



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. 64 OF 2014

1. ELIJAH KINYUA NG'ANG'A
2. MWAI WA MUTHIGI
3. WAWERU MUGO
4. MUIRURI NJUGUNA.....PLAINTIFFS

V E R S U S

1. GITU WA KAHENGERI
2. JACOB NYAGA
3. MAU MAU WAR VETERANS ASSOCIATION
4. THE REGISTRAR OF SOCIETIES.....DEFENDANTS

RULING

Before me for determination is a Notice of Motion brought under Section 3A of the Civil Procedure Act (the Act) and Order 51 rule 1 of the Civil Procedure Rules. It seeks directions from this court based on a ruling dated 17th December 2014 which allowed a preliminary objection. The objection brought by the 4th Defendant was to the effect that the prayers sought could not be issued against it by virtue of the provisions of the Government Proceedings Act (Cap 40). In the Court's view the preliminary objection met the threshold of what a preliminary point of law is as outlined in the case of **Mukisa Biscuits Manufacturing Co. Ltd –v- Westend Distributors Ltd [1969] EA 696**.

In my view this objection should only extend to the 4th Defendant. The 1st to 3rd Defendants are subjects and individuals sued in their personal capacity. An injunction can thus be issued directed to and at them.

As mentioned in the said ruling above, there is no doubt that pursuant to Article 23 of the Constitution of Kenya, injunctive orders can nowadays be issued against the national government where threats to fundamental rights are alleged by a subject. In civil proceedings however, Cap 40 at Section 6 is clear. Such relief is not permitted against the Government. The said Section however permits the court to issue declaratory orders in lieu of the injunction prayed for.

The Section therefore does not suggest in any manner that an application or suit for injunction against the government will be a non-starter but rather grants powers to the court to issue a declaratory order instead. In effect, the preliminary objection did not dispose of the suit on the basis of Section 16 in a summary manner.

The suit should be heard on its merits and then the court left to determine whether to completely deny the relief or return a persuasive verdict through a declaratory order.

The upshot is that the preliminary objection did not dispose off the suit per-se. The parties should therefore endeavour to have the matter heard on its merits.

These are the directions of the court. No order as to costs.

Dated and delivered at Nairobi this 5th Day of November, 2015.

A.MBOGHOLI MSAGHA

JUDGE