



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 341 OF 2016

NAWAZ ABDUL MANJI.....1ST PLAINTIFF
PROFESSOR HAROUN MENGICH.....2ND PLAINTIFF
TEK EGO BORE.....3RD PLAINTIFF
JOSEPH KIPLAGAT LESIEW.....4TH PLAINTIFF
PAUL BRENNAN.....5TH PLAINTIFF

VERSUS

VANDEEP SAGOO.....1ST DEFENDANT
ANDREW CHELOGOI.....2ND DEFENDANT
HELLEN YEGO.....3RD DEFENDANT
JAMES WAWERU.....4TH DEFENDANT
DR. JOHN KIBOSIA.....5TH DEFENDANT
BRIAN CUTHBERT.....6TH DEFENDANT
PATRICK KIPROP.....7TH DEFENDANT
ISCAH MAIZ.....8TH DEFENDANT
SEATTLE LOGISTICS LIMITED.....9TH DEFENDANT

RULING

The plaintiffs have filed an application for the review of its orders on costs to the extent that the same should be borne by the Eldoret Club for which the plaintiffs are trustees and for whose benefit the plaintiffs filed the suit. The application is based on the affidavit of Nawaz Abdul Manji and grounds whose import is that the plaintiffs were litigating as trustees of the Eldoret Club and the costs are therefore, recoverable against the Eldoret Club. The defendants have already taxed their costs and will be executing against the plaintiffs personally in the absence of order indicating that the obligation to pay costs does not affect the trustees personally.

The 9th defendant filed grounds of opposition stating that neither a meeting of trustees was held nor was there a resolution passed before this suit was filed by the plaintiffs on behalf of Eldoret Club. According to the 9th defendant, the plaintiffs/applicants did not only fail to serve the mandatory notice of suit to Eldoret Club of their intention to sue on their behalf but also failed to seek this honourable courts authority to institute the suit on behalf of Eldoret Club in blatant breach of the provision of Order 1 Rule 8 of the Civil Procedure Rules.

That the application offends the provisions of section 120 of Cap. 80, Laws of Evidence on general estoppels, having pleaded in their amended plaint vide paragraph 2 that they sue in their capacities as members of the club, they can not be heard to now shift or change position and seek to depart from that representation.

That the application offends the provisions of Rule 7.7 of the Eldoret Club rules and by-laws requiring all documents signed on behalf of the club to be sufficiently signed by 2 members of the committee and counter-signed by the secretary of the club.

That there was no resolution passed to authorize the filing and prosecution of this application and to appoint Messrs. Manani Lilan & Mwetich Company Advocates to act for the Eldoret Club. As such, there is no valid resolution authorizing the institution of these proceedings or the appointment of the said firm to file these proceedings on behalf of the Eldoret Club.

That therefore, the 9th defendant's bill of costs should be borne by the plaintiffs' personally and not Eldoret Club as alleged.

That plaintiffs'/applicants' application is therefore fatally defective and improperly before this Honourable court.

I have considered the application and do find that the plaintiff sued the defendants as trustees of the Eldoret Club and not in their personal capacities. According to the pleadings, they sued as trustees, however, there is no evidence of a resolution to file the suit as trustees.

It is not clear whether the plaintiffs represent the body corporate of Eldoret Club. In fact, it is not clear whether there is a body corporate called Trustees Eldoret Club.

Section 3 of the Trustees (Perpetual Succession) Act Cap. 164, Laws of Kenya provides for the **incorporation of trustees as follows: -**

(1) Trustees who have been appointed by anybody or association of persons established for any religious, educational, literary, scientific, social, athletic or charitable purpose, or who have constituted themselves for any such purpose, or the trustees of a pension fund or provident fund may apply to the Minister in the manner provided in this Act for a certificate of incorporation of the trustees as a corporate body.

(2) If the Minister, having regard to the extent, nature and objects and other circumstances of the trust concerned considers incorporation expedient, he may grant a certificate accordingly, subject to such conditions or directions generally as he thinks fit to insert in the certificate, and particularly relating to the qualifications and number of the trustees, their tenure and avoidance of office, the mode of appointing new trustees, the custody and use of the common seal, the amount of movable or immovable property which the trustees may hold, and the purposes for which that property may be applied.

(3) The trustees shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in their corporate name and, subject to the conditions and directions contained in the certificate, to hold and acquire, and by instruments under the common seal to convey, transfer, assign, charge and demise any movable or immovable property or any interest therein now or hereafter belonging to, or held for the benefit of, the trust concerned in the same manner and subject to such restrictions and provisions as trustees might so do without incorporation.

No certificate of incorporation has been supplied in this case to demonstrate that the plaintiff was a corporate entity. It is probable that the plaintiffs sued as individual trustees but not a corporate body and therefore, they are liable to pay costs as individual trustees.

I do find the procedure adopted by the plaintiffs in filing the suit was defective and therefore there is no merit in the application. The same is dismissed with costs.

Dated and delivered at Eldoret this 30th day of May, 2019.

A. OMBWAYO

JUDGE