



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

(Coram: Hon. D. K. Kemei – J)

CIVIL SUIT NO. 13 OF 2020

REV.NAHASHON WAMBUA MWANGANGI.....1ST PLAINTIFF/RESPONDENT

REV.TOM NTHENGE MWANGANGI.....2ND PLAINTIFF/RESPONDENT

REV.LUCAS MUTISYA WAWERU.....3RD PLAINTIFF/RESPONDENT

REV.CHRISTOPHER MATHEKA NDAMBUKI.....4TH PLAINTIFF/RESPONDENT

REV.TITUS MWENDWA KATINGU.....5TH PLAINTIFF/RESPONDENT

(Suing on their own behalf and on behalf of other pastorsand/or members of Eaglerise Christian church)

VERSUS

REV.LEONARD MUNYAO WAMBUA.....DEFENDANT/RESPONDENT

AND

EDWARD MULINGE MAKOLE.....INTENDED DEFENDANT/APPLICANT

RAMSON MWASHIGHADI.....INTENDED DEFENDANT/APPLICANT

IRENE NJERI.....INTENDED DEFENDANT/APPLICANT

KENNEDY OTACHI.....INTENDED DEFENDANT/APPLICANT

ZIPPORAH MULINGE.....INTENDED DEFENDANT/APPLICANT

RULING

1. By summons dated 28.7.2020 supported by the affidavit of Edward Mulinge Makole, the intended defendants are seeking to be joined as defendants or interested parties in this suit.

2. The application is based on grounds that the applicants are the founders and duly elected officials of Eagle Rise Christian Church while the Defendant is the Bishop and duly elected Chairman as a well as founder of the said church. According to the Applicants, the Plaintiffs/ Respondents have assumed the position of officials of the church without being elected which has caused confusion to members of the church, chaos and that the church operations are in total disarray. They also aver that the Plaintiffs/Respondents have purported to undertake developments and acquisition of the properties on behalf of the church without authority and approval from the duly elected officials of the church and further that the Plaintiffs/Respondents do not want to be instructed, directed and supervised at all by the elected officials of the church.

3. According to the Intended Defendants, if a problem arises as a result of the Plaintiffs/Respondents action, liability for their actions will be borne by the Defendant and Intended Defendants/Applicants. They maintain that the orders issued by court on 8.7.2020 affects the Intended Defendants/Applicants since they cannot hold a valid meeting as officials of the church without the participation of the Defendant hence a

need for the Intended Defendants/Applicants to be joined in the suit for the court to be able to resolve the issues between the Plaintiffs against the Defendant.

4. In opposition to the application, the 1st Plaintiff/Respondent swore an affidavit dated 26th August 2020 and filed on the same day. He averred that the Applicants have not disclosed to which local church they belong and that he, being a member of the church Executive Board who attends its meeting and fully involved in the umbrella church day to day operations, knows that the members of the old committee were members of Umoja Church which is headed and/or presided over by the Defendant.

5. He deposes that Irene Njeri and Kennedy Otachi left the Eagle Rise Church over 10 years ago. It is within the Plaintiffs knowledge as well as the Defendant and Intended Defendants that the 2nd Intended Defendant, Ramson Mwashigadi left Eagle Rise Christian church well over 5 years ago and serves as a pastor with a different ministry at a place near Mulala in Nzau Sub-County. He further deposes that the Defendant is an associate pastor at Umoja in Nairobi and currently serves as the Vice Chairman of the Executive Board of Eagle Rise Christian Church.

6. According to the 1st Plaintiff, joining the Intended Defendants/Application will make the proceedings murkier and unnecessary lengthen the same. He deposes that the interest of the Intended Defendants can be properly catered for by the 1st Defendant who is the general church overseer who has breached the church's Constitution and administrative laws and not Intended Defendants. The Plaintiffs have no case against the Intended Defendants and joining the Intended Defendants will expose the Plaintiffs to costs in the event the suit is dismissed. It was further averred that the Intended Defendants have not demonstrated their interest in the case and who are working in cahoots with the Defendant to frustrate the plaintiffs yet the Plaintiffs had been duly elected into office and names forwarded to the Registrar of Societies vide returns, paid for and registered.

7. He deposes that the Plaintiffs, Defendant and Intended Defendants are not owners of the church but officials who can be voted in and out as per the church's Constitution hence the court would open a floodgate of other similar applications from the church members to be joined in the suit. The court order only barred the Defendant from interfering with the office, mandate and work of the Plaintiffs and does not inhibit the Defendant from holding his meeting with other people. The Defendant has been holding meetings with the Applicants remaining with the church at Nairobi, Makindu and elsewhere and it seems the application is a product of those meetings.

