



## 1. Land Law

## 2. Subject of main suit

- 2.1. School management
- 2.2. Defendants took over management of school including bank signatory unlawful
- 2.3. Injunction to restrain defendant from operating school.

## 3. Application 27<sup>th</sup> April, 2009 filed 30<sup>th</sup> April, 2009

- 3.1. Certificate of urgency
- 3.2. Injunction to restrain defendants from transacting group account

NO. 1105642607 Kenya Commercial Bank

- 3.3. To restrain defendants from taking over management of school

## 4. In reply

- 4.1. Plaintiffs/applicants are not proprietor of school.
- 4.2. Committee delegated day to day running of school.
- 4.3. Noted from bank account, funds were misappropriated.

Matter reported to the police and the plaintiffs charged with

offence of stealing contrary .. Hearing on 8<sup>th</sup> June, 2009.

- 4.4. No probability of success exhibited.

## 5. Held-

- a) No prima facie case made out.
- b) There was non-disclosure of material facts.

## 6. Case Law - Nil

## 7. Advocates

S.K. Khalwale advocate instructed by M/S Kimaru Kiplagat & Co. advocates

for the Plaintiffs/Applicants – present

J.K. Kurugat advocate instructed by M/S Kiplenge & Kurgat advocates

for the Defendants/Respondents - present

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CIVIL SUIT 40 OF 2009**

**JOHN TERER .....1<sup>ST</sup> PLAINTIFF**

**RICHARD ROTICH ..... 2<sup>ND</sup> PLAINTIFF**

**KIPKORIR KIRUI .....3<sup>RD</sup> PLAINTIFF**

***(Suing as officials and on behalf of St. Marks Community Self Help Group)***

**VERSUS**

**FATHER JOHN MBARAKA .....1<sup>ST</sup> DEFENDANT**

**NELSON KIPRUTO TUITOEK .....2<sup>ND</sup> DEFENDANT**

**JOSEPH TONUI .....3<sup>RD</sup> DEFENDANT**

**RULING**

**Application dated 27<sup>th</sup> April, 2009 seeking orders of injunction**

**I: Procedure**

1. A certificate of urgency application was filed by the three plaintiffs/applicants seeking to be heard on their Chamber Summons of 27<sup>th</sup> April, 2009 filed on 30<sup>th</sup> April, 2009.
2. The three applicants claimed that they are the Chairman, Secretary and Treasurer respectively of an organization known as St. Marks Community Self Help Group. This organization came from the faithfuls of St. Marks Litein Catholic Church. It organized and established a school on land donated by another. The plaintiffs registered their organization in 2007. The school operating accounts and management was at all times run by the three plaintiffs.
3. Due to the allegations made, this Court certified the application urgent. The school was beginning a new term and orders given to stop the school operations by the defendants would affect the pupils. I therefore ordered the inter-parties be heard on 5<sup>th</sup> May, 2009 being the next day.
4. The respondents did appear to court and filed a replying affidavit. This matter was heard inter parties.

**II: Application 27<sup>th</sup> April, 2009**

### **seeking orders of injunction**

5. The applicant's case is that the three as Chairman, Secretary and treasurer respectively of the said school were lawfully running the school. The school was duly registered with the Ministry of Education and as such was under the control of the government as concerns its management.
6. The defendants without seeking the leave of the minister interfered in the said management and unlawfully took over the school and changed the bank signatory. This take over was illegal.

### **III: In reply by respondents**

7. The school emanated from a Catholic Church. This is agreed by both parties. It transpired after an audit report was undertaken at the school that the said three plaintiffs/applicants misappropriated funds. The three were under a conflict of interest as councilors, politicians and teachers in other schools to be running the school as committee members.
8. There was no prima facie case herein established to have an injunction issued. They prayed that the application be dismissed.

### **IV: Opinion**

9. The act to be restrained has occurred. The school management has changed hands whether lawfully or otherwise. The prayer here would have been that of a mandatory injunction to reinstate the three plaintiffs and further have them returned to be the bank signatory.
10. Mandatory injunction is not available in Kenya save for specific situations.
11. In this case I note that the applicants have duly failed to disclose material facts. I have stated in past rulings on application for injunction that non-disclosure of material facts would not entitle an applicant to prayers of injunction.
12. It is the fact that the three plaintiffs face criminal charges for misappropriating funds. They do not deny this but state that the respondents have brought no proof of these charges.
13. There is the affidavit by the respondent deposed to by the father of the Catholic Church who knew the history and genesis of the school. I would believe his allegations as there being no truth in the Plaintiffs/applicants case.
14. I accordingly dismiss the application for injunction against the respondents/defendants. I order that the Plaint, and summons to enter appearance be served upon the respondent and parties do set this matter for full hearing after the criminal case has been finalized. That the proceedings of the criminal case do form part of the proceedings as exhibits of this case. In essence after the above this case is stayed under **Section 6 CPA** till the determination of the criminal court case.

**DATED** this 6<sup>th</sup> day of May, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

**Advocates**

S.K. Khalwale advocate instructed by M/S Kimaru Kiplagat & Co. advocates

for the Plaintiffs/Applicants – present

J.K. Kurugat advocate instructed by M/S Kiplenge & Kurgat advocates

for the Defendants/Respondents - present