



Victorious Gospel International Church of Kenya (Suing Through John Mboi, James Kingori, Lawrence Kamutu And David Kuria) in their Capacities as Chairman, Secretary, Treasurer and Assistant Treasurer Respectively) v Karanja & 8 others (Civil Case 150 of 2011) [2023] KEHC 22733 (KLR) (28 September 2023) (Judgment)

Neutral citation: [2023] KEHC 22733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE 150 OF 2011
HK CHEMITEI, J
SEPTEMBER 28, 2023**

BETWEEN

VICTORIOUS GOSPEL INTERNATIONAL CHURCH OF KENYA (SUING THROUGH JOHN MBOI, JAMES KINGORI, LAWRENCE KAMUTU AND DAVID KURIA) IN THEIR CAPACITIES AS CHAIRMAN, SECRETARY, TREASURER AND ASSISTANT TREASURER RESPECTIVELY) PLAINTIFF

AND

**CRYUS NJOROGE KARANJA 1ST DEFENDANT
STANLEY KAMUIRU 2ND DEFENDANT
ROBERT NJEHIA KIARIE 3RD DEFENDANT
OLIVER KINYANJUI THIONGO 4TH DEFENDANT
JOSEPH KARUNDA 5TH DEFENDANT
FRANCIS KARIUKI NJOROGE 6TH DEFENDANT
HENRY KIGERA THUO 7TH DEFENDANT
PAUL MURAGU MWANGI 8TH DEFENDANT
JULIUS KARIITHI NDUNGU 9TH DEFENDANT**

JUDGMENT

1. By the plaint dated June 24, 2011 the plaintiff sought judgement for and against the defendants for the following orders;



- (a) An order of a permanent injunction restraining the defendants by itself, agents or servants and other persons from dealing with, disrupting or in any way interfering with the day to day management of the affairs of the plaintiff's churches at Karagita, Rimunga, Mara –Njau Kasambara and Nyahururu.
- (b) Costs of the suit.
2. After several headwinds the case proceeded to a full trial where the plaintiff called two witnesses and the defendants called two witnesses as well.
 3. The gist of this case is the rivalry between two churches namely Victorious Gospel International Church of Kenya (the plaintiff) and Victorious Community Church both registered by one Bishop Jackson Maina on different dates.
 4. The essence or the sum total of the case was the plaintiff established that the defendants were no longer part of the plaintiff's church and that they should be stopped from interfering with its affairs after being defrocked and or excommunicated.
 5. PW 1 James Kingori Thuo in his lengthy evidence testified that the current officials of the plaintiff were Lawrence Kamutu the treasurer, John Mboi the chairman and David Kuria the assistant general secretary.
 6. He went on to explain that the defendants were no longer officials of the plaintiff and were pastors of Victorious Community Church after being ordained. The witness went ahead to explain several churches in which the defendants served and that the two churches had one spiritual father namely Bishop Jackson Maina.
 7. In the cause of the proceedings a video was played showing an ordination ceremony of various pastors and which was being conducted by the said Bishop Maina.
 8. Evidence was also lead of an AGM which was conducted at Subukia on December 31, 2007 in which the plaintiffs were elected as officials of the church.
 9. PW2 Lawrence Kamutu Wamuguunda testified that he was a pastor with the plaintiff church as well as the treasurer and was based at the Naivasha church since 1991. In his testimony he confirmed that Bishop Maina later registered Victorious Community Church and that he served as a spiritual leader of both churches.
 10. The witness went ahead to enumerate the officials of the plaintiff's church who excluded the defendants. He also testified how the defendants were so dissatisfied with the changes that they caused chaos in the church by interfering with the church services which led them file this suit. The said interference went as far as involving the police and the local provincial administration at Naivasha.
 11. He went on to state that on January 21, 2008 he gave some money to one Peter Wanyoike to file the annual returns of the church which he went ahead and produced them as evidence.
 12. He was cross examined at length by Mr Waiganjo counsel for the defendants who showed him copies of cheques dated different dates paying the defendants who were still the plaintiffs pastors even after the registration of the Victorious Community Church and after alleged defrocking.
 13. The defendants on their part called Cyrus Njoroge Karanja (PW1) who testified that he was the bishop and leader of the plaintiff church together with the other defendants and that the plaintiffs were not officials of the said church. He said that the genesis of the problem was when Bishop Maina ordained