8. It is further deposed by the 1st Plaintiff that the photographs attached are misplaced as they are undated do not show from where they were taken. He further averred that the individual churches and their developments are also authorized by the Executive Board, whose membership includes the Plaintiffs and the Defendant and hence the developments shown in the photographs do not in any way aid the Intended Defendants in the prayers they are seeking in court. The 1st Plaintiff deposes that the application is devoid of any merits, baseless and abuse of the court process and it be dismissed with costs.

9. The 2nd Intended Defendant swore a supplementary affidavit on 17.5.2021 where he deposes inter alia; that the Intended Defendants and himself are the founding members and duly elected officials/registered Trustees of Eagle Rise Christian Church; that the Plaintiffs have not denied that the Intended Defendants are the founding members of the church; that it is not true that Irene Njeri and Kennedy Otachi have left Eagle Rise Christian Church or are not duly elected officials or founding members of the church and the 3rd Intended/Defendant does not operate in a different ministry as alleged.

10. He avers that the Defendant can't be sued alone on issues pertaining the operations, administration and general management of the church hence the interest of the other duly elected officials cannot be catered for and protected without them being joined in the suit and that the Defendant and Intended Defendants who are duly elected officials of the church will be prejudiced. It was also claimed that the allegations averred by the 1st Plaintiff in paragraph 11 of his affidavit that the Intended Defendants and Defendant are in cahoots are serious allegation which the Plaintiffs cannot turn around and pretend that they don't have complaints against the Intended Defendants. It was also averred that the Intended Defendants seek to be joined as founding members and duly elected officials of the church and not as members hence the issue of flood gates can never arise.

11. It is further averred that the minutes of the church in respect of the Plaintiffs election into the office have not been attached hence the averments in paragraph 14 of the 1st Plaintiff's affidavit are mere denials. In response, he averred that according to the photographs annexed as EMM 3', the Plaintiffs admitted that the developments shown in the photographs can be undertaken by the Plaintiffs who are pastors in their respective branches of the church without resolutions to that effect being made by the duly elected officials of the church, the Defendant and Intended Defendants herein. It was finally averred that no resolution has been made by Defendant and Intended Defendants for the Plaintiffs to assume the position of officials of the church and that it is in the interest of justice and fairness that the orders sought are granted.

12. According to the Intended Defendants counsel, the issues that fall for determination is whether the Intended Defendants should be joined in the suit either as Defendants or Interested Parties and who bears the costs of the application. As regards the principles that guide the court to consider whether or not to join parties in a suit, reliance was placed on the case of ***Departed Asians Property Custodian Board vs Jaffer Brothers Ltd [1999]1EA SC Uganda***.

13. It is submitted that there is a question as to who are the duly elected and registered officials of the church since the Plaintiffs have assumed the position of officials without being validly elected through an annual general meeting. The Intended Defendant are founding members and duly elected officials and/or registered Trustees of the church hence the need to join them in the suit. Reliance was placed on the case of ***Registered Trustees of the African Independent Pentecostal Church of Africa vs Arch Bishop Amos Mathenge Kabuthu & Another [2016] eKLR***. According to the Intended Defendants, they should be joined to avoid multiplicity of suits. They have demonstrated that they have an interest in the case. The orders sought will directly and legally affect them. According to them, the Defendant who is the Chairman of the church Board and/or Committee cannot implement and/or comply alone with any orders which the court might issue without involving and/or participation of the Intended Defendants who are his fellow duly elected officials. It was submitted that the Plaintiffs/Respondents have not demonstrated what prejudice they will suffer if the Intended Defendants are joined. Reliance was placed on the cases of ***Kenya Medical Laboratory Technicians & Technologists Board & 6 Others vs Attorney General & 4 Others [2017] eKLR***,

Antony Gachoka vs National Hospital Insurance & Others [2005] eKLR and Premier Savings & Finance Ltd vs Hemendra Mansukhlal Shah [2002] eKLR. The Intended Defendants pray for costs of the application.

