



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei - J

CIVIL SUIT NO. 13 OF 2020

REV. NAHASON WAMBUA MWANGANGI.....1ST PLAINTIFF
REV. TOM NTHENGE MWANGANGI.....2ND PLAINTIFF
REV. LUCAS MUTISYA MAWEU.....3RD PLAINTIFF
REV. CHRISTOPHER MATHEKA NDAMBUKI.....4TH PLAINTIFF
REV. TITUS MWENDWA KATINGU.....5TH PLAINTIFF

(Suing on their own behalf and on behalf of other pastors

and/or members of Eagle rise Christian Church

VERSUS

REV. LEONARD MUNYAO WAMBUA.....DEFENDANT

RULING ON DIRECTIONS

1. An objection has been raised by Miss Mutuku learned counsel for the Defendant which is to the effect that Mr. Muithya who acts jointly with Mr. Mutia for the Plaintiffs herein does not hold a valid practicing certificate for the year 2020. It was the view of counsel for the Defendant that the said Mr. Muithya does not therefore have capacity to purport to represent the Plaintiffs or even hold brief for any counsel for that matter. Finally, it was the counsel's request that the court proceedings made on the 8/07/2020 in which the said Mr. Muithya participated be expunged on account of the counsel's lack of valid practicing certificate and that the Defendant's latest application dated 30/09/2020 should take precedence over the one dated 29/07/2020 as it raises weighty issue. A letter from the Law Society of Kenya dated 28/09/2020 addressed to the defendant's counsel regarding the practicing status of Mr. Muithya Advocate was presented to this court for perusal.

2. Mr. Mutia learned counsel for the plaintiffs pointed out that no formal application had been made over the issue of lack of practising certificate of Mr. Muithya Advocate. He contended that the pleadings regarding the plaintiffs had been prepared and signed by none other than himself. Learned counsel opposed the request by defendants to expunge the proceedings in which Mr. Muithya Advocate had participated as the same will affect the right of his clients to access justice. Counsel sought reliance in the **Supreme Court Petition No. 36 of 2014** where the court dealt with a similar case of lack of a practising certificate by an Advocate. It was the view of counsel that the defendants should proceed with the issues raised in the application dated 29/07/2020 and file written submissions.

3. I have noted the sentiments by learned counsels. It is not in dispute that the matter had been scheduled for mention to confirm filing of submissions on the application dated 29/07/2020 so as to reserve a ruling date pursuant to the directions made on the 10/09/2020. It is also not in dispute that the Defendant have filed an application dated 30/09/2020 seeking review of orders made on 8/07/2020. It is not in dispute that the application dated 29/07/2020 seeks to cite the Defendant in contempt of court orders made on the 8/07/2020. It is also not in dispute that the Defendant's counsel has received written communication from the Law Society of Kenya to the effect that Mr. Muithya Advocate who participated in this courts proceedings of 8/07/2020 does not possess a valid practising certificate for the year 2020. The issues for determination are firstly whether the proceedings dated 8/07/2020 together with Plaintiffs submissions dated 6/10/2020 should be expunged and secondly whether the Defendant's application dated 30/09/2020 should take precedence over the application dated 29/07/2020.

4. As regards the first issue, it is noted that all the plaintiffs pleadings including submissions have been duly signed by Mr. Mutia Advocate on behalf of his firm Mutia J. M. & Associates Advocates and since there has been no complaint regarding practicing status of Mr. Mutia by the Defendants then I find the said pleadings and submissions to be properly on record. It is indeed correct to state that all Advocates

appearing before the courts are expected to take out practising certificates by paying the requisite fees so as to entitle them to represent their clients in court. This is the position provided for under section 34 of the Advocates Act. As the letter from the L.S.K dated 28/09/2020 confirms that Mr. Muithya Advocate does not hold a valid practising certificate for the year 2020 then *ipso facto* the said Advocate has no authority to sign, prepare pleadings or even have audience with the court. He can only do so once he regularizes his practising status. Hence the proceedings conducted on the 8/07/2020 in which he had participated ought to be expunged on that ground. However, the Supreme Court vide its decision in **Petition No. 36 of 2014** held that an Advocate's obligations under the law remains unaffected since such Advocate remains liable in any applicable criminal or civil proceedings as well as disciplinary proceedings to which he or she may be subject. It was the decision of the Supreme Court that litigants who are innocent should not be denied access to justice under Article 48 and 159(2)(d) of the Constitution. Being guided by the above decision, I am of the considered view that expunging the proceedings of 8/07/2020 and submissions dated 6/10/2020 will cause prejudice to the Plaintiffs. In any case the counsel acting for the plaintiffs and who drew the pleadings does not have any challenge with regard to a valid practising certificate. There is no prejudice suffered by the Defendants as they will be given their day in court to challenge the Plaintiffs case on all fronts. Further, the counsel affected by the lack of a valid practising certificate only held brief for Mutia who had been duly appointed by the clients and hence the plaintiffs should not be denied justice on that account alone. The affected counsel did not prepare or sign any pleadings or documents regarding the plaintiff's case. The right to access justice by the litigants should outweigh issues to do with Advocate's practicing status as held by the **Supreme Court in Petition No. 36 of 2014**.

5. As regards the second issue, it is noted that the defendants vide their application dated 30/09/2020 seek for review or setting aside of the orders dated 8/07/2020. Apparently, it is from the said orders that the application dated 29/07/2020 for contempt was filed and in which parties have already taken directions to dispose of the same by way of written submissions. Already the plaintiffs have filed their submissions. It would seem to me that the Defendant's intention is to scuttle the application dated 29/07/2020 without the same being determined. I also note that the Defendants application dated 30/09/2020 seems to suggest that the orders made on 8/07/2020 were overtaken by events since the issues complained of had already taken place. If this is the position then I would suppose that the same should be used by the Defendants as an answer to or defence to the contempt application dated 29/07/2020. The Defendants are at liberty to bring up such a response and ought not to scuttle the application before the same is determined on its merits. That being the position, I find that the Defendants application dated 30/09/2020 should await the determination of the contempt application dated 29/07/2020. Indeed, once a complaint has been raised to the effect that a court order has been disobeyed, such a complaint should take precedence and be disposed of by the court before any other activity is undertaken since an issue of contempt of court affects the administration of justice. This court having issued the order must be given an opportunity to determine whether or not the same has been disobeyed. The Defendants therefore should proceed to respond to the contempt application as well as file their submissions pursuant to the directions taken before the court.

6. As regards the issue of Mr. Muithya Advocate, since the L.S.K has now confirmed that he does not possess a valid practicing certificate, this court takes notice of the same and directs that he shall not have audience with the court over this matter until he regularizes his status with the L.S.K.

7. In the final analysis, I issue the following directions:-

(a) Learned counsel Mr. Muithya Martin Musyoka shall not have audience with this court over this matter until he regularizes his practising status with the Law Society of Kenya.

(b) The application dated 30/09/2020 filed by the Defendants shall await determination of the application dated 29/07/2020.

(c) The Defendants are granted seven (7) days to file and serve submissions to the application dated 29/07/2020.

(d) Mention on 22/10/2020 to reserve ruling date.

It is so ordered.

Dated and delivered at Machakos this 16th day of October, 2020.

D. K. Kemei

Judge