



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT NO. 15 OF 2016

ARCHBISHOP JOHN MWERESA KIVULI II1ST PLAINTIFF
AFRICAN ISRAEL NINEVEH CHURCH2ND PLAINTIFF
BETTY AKETCH ANYANGO3RD PLAINTIFF
ISAIAH KIPKOECH RUTO4TH PLAINTIFF

VERSUS

REGISTRAR OF SOCIETIES1ST DEFENDANT
RT. REV. MICHAEL AMONDI.....2ND DEFENDANT
REV. EVANS AMUGUNE CHADIVA3RD DEFENDANT
REV. DANIEL LANONWA JUMBA4TH DEFENDANT
REV. KEMELI RUGUT 5TH DEFENDANT
REV. WILSON PETERSON MBANDUINTERESTED PARTY

RULING

The application before me is dated 8th May, 2019.

1. The said application was brought by the following four persons;

- (a) *Archbishop John Mweresa Kivuli II*
- (b) *African Israel Nineveh Church;*
- (c) *Betty Aketch Anyango; and*
- (d) *Isaiah Kipkoech Ruto.*

2. It was the prayer of the Applicants that until the substantive application was heard and determined, the Respondents should be barred from calling for, organizing or conducting any Meetings, Church Services, Gatherings, Functions or Events at the Headquarters of the African Israel Nineveh Church, or at any of the branches of the Church.

3. The Applicants also asked the Court to grant Orders to compel the Inspector of the Police, and more specifically, the Sub-County Police Commander, Hamisi Police Division to ensure that the Judgment delivered on 23rd May, 2017 was complied with.

4. The substantive reliefs sought in the application were that the following fifteen (15) persons be cited for Contempt of Court;

(i) Rev. Daniel Lanonwa Jumba;

(ii) Rev. Kimeli Rugut;

(iii) Rev. Evans Amugune Chadiva;

(iv) Robert Odiara;

(v) Kevin Muguza;

(vi) Isaac Mabusu;

(vii) Michael Asege Agamu;

(viii) Mzee Nyangweso;

(ix) Omido Mchangiru;

(x) Francis Indiazi;

(xi) Luka Musoda;

(xii) Dan Kipruto;

(xiii) Vihiga County Commissioner;

(xiv) Sub-County Police Commander, Hamisi Police Station; and

(xv) DCI Regional Co-ordinator, Western Region.

5. The Applicants' further request was that all the fifteen (15) persons named above, except the Vihiga County Commissioner, should be committed to civil jail, because they had blatantly disobeyed and frustrated the express which this Court made on 23rd May 2017.

6. The person against whom the Applicants don't want an Order for Committal to Civil Jail is the Vihiga County Commissioner.

7. The Applicants suggested that if the named persons are not committed to civil jail, the Court could impose appropriate Fines, as punishment.

8. The application was supported by the Affidavit sworn by Archbishop John Mweresa Kivuli II.

9. He pointed out that on 23rd May 2017 the High Court delivered its Judgment, pursuant to which the learned trial Judge quashed the registration of the following persons as officials of the African Israel Nineveh Church (hereinafter "*the church*");

(a) Rev. Michael Amondi;

(b) Rev. Evans Amugune Chadiva;

(c) Rev. Daniel Lanonwa Jumba; and

(d) Rev. Kimeli Rugut.

10. Notwithstanding the said pronouncement by the Court, the four-named persons had continued to state that they were;

“..... the duly ordained Archbishops of the 2nd Applicant Church”

11. Secondly, the said named persons are said to have been bragging to their followers that the Court directions have no effect, as they were still in leadership of the Church.

12. In particular, the Applicants appear to have been irked by the fact that the named four persons had continued;

“..... referring to themselves with the title of Archbishop.”

13. The Applicants then made reference to an event which had allegedly taken place on 18th April 2019, when **MAMA SAFINA ALUSE**'s remains were interred at the property belonging to the Church.

