



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
Civil Case 177 of 2008**

**1. DAVID
MILLER)**

**2. ISAIAH
MIREGWA)...
.....
.....PLAINTIFF
S**

**3. GEKARA
OGETO)**

-VERSUS-

**HON.
WILFRED
MORIASI
OMBUI.....
.....DEFEND
ANT**

RULING

The plaintiffs are residents of Kiangeni Division. They have brought the suit on their own behalf and on behalf of 156 or so residents of the Division against their member of parliament whose constituency is called North Mugirango/Borabu. They sought the following orders:-

- a) a declaration that the residents of Kiangeni Division be left to belong to Borabu District;
 - b) a declaration that the intended meeting scheduled 7/12/2008 be held to be invalid and of no effect;
- and
- c) an injunction to restrain the defendant by himself, his agents, servants or otherwise howsoever from purporting to remove the Division from Borabu District.

With the suit was filed an application for temporary injunction restraining the defendant by himself, his rights, assigns and/or servants from holding any meeting to discuss the removal of Kiangeni Division

from Borabu District to Nyamira District or elsewhere until the suit was heard and determined. The application is subject of the present Ruling.

From the affidavits filed by the parties it is apparent that on 15/10/2007 the President was campaigning when he declared that Borabu becomes a District. It was previously a Division in Masaba District. The defendant's constituency covers part of Nyamira District and the whole of Borabu District. The Government decided that Kiangeni Division becomes part of the Borabu District. The defendant and other residents of Nyamira District and Kiangeni Division remains in Nyamira District.

The Permanent Secretary Provincial Administration and Internal Security was written to by the defendant. He responded by advising that the defendant, the local leaders and the residents of Kiangeni Division should find a political solution to the issue. The Permanent Secretary pointed out to the defendant that Borabu District had been launched on 6/12/2007 and on the occasion attended by the District Commissioner Nyamira District, the former Member of Parliament of the area and leaders from Kiangeni Location (now Kiangeni Division), it was unanimously agreed that the location (now Division) be part of Borabu District.

On 29/11/2008 the defendant and the District Commissioner of Nyamira and Borabu held a meeting at KICC in Nyamira at which it was agreed that:

“a meeting be held on 7th December, 2008 at which both DCs would attend to give a political solution to Kiangani. The venue was to be at Kiangeni division.”

On 29/11/2008 the defendant called a leaders meeting for 7/12/2008 at 9 a.m at Ekerubo Gietai Mixed Primary School whose agenda was “Kiangeni Division”. The notice indicated that the meeting would be co-chaired by the DC Nyamira and DC Borabu. This notice is what prompted the plaintiffs to file this suit on 5/12/2008. The suit had the application above which sought the meeting restrained. There was apparently no Judge in the station and it was not until 31/12/2008 that the advocates appeared before Justice Karanja in Kisumu with a consent which was recorded indicating that the status quo as of 10/12/2008 be maintained until present application is heard and determined.

What had happened was that the meeting of 7/12/2009 had gone on. The minutes (Hon.WMO-01) show that the District Commissioners were absent (with apology). The defendant was present with local leaders and “other residents from Nyamira and Borabu.” The resolution was that Kiangeni Division remains in Nyamira District and that any transfer of the Division to Borabu District would be regarded as illegal and would be rested “by all means.” In Resolution 9 it is indicated as follows:-

“That the District commissioner Borabu has a hidden agenda for not attending as they agreed at KICC Nairobi .That the meeting resolved that he be removed . His reason that the leaders had refused to attend was not genuine as leaders attended from Borabu District and more specifically from Kiangeni.”

The minute appears to show that the District Commissioner Borabu deliberately kept away from the meeting. I have indicated in the foregoing that the present position is that the Division is in Borabu District, but the Government would like the local leaders and residents to agree on whether it remains here or goes to Nyamira District.

The meeting of 7/12/2008 was not chaired by the District Commissioners as agreed between them and the defendant on 29/11/2008. The venue of the meeting was to be at Kiangeni Division to discuss Kiangeni Division. The Statement of Defence shows the defendant called together the residents of Kiangeni Division and Ekereny Division to discuss the matter. When one considers the agreement of 29/11/2008, Ekereny Division residents had nothing to do with the meeting. Mr. Bosire submitted that the venue of the meeting was not as agreed. In paragraph 4 of he Defence the defendant pleaded that Kiangeni is a location, not a Division, and is part of Ekereny Division in Nyamira District.

The meeting held on 7/12/2008 went against the direction of the government and the agreement between the defendant and the two District Commissioners. Kiangeni is already a Division in Borabu

District. If the defendant and some residents of the Division wish that the Division reverts to Nyamira District, a political solution has to be found. The leadership and residents of the two Districts, and the residents of Kiangeni Division, must have genuine consultations and meeting to reach an agreement on the matter.

The facts narrated above indicate that the plaintiffs have demonstrated *a prima facie* case in terms of *Giella.V Cassman Brown and Co. Ltd [1973] EA 358*.

For the plaintiffs, given their numbers, to be relocated against their will from their District to another would not only be inconvenient but also undemocratic in a way that damages would not be able to compensate.

I allow the application in terms of prayer 3, with a rider that any such meeting to be held should be on agreed ground rules. Costs to follow the event

Dated, signed and delivered at Kisii this 2nd day of November, 2009

A.O.MUCHELULE

JUDGE

2/11/2009

2/11/2009

Before A.O.Muchelule-J

Court clerk-Mongare

Mr. Bosire-present

COURT: Ruling in open court.

A.O. MUCHELULE

JUDGE

2/11/2009