



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 144 of 2009

**LYDIA WANJUGU GACHOYA (as the Chairperson of the
National Council of Women of Kenya)PLAINTIFF
VERSUS**

**ALICE GATHAMBO as the National Secretary General of the
National Council of Women of Kenya.....1st DEFENDANT**
**AGNES KITHIMBA as the Treasurer of
National Council of Women of Kenya.....2nd DEFENDANT**
ISABELLA KARANJA as the Rx-Chairperson of the

National Council of Women of Kenya..... 3rd DEFENDANT

**ANN KYALO as an Executive Committee Member of the
National Council of Women of Kenya).....4th DEFENDANT**
RULING

Coram: Mwera J.

Gatheru for Plaintiff Applicant

Kaka for Defendant/Respondents

On 14.1.2010 the defendants herein filed a notice of motion of the same date invoking section 3A

Civil Procedure Act in that the plaintiff herein Lydia Wanjugu Gachoya be:-

- a) restrained from publishing; advertising or in any way dealing with the affairs of the National Council of Women of Kenya, the Council, and
- b) ordered to reopen the premises of the Council.

The grounds upon which the mention was bases stated that the plaintiff (Lydia) had an injunction application before court which was pending determination. And the court had declined to grant her any interim orders thereon. And that while that application was still pending, the plaintiff had put forth a representation that the suit herein had been withdrawn following an arbitration that ended in her favour. And further, that she had caused advertisement to appear in some daily newspaper of 22.12.09 to inform the public that the 3rd defendant (Anne Kyalo) was not an executive director of the Council. More, that the plaintiff had caused the Council offices to be locked thereby paralysing its operations. A supporting affidavit was sworn by Isabella Karanja, the

2nd defendant herein. Her affidavit elaborated on the grounds set out above in that the plaintiff was suspended as chairperson of the Council by the Executive Committee on 18/3/09 on grounds of abuse of office. On 23/3/09 she filed an injunction application to restrain the defendants from interfering with her position of chairperson but she did not obtain interim orders. She had, nonetheless, gone about describing and holding out herself as still the chairperson of the Council and with all these the operations of the Council had come to a standstill particularly after she placed her own padlocks on the council's office doors on 22.12.09, thereby barring access thereto by any personnel of the Council.

On the 14.1.10 the court granted the defendants an interim injunction barring the plaintiff from advertising, publishing writing or in any way dealing with the affairs of the council. There was no order as to prayer 3 – reopening the Council offices.

On 18/1/10 the plaintiff filed a replying affidavit to Isabella Kamau's supporting affidavit of 14.1.10. It seemed to refer to paragraphs 32, 34, 36 of Isabella's affidavit which had only fifteen paragraphs! The plaintiff then went on to comment on various other matters etc.

Then on her behalf Mr Gatheru Advocate filed a notice of motion dated 18/1/10 asking for suspending, staying or discharging the interim orders in favour of the affidavits dated 14.1.10 among other prayers. That motion is still pending. There was a replying affidavit to it by the 3rd defendant sworn on 28.1.10. Then on 3.2.10 the plaintiff swore and filed a supplementary affidavit to clarify contents of all her earlier affidavits. By it she went over the affidavit in reply to the motion under review and her own supporting affidavit to the motion of 18/1/10. No doubt such deposition confused and complicated the matter even as it exhibited several documents which counsel referred to during these proceedings. Despite all that the court granted the defendant to file a further affidavit on 11/2/10. And again the plaintiff filed yet a further supplementary affidavit on 16.2.10. Not to appear to shut out anybody, despite the multiplicity of affidavits, which demonstrated the serious contest, packed with passion and even emotion, parties were heard on any aspect thought pertinent to the proceedings.