14. That event was said to have been contrary to the Orders granted by **HON. M. L. NABIBYA** in the case of **JOHN G. K. O. MWERESA ALUSE Vs. DANIEL G. K. O. MWERESA ALUSE, HARUN AMANI KIVULI ALUSE & ZEBEDAYO SEDA ALUSE, SRMCC NO. 24 OF 2019, (At Hamisi).**

15. The Respondents confirmed that the body of the late **MAMA SAFINA ALUSE** was interred on the parcel of land belonging to the Church.

16. The question that then arises is whether or not the said interment was contrary to the Ordes made by the learned Magistrate at the Hamisi Law Courts.

17. If the said action was contrary to orders of the Court, that would be tantamount to Contempt of Court.

18. I perused the copy of the Order made on 18th July 2018. The following 2 parts of the said Order were relevant on the question regarding the place where Mama Safina Aluse was to be buried;

“1. The Plaintiff has not been able to prove that he owns an indefeasible title to the suit land, to the exclusion of his family members and siblings, this court has found that there is a resulting trust.

2. The deceased, Safina Lung'azo Aluse shall be buried on Land Parcel KAKAMEGA/ GIMARAKWA/494, whereupon, the deceased used to live for over a decade and she knew as her home/house and even her kids (Defendants) and her husband stays.”

19. By his Replying Affidavit, Rev. Daniel Lanonwa Jumba stated that Mama Safina Aluse was laid to rest on Parcel No. 494.

20. If that statement is accurate, it would mean that the Respondents were not in breach of the Orders of the Court.

21. At the moment, I do not need to make a definitive finding about the exact parcel of land on which the burial took place.

22. I say so because a person can only be cited for contempt if his or her actions were found to have

wilfully disobeyed a Court Order or if he or she does any of the things listed in **Section 36(1) of The High Court (Organization and Administration) Act.**

23. It therefore follows that if the Applicant does not offer sufficient proof of the actions attributed to the Respondent, the Court would not cite the Respondent for contempt.

24. In this case, it does appear that the body of Mama Safina Aluse was laid to rest on the parcel of land which the court had specified as the proper place for doing so.

25. The Applicants suggested that when the Respondents continued to state that they were ordained Archbishops or Bishops of the church, they were in contempt of court.

26. However, the Applicants failed to point out any specific order which barred the Respondents from continuing to use their respective religious titles.

27. In any event, when the Learned Judge quashed the registration of Rev. Evans Amugune Chadiva as the Chairperson; Rt. Rev. Michael Amondi as General Secretary; Rev. Daniel Lanonwa Jumba as the Deputy General Secretary and Rev. Kemeli Rugut as the Treasurer, he referred to them by their respective religious titles.

28. The Applicants did not make out a case that the quashing of the registration of the Respondents as officials of the church also automatically implied that each of the said Respondents would relinquish their respective titles.

29. I find that there is no proof that the Respondents were only conferred with the positions of either Bishops or Archbishop upon their election to the respective offices of Chairperson, General Secretary, Treasurer or Deputy General Secretary.

30. At this stage, I am unable to hold the continued use of the title of either Bishop or Archbishop, by the Respondents, constituted an act that was in contempt of court.

31. In the case of **WOBURN ESTATE LIMITED V MARGARET BASHFORTH, CIVIL APPEAL NO. 18 OF 2015** (at Malindi), the Court of Appeal reiterated that;

“..... a person who knowing of the existence of an order of injunction or stay, but wilfully does an act that violates the terms of the injunction or stay is liable to be committed for contempt.”

32. It is well settled that when a Court of Law gives an Order, the same must be complied with until and unless it is discharged. Such obedience to court orders is demanded by the law, irrespective of the views which any person has over the Judge who granted the order in question.

33. It is worth reiterating the fact that contempt proceedings are not intended to protect the personal dignity of the individual Judge or the personal rights of any litigant.

