Plaintiff/Applicant has in his submissions supported the 5th Defendant's application to stay proceedings in this case and to refer the dispute to the 5th Defendant's Disciplinary and Appeals Committee for resolution as provided under its constitution or alternatively for arbitration by an Advocate of the High Court of not less than twenty years in practice. He however urges the Court to order parties to bear their own costs.

This Court has not only the power but a duty to give effect to the overriding objective which is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by the Civil Procedure Act and it is for that reason that I have considered the two applications filed herein together. I opine that by doing so I shall attain the just determination and timely disposal of these proceedings while saving the parties herein costs.

On the Notice of Motion my finding having considered the grounds, the supporting affidavit and annexures, is that the Plaintiff/Applicant has not established a prima facie case with a likelihood of success that would entitle her to the temporary injunction sought. She has herself annexed a Cleared Candidates Nomination list for Siaya County that has the names of the 1st, 2nd and 3rd Respondents as among those cleared by the organization to run for office. Moreover she has not tendered evidence to substantiate her allegations that the three respondents did not express interest in the seats to which they were elected. Further the constitution of the Maendeleo Ya Wanawake Organization to which she ascribes clearly stipulates at Article 12 that;

"The Disciplinary and Appeals Committee of that organization

shall be responsible for dealing with reported election

irregularities and making recommendations for action." (emphasis mine)

Her bringing this dispute to this Court while there is an alternative dispute resolution method prescribed in the organization's constitution is irregular and I cannot agree with the 1st, 2nd and 3rd Respondents grounds of opposition. To the contrary I find that they misapprehended the application as the same is not filed by the Plaintiff but by the 5th Respondent.

I further find that to stay these proceedings which are not properly before this Court would go against the overriding objective. Accordingly I strike out the proceedings in their entirety and order that the Plaintiff shall bear the costs.

Signed, dated and delivered at Kisumu this 8th day of October 2015

E. N. MAINA

JUDGE

In presence of:-

N/A for the Plaintiff/Applicant

Mr. M.M. Omondi for the 1st, 2nd, 3rd Defendants/Respondents

N/A for the 4th Defendant/Respondent

N/A for the 5th Defendant/Respondent

CC: Moses Okumu