14. Counsel for the Plaintiffs/Respondents submitted that the Plaintiffs do not have any cause of action against the Intended Defendants and that it is not clear what the Intended Defendants would be defending in the suit since they have not been sued by the Plaintiffs/Respondents. It is submitted that the Church's Constitution and the Societies Act has not defined who are the 'Founder Members' as alleged by the Intended Defendants hence it is foreign to the laws. It was pointed out that the returns filed with the Registrar of Societies show the Plaintiffs and Defendant as the current validly elected officials of the Church. According to the Plaintiffs, there are no minutes tendered in court to show that the Intended Defendants were elected or that they have membership cards and that the Intended Defendants did not state which branch they belong to or attached copies of the church's register to show their membership.

15. According to the Plaintiffs, the 1st Intended Defendant supplementary affidavit is defective, bad in law and improperly before court and should be struck out for being filed outside the timelines. It is submitted that according to paragraph 12 of the 1st Intended Defendant's supplementary affidavit, the Intended Defendants admit that they are not members of the church by stating that they '*seek to be joined in their capacity as founding members and duly elected officials of the church and not as members of the church*' hence cannot purport to protect the church's interest when they are not members. In response to paragraph 13 of the supplementary affidavit, the Intended Defendants have not tendered any letter from the Registrar of Societies to prove that the Plaintiffs were not the officials. The Intended Defendants have not demonstrated what loss they will suffer personally or collectively if they are not joined in the suit. Accordingly, if the Plaintiffs suit succeeds, the Intended Defendants will benefit as the church assets and their interest will be safeguarded hence the Intended Defendants application is unnecessary.

Determination

16. I have considered the application, rival affidavits and submissions filed. The only issue necessary for determination is *whether the Intended Defendants application seeking to be joined as Defendants or Interested Parties in the suit is merited.*

17. Order 1 Rule 3 and 5 of the 2010, provide that:-

Rule 3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where if separate suits were brought against such persons any common question of law or fact would arise.

Rule 5. It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

18. Order 1 Rule 3 is applicable where a person is to be joined as a Defendant. The Intended Defendants also place reliance on the overriding objectives under sections 1A and 1A and want the court to invoke its inherent powers under section 3A of the Civil Procedure Act.

19. The Intended Defendants plead to be joined as Defendants or Interested Parties. As regards joining the Intended Defendants as Defendants, in my view the same cannot succeed since the Plaintiffs do not have a cause of action against them but the Defendant. The court order issued on 8.7.2020 was in respect of an application dated 30.6.2020 that had been filed by the Plaintiffs/Respondents to restrain the Defendant, his agents and/or employees from interfering with the offices and/or work of the Plaintiffs/Respondents. The Defendant is the Chairman and General overseer of the Eagle Rise Christian Church. The Plaintiffs/Respondents assert that the Defendant is the aggressor and hence a proper party to be sued.

20. I associate myself with ***Munyao J.*** in ***Joseph Leboo & 2 others v Director Kenya Forest Services & another [2013] eKLR*** where the question was whether the applicants ought to be joined as defendants or as interested parties held that:-

"I think courts need to be careful before making an order for a person to be joined as a defendant where the application for that joinder is not emanating from the plaintiff. This is so as to avoid thrusting upon the plaintiff a party against whom the plaintiff does not intend to sue, or the plaintiff feels he has no cause of action against, or even if he does, has opted not to pursue the action. It is important, unless there will be great prejudice to an existing party, or a clear lacuna in the proceedings, for courts not to seem to be choosing a defendant for the plaintiff to sue. This is because the choice of whom to sue is that of the plaintiff and there may be cogent reasons as to why a litigant has opted not to sue some other persons. Even, in the absence of any reason, the choice to sue ought to be left to the litigant, and this choice ought not to be disturbed without the presence of compelling reasons. Joining a defendant to the proceedings on an application which is not coming from the plaintiff, may also compel the plaintiff to pursue a cause of action that the plaintiff, for his own reasons, or lack of any, of which there is perfect freedom, the plaintiff has opted not to pursue. Where there is an application for a person to be joined as defendant, and the plaintiff objects to such joinder, the court should even be more cautious before making an order for such joinder. It ought to be clear that the remedy sought by the plaintiff in the proceedings, actually ought to be directed against the party sought to be enjoined, or that the remedy the plaintiff seeks cannot be granted, or the proceedings cannot be properly conducted without the person sought to be enjoined being a party."

21. In my view there is no remedy that the plaintiffs/Respondents are seeking from the Intended Defendants. The Intended Defendants in my view are not necessary parties to be enjoined as Defendants.