34. Contempt proceedings are intended to protect the Fundamental Supremacy of the Law and the Rule of Law.

35. In the case of **REFRIGERATION & KITCHEN UTENSILS LIMITED Vs GULABCHAND POPATLAL SHAH & ANOTHER, CIVIL APPLICATION NO. 39 OF 1990**, the Court said;

“A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.”

It would be most dangerous to hold that the suitors or their solicitors could themselves judge whether an order was null or valid; whether it was regular or irregular. That they should come

to court, and not take upon themselves to determine such a question.”

36. In effect, there is no room for any negotiation about the requirement that Orders made by the courts must be complied with: as any dilution of that requirement would be an affront to the Rule of Law.

37. Therefore, if any person had the audacity of stating that the;

“..... Court directions have no effect”;

the court has an obligation, when it is moved by an application for contempt of court, to firmly remind such a person that the Law is stronger than, not just against the said person, but also stronger than the Judge or Magistrate who had given the Order in issue.

38. The Applicants have said that;

“..... the 3rd to the 5th Respondents have been bragging to their followers that the Court directions have no effect, as they are still in leadership at the 2nd Applicant Church, to the extent of referring to themselves with the title of Archbishop.”

39. As already stated earlier in this Ruling, the learned trial Court had only quashed the registration of the 4 Respondents as the Chairperson, General Secretary, Treasurer and Deputy General Secretary, respectively.

40. It has not been shown to this court that the Respondents have continued to hold themselves out as holding the positions in respect to which their registration was quashed.

41. In any event, the assertions are too generalized.

42. It must be borne in mind that when the court is called upon to punish a person for being contempt of court, the person making the application has the onus to provide proof to a standard that is higher than that applicable in ordinary civil cases.

43. It is not enough that the allegations be proved on a Balance of Probability.

44. The proof must be beyond a balance of probability, but need not be beyond any reasonable doubt.

45. The reason for this requirement is that although proceedings for contempt of court are normally within civil cases, the punishment for contemnors is almost akin to that which is ordinarily meted out in criminal cases.

46. Therefore, it was the duty of the Applicants to give specific evidence that would prove what each Respondent had actually done.

47. A generalized statement, that the Respondents were bragging to their un-named followers, at an un-named place, on a date which is not specified, is completely insufficient to enable the court make a finding against the Respondents, or any of them.

48. I note that on 23rd May 2017, Majanja J. directed, inter alia, that;

“(c) In light of Orders (a) and (b) the Registrar of Societies shall give directions for orderly hand over of the Church’s affairs.

(d) The Registrar of Societies to start the referendum process afresh and in compliance with the decision of the Court of Appeal judgment dated the 2nd of June, 2016 in Kisumu Court of Appeal No. 93 of 2015.

(e) Further to Order (c), the Registrar shall constitute a team comprising members from each side to come up with a program for amendment of the Church Constitution within one year which shall be filed in court within 60 days from today.”

49. It appears to me that the protagonists have not paid heed to these orders.

50. It is noteworthy that the Registrar of Societies has not been cited as a Respondent to these Contempt proceedings. That is probably an indication that the said Registrar played their role.

51. Although it is not my role to give directions to the Registrar of Societies about what should be done when any organization which is registered under the **Societies Act** fails to comply with the applicable law, I would be failing in my duty if I did not remind the said Registrar of Societies that he has the requisite legal mandate and authority to take appropriate action.

52. Meanwhile, I find no merit in the application against the Respondents.

53. I also find absolutely no reason why the Applicants had sought orders against fifteen (15) persons, whereas they listed only five (5) Respondents to the application.

54. In the result, the application dated 8th May 2019 is dismissed.

55. Finally, I wish to place it on record that neither of the parties provided me with their respective submissions. Therefore, in order not to forestall this decision, which was being awaited for anxiously, I formulated my determination from the application and the Affidavits on record.

DATED, SIGNED at DELIVERED at KISUMU This 29th day of October 2019

FRED A. OCHIENG

JUDGE