



REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

CIVIL SUIT NO. 144 OF 2012

ALI ABDALLA DUHMY (CHAIRMAN)

SHEE ATHMAN OMAR (VICE CHAIRMAN)

NASSIR SALIM KHAMIS (SECRETARY)

MOHAMED HEMED ATHMAN (TREASURER) as

representatives of the members

of NUR MUSLIM SCHOOL SOCIETY.....PLAINTIFFS

VERSUS

MOHAMED ABDISHEIKH

SWALEH ABOUD ABDALLA

ALI OMAR SAID

ABDALLAH SWALEH OMAR

ABDALLA M. ABDISHEIKH

IDRIS MAAMUN ALIDEFENDANTS

RULING

1. The plaintiff's Notice of Motion dated 31st August, 2012 was prompted by a letter from the defendant's advocate dated 24th August, 2012 notifying the plaintiffs, inter alia:-

“RE: HANDING OVER OF OLD OFFICIALS TO NEW OFFICIALS i.e MOHAMED ABDI SHEIKH & OTHERS

“We have been instructed by all the new office bearers of the Nur Muslim School Society led by Mohamed Abdi Sheikh (chairman) that the new officials shall take over the offices and general administration of the society on 29th August, 2012 at 11.00am hence kindly avail yourselves to hand over peacefully accordingly.

A copy of the list of names of the new officials is here attached.

Yours Faithfully,

MUTISYA BOSIRE & CO. “ (SIC)

2. Annexed to the notification is a letter from the Deputy Registrar of companies, dated 14th August, 2012 listing the six defendants as the office bearers of Nur Muslim School Society (see annexure G to the affidavit supporting the Notice of Motion). Interim orders were previously granted in terms of prayer 2 of the Notice of motion.

3. The 3rd prayer seeks:

“That pending the hearing and determination of this suit there be an order restraining the defendants personally or through their employees, servants and/or agents from taking over the office of Nur Muslim School Society changing signatories,, or in any way interfering or dealing with the affairs of Nur Muslim School Society.”

The grounds are on the face of the application and expanded in the various affidavits sworn by the applicant. The key ground is that the applicants are legally in office as office bearers of the society since 2011 and the defendant's attempt to take over the society are unlawful.

4. For their part, the defendants filed a replying affidavit and a supplementary affidavit (headed further replying affidavit). The gist of their reply is that the defendants were elected as officials of the society in a special general meeting called by members on 13th July, 2012. The defendants dispute the assertion that the applicants were duly elected as office bearers in December, 2011. They describe the alleged election in December, 2011 as “null and void”.

5. The principles to be considered regarding the grant of an interim injunction are well settled. The applicant must establish:

- a. A prima facie case with a probability of success,
- b. That he will suffer irreparable damage if the orders sought are denied. In the event of doubt, the court will determine the matter on a balance of probabilities.

(see **Giella vs Cassman Brown & Co. Ltd (1973) EA 358**).

6. I have considered the pleadings herein, affidavits and submissions by respective parties. It is apparent that two groups represented in this case by the plaintiffs and defendants are locked in a tussle over the leadership of the Nur Muslim School Society. Indeed the parties admit the existence of another suit in respect of the same dispute. This is HCC No. 468 of 2006 which is still pending. The suit pits the present defendants (as plaintiffs) against the present plaintiffs (as defendants).

7. As expected each side claims to represent the bona fide leadership of the society. Determination of such a dispute is a matter for evidence. It does appear though that since 2006 the present plaintiffs or some of them have been acting as the defacto office bearers of the society, whether lawfully or otherwise. That would explain the notice given to the ‘old’ officials (annexture G) by the defendants in August, 2012, to hand over to the ‘new’ officials (the defendants).

8. Prima facie, it appears that the applicants are the officials on the ground, the validity of their election notwithstanding. This is an important consideration because the subject matter herein is the running of a school providing education and religious instruction to muslim children. Constant disruption through installation of temporary office bearers will clearly affect the institution and the provision of services to children. It is difficult to assess the harm that will be occasioned by such disruption. Hence even the balance of convenience tilts in favor of maintaining the status quo until the leadership dispute is settled; there being no allegation of mismanagement by the present leadership. However, the said leadership will be held accountable for all the activities of the society in the intervening period.
9. In light of the foregoing, I consider it mete and just to grant prayer 3 of the Notice of Motion. I also direct that NRB HCC 468 OF 2006 which was ordered transferred to this court be consolidated with the present case for purposes of hearing. Pending that event, the court proposes to the parties herein to consider taking this matter through Alternative Dispute Resolution, particularly under the office of the Chief Kadhi or the Registrar of Societies.

Costs will abide the outcome of the suit.

Delivered and signed at Malindi this **4th** day of **April, 2013** in the presence of Mr. Nyakoe holding brief for Mr. Hamza for applicant. Mr. Katsoleh holding brief for Mr. Bosire for defendants.

C. W. Meoli

JUDGE