



**Gikunga & 2 others v Mbogo (Suing as the Chairman, Secretary and Treasurer of Enosupikia Displaced People Group) (Civil Suit E031 of 2022) [2024] KEHC 3072 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3072 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL SUIT E031 OF 2022  
SM MOHOCHI, J  
MARCH 19, 2024**

**BETWEEN**

**JOHN NJUGUNA GIKUNGA ..... 1<sup>ST</sup> PLAINTIFF  
JAMES NDUNG’U NG’ANG’A ..... 2<sup>ND</sup> PLAINTIFF  
KIMANI KARANU ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**STARNLEY KIAMA MBOGO ..... DEFENDANT  
SUING AS THE CHAIRMAN, SECRETARY AND TREASURER OF  
ENOSUPIKIA DISPLACED PEOPLE GROUP**

**RULING**

1. Before Court for determination are two Applications; the Plaintiffs’ Application dated October 26, 2022 and the Defendant’s Application dated December 15, 2022.

The Application dated October 26, 2022 seeks;

- i. Spent
- ii. Spent
- iii. That the Honourable Court be pleased to quash, remove and or vacate the elections held on April 21, 2022 that culminated in electing the Defendant as the chairman of Enosupikia Displace People Group pending hearing and determination of the suit.
- iv. Spent



- v. That pending the hearing and determination of this suit, the affairs of Enosupukia Displaced People Group be managed by the Plaintiffs in their capacity as chairman, secretary, and treasurer of the organization.
  - vi. That costs of this Application be provided for.
2. The Application was supported by the sworn affidavit of John Njuguna Gikunga. He stated that he was the Chairman of Enosupukia Displaced People Group (herein the Group) and that the Group was established on January 13, 2004 to cater for the welfare of the victims of post-election violence in Narok and all over the country. That the Plaintiffs were all elected to office on December 20, 2019. That vide a general meeting held on September 28, 2022, a resolution was passed for an AGM to be held on 31<sup>st</sup> October for purposes of electing new officials.
  3. That Clause 7.1 mandate the chairman to send the agenda to all the members or via advertisement or radio announcement. The chairman as well can convene the meeting in his absence, the vice-chair or in both their absence a member can be appointed.
  4. He stated that the Respondent illegally convened an AGM without quorum and proceeded to have himself appointed as chairperson. That the Respondent has blocked the Applicant from running the affairs of the group. That no prejudice will be occasioned on the Respondent if the Application is allowed.
  5. The Application was opposed via Replying Affidavit filed on November 28, 2022. The Respondent stated that the Applicants were not the bonafide officials of the Group and that they were misappropriating funds in the group accounts by withdrawing money without any authority from the members. That they wrote to the ministry to authorize the bank to block the accounts. That the Ministry of Public Service wrote to the bank outlining the names of the committee members.
  6. The Respondent stated that they convened an AGM and the Ministry issued a notice and service to the Applicants and on October 21, 2022 in the absence of the Applicants an AGM was conducted and new officials were elected. The same was registered with the Ministry of Social Services. That the AGM held on October 31, 2022 vide resolution of September 28, 2022 is meant to mislead the Court.
  7. On the other hand, the other Application dated December 15, 2022 seeks;
    - i. Spent
    - ii. Spent
    - iii. Spent
    - iv. That pending the hearing and determination of this suit, this Honourable Court be pleased to restrain the Plaintiff's and their servants from collecting monies from the members of Enosupukia Displace People Group
    - v. That the costs of this application be provided for
  8. The Application was supported by the Sworn affidavit of Stanley Kiama Mbogo who stated that the Plaintiffs called for an SGM and one of the agendas of the meeting is for members to contribute survey fees for parcels of land that is nonexistent. That the Plaintiffs have misappropriated funds to the tune of Kshs. 14,000,000 while holding office. That if the Plaintiffs are allowed to continue collecting monies it will cripple the group.
  9. This Application is unopposed



