



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO. 17 OF 2016

STEPHEN K. WANG'OMBE.....1ST PLAINTIFF

JORAM THEURI MWANGLI.....2ND PLAINTIFF

ELIJAH MWAI MWANGLI.....3RD PLAINTIFF

VERSUS

ARCHBISHOP A. KABUTHU.....1ST DEFENDANT

PATRICK K. KAHORO.....2ND DEFENDANT

NICODEMUS GICHANGA.....3RD DEFENDANT

JUDGMENT

The plaintiffs and the defendants are members of the African Independent Pentecostal Church of Africa (herein “the AIPCA”) which is registered as a society under the **Societies Act, cap 108**. Up to and until sometimes in 2016, the plaintiffs and the 3rd defendant worshipped at one of the church’s branches at Munyange in the diocese of Mukaro South; the 2nd defendant was the chairman of the diocesan committee of this diocese.

In their plaint dated 27 October 2016, the 1st and the 2nd plaintiffs have described themselves respectively as the chairman and the vice chairman of the church committee of Munyange church. The 3rd plaintiff is described as the archdeacon of this church and is said to have been ordained in office on 10 September 2016.

On or about the 14 October 2016 the 1st defendant dissolved the committee and, in its place, appointed a commission to run the affairs of the church. Soon thereafter, a physical confrontation ensued apparently between the plaintiffs and the defendants and their respective allies in church making it difficult for either of them to worship in peace and tranquility. Subsequently, the 1st defendant suspended the 3rd plaintiff from conducting any services or other church duties for which he had been ordained to undertake. The 1st defendant is also alleged to have slandered him by uttering words to the effect “*go back to Kirinyaga where you were rejected due to your bad reputation, you can not come to lead us.*”

The plaintiffs thus asked for judgment against the defendants, jointly and severally, for declarations that Munyange church commission is illegal and contrary to the constitution of the church and, that the 1st and 3rd plaintiffs’ suspension from the Munyange church is illegal. They also sought for general damages for defamation.

The defendants entered appearance to the suit and filed a joint statement of defence disputing the plaintiffs’ claim. They averred that the 1st defendant was not only the archbishop of the church but that he was also the bishop of the diocese of Mukaro South while the 2nd defendant was the chairman of that diocese.

The defendants contended that according to the church constitution, the 3rd plaintiff did not qualify to be ordained as an arch deacon; in any event, so they averred, the procedures laid down for ordination of a deacon were not followed and for these reasons the 3rd defendant’s purported ordination was null and void. The plaintiffs’ participation in what the defendants consider to be an illegal or unlawful exercise informed the decision to suspend them and therefore, so they have contended, their suspension was proper.

Further the defendants disputed the legality of the suit on the ground that the church constitution provides that any dispute amongst members of the church ought to be determined, in the first instance, by a church tribunal. To the extent that the suit was filed before a reference to the tribunal, it was premature.

At the hearing, the 1st plaintiff testified that the appointment of a new committee by the 1st defendant to run the Munyange church was contrary to the church constitution which provides that committee members can only be elected by the members of the church for an uninterrupted term of five years; having been elected in November 2012, the 1st and 2nd plaintiffs were to serve until the end of October 2017 when their five-year term was set to expire. As far as the ordination of the 3rd plaintiff is concerned, he explained that the exercise was conducted and presided over by one Bishop Njogu of the diocese of Gatanga since the Diocese of Mukaru South in whose jurisdiction Munyange church falls had no bishop at the time.

Indeed, he testified further, as at 27 October 2016, the AIPCA had no substantive bishop; that office was being held by the chairman of the bishops' synod, apparently in an acting capacity. It is this body, that is, the bishops synod, that approved the ordination of the 3rd plaintiff.

He acknowledged that there are certain prerequisites of the church constitution that a candidate for the position of an archdeacon must prove to have attained before he is ordained to such a position; for instance, he must be married and a member of the church; he must have attained at least a D+ grade in the Kenya Certificate of Secondary Education (KCSE) examinations; he must have served as a priest for at least 3 years; he must have a diploma from a theological college; and, most importantly, must acknowledge the salvation of Jesus Christ. In addition to these qualifications, the candidate must have obtained a preaching authority card issued and signed by the arch bishop and the secretary general of the church. And even before one is ordained as a priest, he must have served as a deacon for 4 years and before that, he must have served as a church leader for 2 years.

According to the 1st plaintiff, the 3rd plaintiff met all these conditions and thus he was not only qualified but he was also ordained as an archdeacon and was subsequently issued with a certificate of ordination by the bishop. In short, according to him, the ordination of the 3rd plaintiff was lawful and, in any event, it conformed to the church constitution.