22. The Intended Defendants have urged the court to join them as interested parties if not as Defendants. The Civil Procedure Rules, 2010 do not have provisions to join an Interested Party in a suit. However, the same can be inferred under Order 1 Rule 10 (2) that a person despite not being a Plaintiff or Defendant can be joined as an interested party ***BUT*** only if their presence is necessary for the court to *effectually* and *completely adjudicate upon and settle all questions in the suit.*

23. Order 1 rule 10(2) of the 2010, Rules provides that:-

The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions in the suit, be added.

24. The guiding principles when joining an Interested party(s) are well expressed by *Nambuye J. in Joseph Njau Kingori vs. Robert Maina Chege & 3 others [2002] eKLR* where the learned Judge held that:-

“...it is clear that the guiding principles when an intending party is to be joined are as follows:

(1) He must be a necessary party;

(2) He must be a proper party;

(3) In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff;

(4) The ultimate order or decree cannot be enforced without his presence in the matter;

(5) His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit”.

25. In *Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others, Supreme Court Petition No. 12 of 2013, [2014] eKLR* the Supreme Court observed that:-

“[Under] Black’s Law Dictionary, 9th Edition page 1232 ‘Interested Party’

“A party who has a recognizable stake (and therefore standing) in a matter” thus:-

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...” See also in *Communications Commission of Kenya & 4 others vs Royal Media Services Limited & 7 others [2014] eKLR*.

26. The Intended Defendants contend that any orders and/or judgement might issue in this matter will generally affect them since they are the duly elected officials and/or registered trustees of Eagle Rise Christian Church. The Plaintiffs/Respondents assert that no single documents have been tendered in court to show that the Intended Defendants are the duly elected officials as there are no minutes showing the date of election or membership cards. However, the Plaintiffs/Respondents have also not attached any document to show that they are officials of the church. The 1st Plaintiff/Respondent claims that some of the Intended Defendants have left the church to other ministries but the same is denied by the Intended Defendants and the 1st Plaintiff/Respondent has not attached any document to show departure of the Intended Defendants.

27. Similarly, the Intended Defendants have only attached annexure ‘EMM2’ an application for registration or Exemption from Registration before the Registrar of Societies. The certificate of registration has not been availed to court. In my view there is a question as to who are the validly elected officials of the church. Both the Plaintiffs/Respondents and Intended Defendants have not tendered in court sufficient document to prove their assertions.

28. According to *Munyao J. in Joseph Leboo & 2 others v Director Kenya Forest Services & another [2013] (supra);*

“...the joinder of a person as an interested party ought not to be as stringent as the joinder of a person as a defendant. So long as a person can demonstrate that he has a legitimate interest in the subject matter, there is little reason to deny such person a joinder as an interested party. See also in Antony Gachoka vs National Housing Insurance & Others (supra) where the court stated that in deciding an application for joinder, the court must exercise a liberal approach so as not to shut out a genuine litigant who is effectively interested or is bound by the outcome of the suit.”

29. Looking at the rival allegations made by the plaintiffs and the intended defendants or interested parties, I find that the principal parties are the plaintiffs and the defendant. The intended defendants have not presented cogent material that their presence in the suit will assist the court to finally and effectually determine the issue in dispute. As the plaintiffs have expressly indicated that they have no cause of action against the said intended defendants or interested parties and that the defendant has not of his own motion sought for their joinder, I find that the intended defendants/interested parties herein will only be in the proceedings as busybodies and that their joinder will further convolute the matter set for determination. It would appear to me that the defendant has nudged the intended defendants/interested parties out of an instinct of herd mentality in a bid to join forces against the plaintiffs yet the plaintiffs have no cause of action against the intended defendants/interested parties. The issue in controversy does not require the presence of the intended defendants/interested parties for the court to determine it since the plaintiffs and the defendants will properly articulate the same. If the intended defendants/interested parties wish to come to the aid of the defendant, then the defendant will be at liberty to invite them as witnesses in his case. It is instructive to note

that the counsel acting for the defendant is the same one acting for the applicants and which shows that the applicants and the defendant share some common front or ideas yet the defendant curiously opted not to seek to enjoin the applicants but advised them to come by themselves. I also find it rather curious that the applicants have left the role of choosing their status as to whether they should be made as defendants or interested parties to the court which is a clear indication that they do not know their real grievance in the matter between the plaintiffs and the defendant. Hence, it is my considered view that the request for joinder by the applicants is not merited at all.

30. In the upshot, I find no merit in the application dated 28/7/2020. The same is dismissed with costs to the plaintiffs.

It is so ordered.

Dated and delivered at **Machakos** this **27th** day of **July, 2021**.

D. K. Kemei

Judge