

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

Civil Case No: 23 Of 2013

KAKAMEGA JUA KALI ASSOCIATION

SUING THROUGH

PATRICK LUVUSI- CHAIRMAN.....PLAINTIFFS

CHACHA WECHE- SECRETARY

-VERSUS-

RICHARD W. KONDO - CHAIRMANRESPONDENTS

ERNEST W. LUKAVALIA- SECRETARY

SUED AS OFFICIAL AND MEMBERS OF

KAKAMEGA COUNTY JUA KALI ASSOCIATION.

R U L I N G

The application dated 28/6/2013 is seeking to restrain the defendants from interfering with the operations of the **KAKAMEGA JUA KALI ASSOCIATION**. The application is supported by the affidavit of PATRICK LUVUSI sworn on the 28/6/2013. The defendants filed a replying affidavit sworn by the 1st defendant on 22/7/2013.

Counsels for both parties are relying on the application and the replying affidavit. I have gone through the application and the affidavit and it is established that the **KAKAMEGA JUA KALI ASSOCIATION** was registered on the 24/11/1993. The Association owns some properties and there has been rivalry relating to the leadership of the association. The pleadings established that the respondents registered **KAKAMEGA COUNTY JUA KALI ASSOCIATION** around the year 2010 and made it to assume the functions of the original **KAKAMEGA JUA KALI ASSOCIATION**. The respondents filed two suits namely; **KAK CMCC 353/2010** and **KAK CMCC No. 308/2011**. In the later suit the court allowed the applicants to continue as officials of **KAKAMEGA JUA KALI ASSOCIATION**. In the CMCC 353/2010 the defendant's application to restrain the plaintiffs herein from dealing with the association was dismissed. The applicants contend that the defendants have forcefully taken over the operating premises and are interfering with the operations of the Association.

The respondents have annexed some minutes indicating that the name of the Association was changed to Kakamega **COUNTY JUA KALI ASSOCIATION**. It is clear that there is dispute between the two parties. The defendants simply changed the name and assumed that the properties owned by the previous association would be carried over to the new Association. On the other side the applicants maintain that the old association still exists and there was no change of name. The registrar of societies seems to have endorsed the changes. It is clear to me that the change of the name was only meant to circumvent the decision of the court that dismissed the defendants' application. I am satisfied that the applicants have established a prima facie case with a probability of success. There is the danger that the property of the association might be misused by people who are not officials of the association. The application dated 28/6/2013 is merited and is granted as prayed. Costs to the applicants.

Dated, signed and Delivered at Kakamega this 3rd day of July 2014.

SAID J. CHITEMBWE

JUDGE