Like the 1st plaintiff, the 3rd plaintiff testified that he was ordained when AIPCA had no substantive bishop; the immediate arch bishop was the 1st defendant but he had retired at the material time. The church constitution, according to him, mandated the church bishops to conduct ordinations and it is upon this understanding that he was ordained by Bishop Njogu of the diocese of Gatanga with the support of the diocesan committee of Mukaru South diocese. He was thereafter duly issued with the preaching authority card by the arch bishop and the secretary general of the AIPCA.

He, conceded, however, that he did not hold a diploma from any theological college and that as at the date he was ordained, he had not served the requisite 3 years as a priest, and neither had he served as a deacon before. Nonetheless, he had served as a church leader between 2004 and 2013 when he became a priest and, as far as his academic qualifications are concerned, he had attained grade B- in his secondary education.

In their evidence, all the three defendants were unanimous that the plaintiffs were at fault in ordination of one of them as an archdeacon. According to 1st defendant, he had served as the arch bishop and spiritual head of AIPCA but had retired, at least at the time he testified. He was acting in that position as at 10 September 2016 but at the same time he was also the bishop of the diocese of Mukaru South. He was also a member of the diocesan committee in Mukaru South which was then chaired by one Patrick Kahoro.

It was his evidence that only the arch bishop could ordain an arch deacon; however, a bishop could conduct such an exercise only after the arch bishop himself had sanctioned him and after the diocesan committee, the Bishops' synod and the Central Board of the AIPCA had been duly notified of the intended ordination. It was his testimony that neither the archbishop nor any of these other entities were notified of the 3rd plaintiff's ordination. In any case, so he testified, the 3rd plaintiff did not qualify for the position for which he was purportedly ordained; I understood the witness to be saying that since the 3rd defendant was ill-equipped to hold the office of an arch deacon, these notifications would have been superfluous even if they had been sent to the relevant authorities.

On matters discipline, the 1st defendant testified that article 9 (r) of the church constitution authorised him to discipline any officer of the church as and when need arises and it is on this basis that he took action against the plaintiffs for ordaining the 3rd plaintiff as an archdeacon contrary the constitution of the church. Again, for the same reason, he admitted disbanding the church committee and in its place appointed a commission to manage the affairs of the church; he took this particular decision, which he later communicated to the Central Board, based on article 9(a) of the Constitution of the Church.

He admitted that the wrangles in his church started when the central board and the bishops' synod extended his term after he had attained the retirement age.

The 2nd defendant testified that he was the chairman of the diocese of Mukaru South; his testimony was in the same breath as the 1st defendant's. He added that as a result of the illegal and irregular ordination of the 3rd plaintiffs, the central board wrote to the 1st and 3rd plaintiff vide a letter dated 16 October 2016 suspending their activities in church. The same board, through a letter dated 14 October 2016, approved the appointment of other members to run the church; one of those appointed in this regard was the 3rd defendant and the appointments were sanctioned by the 1st defendant. As I understood him, the members appointed constituted a sort of caretaker commission because he testified that elections ought to have been conducted six months after these appointments; the elections were, however, deferred because the present suit had been filed.

He also testified that although the dispute was eventually referred to the church tribunal the plaintiffs never attended any of its sessions and so nothing came of it. The 3rd defendant did not say much in his testimony save to confirm that indeed he was one of the appointees to the caretaker commission but he never assumed his duties because he was immediately sued together with the rest of the defendants; he also denied having left the church to start his own.

After hearing the contestants, I had occasion to consider their respective counsel's submissions; from the very outset, I note that a substantial

part of these submissions revolves around the evidence given by the parties themselves and, of course, the constitution of the Church.

For all that the parties said in their testimony, there is one thing that is not in doubt and which, in my humble view, is central to the plaintiffs' cause; this is that the origin of the dispute between them is the ordination of the 3rd plaintiff as the archdeacon of Munyange church. My assessment of this evidence is that the ordination set in motion the events that culminated in this suit. It follows that the first and perhaps the primary question that this court has to consider is the legality of the purported ordination; if I come to the conclusion that the ordination was legal then the plaintiffs would be entitled to the reliefs they are seeking save for prayer for damages for defamation for which no evidence was proffered. If, on the other hand, I find that the exercise was contrary to the constitution of the church the suit would not have anything to stand on; any other question would be secondary if not superfluous.

One thing that I must mention before I interrogate this question is that when the parties first appeared before me, I prodded them to settle their differences amicably. I took this course not only because of the awed position the church occupies in society but also because the constitution of the church itself says so; that disputes amongst members of the church need to be resolved internally. My efforts did not bear any fruit and therefore I was left with no alternative but to hear the parties and make the present decision.