10. Both applications were canvassed by way of written submissions.

### Submissions

11. Plaintiffs vide submissions dated January 18, 2024 and filed on 22<sup>nd</sup> January, 2024 submitted that the AGM convened on October 22, 2022 was unlawful and the Defendant acted illegally and ultra vires contrary to Clauses 7.1 (a), 7.2 (a) and (b) and 7.3 (b) of the Group's constitution. The Defendant lacked capacity and authority.
12. That the allegations of misappropriation of funds are unfounded and the Defendant has not in any provided evidence of any misappropriation of funds by the Plaintiff contrary to the required evidential threshold under section 107 of the *evidence Act* and relied in the case of *Mohamed Guyo Boru v Richard Mwiliaria Aritbo* [2022] eKLR. That the evidence tendered is meant to mislead the Court and to tarnish the name of the Plaintiffs to justify the Defendants actions.
13. According to the Plaintiff, the Defendant's application lacks merit as the meeting held on October 26, 2023 was flawed substantively and procedurally and relied on *Li Wen Jie & 2 Others v Cabinet Secretary, Interior and Coordination of the National Government & 3 Others* [2017] eKLR. and that they have elaborated the lengths that the Defendant has taken to discredit the Plaintiffs. That he who comes to equity must come with clean hands as was held in *Caliph Properties Limited v Barbel Sharma & Another* [2015] eKLR.
14. The Defendant submitted that the election on October 21, 2022 was conducted within the law. The Defendant also submitted that the Plaintiffs are yet to comply with the Orders of October 17, 2023 despite being served.

### Analysis and Determination

15. This Court has carefully considered both Applications, the affidavits in support, and against and the submissions on record as well as the law and the case law cited.
16. Prayer No. (5) in the Application dated October 26, 2022; that the Plaintiffs were the rightful officials of the group and were elected via proper and legal procedure. They argued that the survey receipts tendered in Court were duplicated several times to make it seem like a lot of money had been disbursed and that the Plaintiff at the time the monies were being withdrawn from the group accounts or rather misappropriated, they had no authority to make the alleged payments as they had not yet been elected to office. That the elections held on October 21, 2022 were an illegality therefore null and void.
17. The Defendant on the other hand argued that that there was misappropriation of funds belonging to members of the group and that the Plaintiffs are not the proper officials in office. Further that the AGM held on October 31, 2022 vide resolution of September 28, 2022 electing the Plaintiffs as officials was equally not proper and aimed at misleading the Court
18. The parties seek to bar each other from conducting affairs of the group on the ground that they are legitimately in office. Either Party has given valid arguments to buttress their position. Either party is convinced that the other is not properly in office. The questions therefore that beg, If the Plaintiffs are allowed to manage the affairs of the group till the suit is determined, what are the consequences?
19. As pertains Prayer No. (4) in the Application dated December 15, 2022 the same is interlocutory in nature and not opposed. The Defendant has laid down compelling reasons as to why the Plaintiffs should be barred from collecting monies or handling the groups accounts. The Plaintiff did not oppose



that application. The failure of the Plaintiffs to file a response against the Application works against their Prayer (5) of their application.

20. In Determining the merits of either Application the Court has to question whether in the interim until determination of the main suit, the interests of the group are safe in the hands of one party as opposed to the other? If the Plaintiffs' application is allowed and they are left to handle and manage the affairs of the group based on their evidence and noting that the Plaintiffs are yet to comply with the Court Order of October 17, 2023, what will be the consequences? On the other hand, if the Defendant's prayer is allowed and the Plaintiffs are barred from further collecting monies and managing the affairs of the group what will the consequences be?
21. This Court has the responsibility to do justice to the parties and is clothed with inherent jurisdiction, to make orders necessary for the ends of justice to be met. In so doing, the Court must balance between competing rights and the interests of the parties while fostering the confidence of the public while appreciating the unique nature that each case brings. The Court ought to draw its inherent power when called upon in order to ensure that justice is attained.
22. As the parties are fighting against each other, there is a group of 23,000 members who have been left in limbo. There is no knowing how long the parties are going to be at each other. The Court has to first of all consider and take into account the interests of those individuals who from the documents on record are internally displaced persons and have been contributing monies towards what the Court presumes to be resettlement. They stand to lose the most. This is a case where two bulls are fighting at the expense of the grass.
23. As regards to Prayer (3) in the Application dated October 26, 2022 the same is also couched in the main suit. The Applicant is asking the Court to rescind the elections held on October 21, 2022. A look at Prayer (3) it is my considered view that the evidence of either sides credibility be tabled in Court and interrogated. Additionally, Prayer (3) contains of contested facts which should be interrogated and cross examined by either party.
24. Under normal circumstances the Court ideally would have framed the issues as to whether or not the applications are or are not, merited and make a determination of the issues framed on the basis of the evidence given. For reasons explained above and in the interest of the 23,000 individuals who are members of the Enosupukia Displaced People Group, the matter can only be resolved after hearing the Parties conclusively in the main suit.
25. In conclusion and for the purpose of fast-tracking this case,
  - a. The parties herein are directed to file and serve any necessary documents in compliance with Order 11 within 21 days of this order.
  - b. The Parties are both barred from managing the affairs of the Group until determination of the suit.
  - c. The matter shall be mentioned on April 11, 2024 for directions
  - d. There shall be no orders as to costs.

It is so ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 19TH DAY OF MARCH 2024.**

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**MOHOCHI S. M.**



**JUDGE**