Mr Kaka reiterated the issue that despite plaintiff having been suspended by the Council's executive committee, she had published material in the daily papers and held herself out as still the Council's chairman. She even locked up the offices of the Council virtually stalling its operations. She had sent word abroad that the present case had been withdrawn after an arbitration all of which was untrue. That accordingly this court should under Section 3A Civil Procedure Act restrain her from all this until the Annual General meeting due on 31.3.10 as provided for in Article 12 of the 1997 Council constitution, which will finally determine the plaintiffs' suspension – to ratify or nullify it. The machinery of resolving such issues was still with the Council's system and so it was inadvisable and unwarranted that the plaintiff had come to court to

intervene in a matter still within the Council's internal machinery. The status quo should thus hold until that annual general meeting. That the plaintiff had yet to exhaust the internal machinery for redress. In this regard the incomplete case of Kinyanjui Vs Mwendia [2000] EA 141 was cited along with Hinga & Anr Vs PCEA thro' Rev Njoya & Anr [1986] KLR 317 where Aluoch J, as she then was, held inter alia that issues brought to court for resolution must not be of a domestic nature which can be dealt with by the laws and regulations governing a particular body or organization. There was comment by each side referring to what it considered the Council's applicable constitution as at the time this dispute arose. While the plaintiff held that it was the 1984 version duly filled and approved by the office of the Registrar – General, the defendants had the 1997 (amended) version as the applicable one. Probably the trial court will determine this issue. Basically that was the defendant/applicants case here.

Mr Gatheru began by stating that the defendants had filed no pleading – defence or counter claim, to bring this motion and expect any remedy. In this regard the case of Morris & Co. Ltd Vs Kenya Commercial Bank [2006] 2 EALR 600 was cited. This case was decided in a ruling by Ringera J, as by then was. This court went over it, and noted that a temporary injunction there had been sought under Order 39 Rule, 1, 2, 3, 9 Civil Procedure Rules by a chamber summons. Our present motion as per Order 50 Rule 1 Civil Procedure Rules invokes this court's discretion under Section 3A Civil Procedure Act. Not only is that a distinction but in the Morris Case cited, this court was hard put to discern therein that without filing pleading, the defendants' motion is incompetent. They are parties here and in the circumstances and the rapidity of events here, it cannot be denied that the defendants can still apply to file a defence belatedly. But be that as it may.

Continuing on the merits of this motion, Mr Gatheru posited that there was reconciliation by the parties (no. evidence shown) and in any event the ex parte order in favour of the defendants dated 14.1.10 expired after 14 days. Mr Kaka did not comment on this but in this court's view, orders obtained from the court by exercise of its own discretion (under Section 3A Civil procedure Act) do not expire automatically after 14 days. That is only a feature under Order 39 Civil Procedure Rules (see Order 39 Rule 3 (2)). Counsel then went over many aspects of this case emphasizing that the office of the Registrar – General had on 3/6/09 confirmed that his client with others were the de facto officials of the Council. She had irregularly been suspended without following the procedure eg as pertains to notice, agenda and rules of natural justice.

After hearing all the arguments and perusing the documents placed before this court, it is at this juncture minded to grant the orders sought. It is apparent that the plaintiff was suspended by the executive committee of the Council and the next stage in that process is the annual general meeting where the matter quite likely should be debated and probably the plaintiff can put up her case so that that organ decides to ratify or nullify her suspension. The internal machinery in this regard has not been exhausted yet and this court would rather not

interfere now. While Mr Kaka said that the Council constitution provided that its annual general meeting shall be held not later than 31st March of a given year, Mr Gatheru had doubts about one being held by 31.3.10 because as of now the required 6 weeks notices had not been sent out at all. This seemed to persuade this court greatly to find that much as the plaintiff insisted that the Council secretariat was in office, and not locked out, carrying out all the functions as usual, by this failure to issue due notice, inclines one to agree with the defendants that the Council offices had ceased to function due to the acts of the plaintiff and that more than anything else informs the court to order that the plaintiff should not only stop interfering with the running of the Council business/affairs, but should also remove her locks from the office doors in the next three (3) days. In default, the defendants to do so. The Council which is said to be composed of corporate membership which in term serves the interests of many individual target groups etc should not be forced to cease to operate. Seemingly, the Council is a prominent institution signifying status of power, prestige and probably even perks. But its core purpose, object and interest – those it serves, all require that despite the pushing and pulling of its human agents, it must remain open and functioning even as litigation pends.

Orders granted as prayed.

Delivered on 3/3/10.

J. W. MWERA

JUDGE