While I may have been reluctant to preside over a dispute between church members, I was encouraged by the words of the Court of Appeal in **Geoffrey Muthinja & Anor –vs- Samuel Muguna & 1756 others (2015) eKLR** on when the court will have to intervene and determine such disputes; the Court said:

Churches are not some enclaves where illegalities and violations of rights can be allowed to thrive in the name of God. They are not beyond the Constitution and the search lights of the Courts. The Court may be slow to intrude, for good policy reasons, but in appropriate cases and at appropriate moments they will.

Turning back to the crucial question on the legality or lack thereof of the ordination of the 3rd plaintiff, there is no better place to turn to for the appropriate answer other than the church constitution itself. The qualifications and the procedure for appointment to the office of the archdeacon is provided for in article 5(A) of that Constitution; it states as follows:

5(A) ARCHDEACON'S APPOINTMENT

(i) He must have served as priest for at least three (3) years.

(ii) He must have minimum form four with grade D+ and fluent in English and Kiswahili.

(iii) He must have a diploma from a recognised theological college.

(iv) He must be married in holy matrimony.

(v) He must be saved, confessed Christian and morally upright.

(vi) There shall be sixty (60) days for prayers and preparation for elections and thirty (30) days before ordination for preparation of the ordination ceremony.

(vii) The ceremony shall be presided over by the Archbishop.

(viii) The retirement age is sixty-five (65) years

(ix) A certificate of ordination for archdeacon shall be issued when he is ordained. It shall be signed by the Secretary-General and archbishop, the head of the church.

(x) A preaching authority could shall be issued, signed by the Archbishop.

(xi) He will sign canonical oath of obedience.

Although the 1st plaintiff acknowledged these prerequisites and testified that the 3rd plaintiff met all of them, he did not provide any proof of such qualifications; of course, he couldn't provide any because the 3rd plaintiff himself conceded that besides scoring a B- in his secondary school examinations he did not meet the rest of the requirements. And even if he met these basic requirements, the procedure adopted for his ordination was equally contrary to the constitution; for instance, his ordination was presided over by a bishop when the constitution is clear that such a ceremony shall be presided over by the archbishop himself.

All that this boils down to is that the plaintiffs' acts which instigated this dispute were contrary to the constitution of the church.

For avoidance of doubt article IV (A) (I) of the constitution proscribes ordination that is otherwise contrary to the constitution; it states as follows:

Article IV: A. Disciplinary Action

I. Illegal ordination and incitement SHALL be illegal and shall not be accepted.

It is therefore obvious that the plaintiffs came to court with unclean hands and for this reason alone, they would not be entitled to the remedy they are seeking.

As to whether the plaintiffs could be suspended or expelled from the church for their activities one needs look no further than article IV (D) (e) which is clear that:

Any clergy ordained without the approval of the central board through the electoral college will be expelled from the church together with the president.

This goes to show that the plaintiffs' actions attracted a harsher punishment than a mere suspension. As I understood the plaintiffs, their contention against the suspension is not that they did not flout the constitution but that whoever purported to suspend them for their actions did not have authority to do so. Assuming the plaintiffs are right, I doubt an illegal act can be validated by another illegal act; they would simply be both illegal and certainly none of them can found a cause of action against the other.

Be that as it may, standing order number 4(5) on suspension of officers and dissolution of committees is clear that "immediate authorities" have power to suspend any person or dissolve any committee; it reads as follows:

5. The immediate authorities have power to suspend and/or dissolve any officer(sic) bearer and/or committee pending approval from central board.

No definition has been given as to what "immediate authority" means but I would suppose that the 1st defendant who was the bishop of the diocese in which the local Munyange church fell and who also wore another hat of being the acting archbishop of AIPCA had the mandate to exercise the powers that the so-called "immediate authorities" would exercise.

For the reasons I have given, I am inclined to dismiss the plaintiff's suit and it is hereby dismissed with no orders as to costs.

One more thing I have to mention is that in a ruling I delivered on 24 March 2017 on the plaintiff's application for interim orders, I restrained the defendants from, among other things, interfering with the running of the church committee at Munyange church and suspended the commission that had been informed in its place. This was an interim stay order pending the resolution of the dispute by the church tribunal. As noted, nothing came of the tribunal and therefore those orders lapsed then. From the evidence on record, the term for that committee expired sometime in 2017 and were it not for this suit, elections ought to have been immediately held for the new committee members. For avoidance of doubt, and for completeness of record, the church is now at liberty to conduct the elections in accordance with its constitution forthwith. It is so ordered.

Signed, dated and delivered in open court this 26th day of July, 2019

Ngaah Jairus

JUDGE