- the pastors and issued them with certificates of ordination for Victorious Community Church instead of the plaintiff church which they knew they belonged.
14. He said that all the annual returns they produced showed that they were the registered leaders of the plaintiff church. He denied that they were not part of the church. He said that Bishop Jackson Maina was the bishop of the Victorious Community Church.
 15. DW2 Stanley Njau Kamuru testified that he was a pastor with the plaintiff church since 1998 to date and that he was one of those captured in the video during ordination led by Bishop Maina done at the church head office at Mwariki.
 16. He denied that he was a member of Victorious Community Church and all along he knew that his ordination was to serve in the plaintiff church. He said that all efforts to mediate by other spiritual leaders became difficult as the plaintiffs persisted in not ceding ground.
 17. He said that as a matter of evidence he continued to receive salary up to 11th August 2008 signed by Bishop Maina. He said that the said bishop had family relationship with all the plaintiffs except John Boi.
 18. After the close of the defendant's case the court directed the parties to file written submissions which the defendants only complied.
 19. The court has perused the said defence submissions and it is generally grounded on one issue, namely, leadership of the plaintiff's church. Did the plaintiff prove its case on a balance of probabilities?
 20. What is not disputed is that Bishop Jackson Maina is the central figure in all this melee. For some unknown reason and despite being the spiritual father figure of both protagonists he was not joined as a party neither was he called to testify and clear the air over the confusion.
 21. At the centre of it all is who are the legitimate officials of the plaintiff's church. Some historical evidence was led by the plaintiffs including an AGM held on 31st Dec 2007 which supposedly endorsed the plaintiffs as the officials. When cross examined pw1 and 2 were not sure whether the same was done at Nakuru Ponda Mali church headquarters or Subukia.
 22. Both agreed that this was the height of post-election violence and that it was not possible to have been held at Nakuru as it was one of the hot spots. The minutes produced unfortunately does not help much. The same is devoid of the usual opening prayers or ceremonies and conclusion. More importantly the same does not contain list of all the members who participated.
 23. It is worth noting that the defendants did not attend the said AGM and there is no evidence of such a notice to all and sundry. It is in this meeting that election of the plaintiffs was allegedly done and that gave them the legitimacy.
 24. This court is not convinced that an AGM properly called was done on December 31, 2007 or at all. This is for the reasons that no official communication was done to the members of the plaintiff's church in form of an official notice in whichever fashion, print or electronic and even if it was done the two witnesses were unsure whether it was done at Nakuru Ponda Mali or Subukia. This of course is ridiculous because they were elected as officials yet they were doubtful of the venue.
 25. At the same time the so-called minutes are undated, incomplete and completely incomprehensible to be used as evidence of such an important meeting. In other words, they are unreliable.



26. The court takes judicial notice and it is also admitted by the plaintiffs as well as the defendants that going by the chaos that erupted after the general elections of 2007, it was not foreseeable to hold any AGM leave alone a hypothetical one like in this case.
27. It is therefore the conclusion of this court that there was no AGM undertaken on December 31, 2007 and if there was one then the same was void abinitio for the reasons advanced above.
28. It was further after the alleged AGM that the plaintiffs filed returns with the Registrar of Societies on January 20, 2008. The said returns were well questioned by the defendants and from the gleaning of the same they were allegedly filed on a Sunday. This was not an official working day and the same in my view looks very suspicious for want of official stamps among others.
29. Having said that I have compared the defendant's annual returns which they produced for the period 2007-2011 and cumulatively they are all official documents from the Registrar of Societies. The defendants were able to explain to the court how they filed as well as the attendant fees payable which they backed it with official receipts.
30. In the premises this court is satisfied that the defendants as per the evidence produced both documentary and oral and the law governing societies were legitimate officials of the Victorious Gospel International Church of Kenya and not the plaintiffs.
31. I have also strived to check the registration instruments of Victorious Community Church in vain. If the same was registered by Bishop Maina in 2007 as per averments in the affidavits on record or any other period, they should have produced the same. To ascribe it to the defendants without any tangible evidence runs afoul section 107 and 108 of the Evidence Act in which it states that he who alleges must prove.
32. Needless to state that it is the said Bishop Maina who ought to have cleared the air even by producing any returns from the Registrar of Societies just like they strive to do in regard to the plaintiffs.
33. I think I have stated much to show that being a question of leadership it was incumbent upon the plaintiffs to have proved its case on a balance of probabilities. They have not demonstrated at all that the defendants are not the legitimate leaders of the church at least going by the record of the Registrar.
34. The issue of the properties of the church namely the land was not part of the brief herein. It appears that there is another case at ELC court which is seized of the same. For now, this court shall deal on what was asked to do.
35. In dismissing this suit this court lays blames squarely under the feet of one Bishop Jackson Maina who in my view created the whole confusion for reasons best known to himself. Although the ordination video was not produced as evidence despite being referred to by the parties, and the court having had a chance to see it, it appears to me that the whole idea of ordination was to legitimise the registration of Victorious Community Church by having the said pastors swore allegiance to him and the new church.
36. In any case there was no reason for the said Bishop to have hoodwink the said pastors yet for all intend and purposes he was their spiritual leader. He failed and has therefore caused this confusion and stress in the two churches. The said bishop in my view has the answer to the issues raised in this suit.
37. The case is nonetheless dismissed with costs to the defendants.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 28TH DAY OF SEPTEMBER 2023.

H K CHEMITEI



JUDGE

