



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 127 OF 2014

JAMES NJERU MAINGI.....PLAINTIFF

- V E R S U S -

ARCH BISHOP AMOS MATHENGE KABUTHU.....DEFENDANT

RULING

1. This ruling is the outcome of the motion dated 13.3.2016 in which the plaintiff herein is seeking for the following orders *inter alia*:

1. THAT this application be certified as urgent and the same be heard on priority basis.

2. THAT pending the interpartes hearing of this application and the application dated 12th May, 2014, the honourable court be pleased to reinstate, re issue and validate the orders initially issued on 20th May, 2014 restraining and stopping the defendant, his fellow bishops, his agents or servants, followers or otherwise from carrying on, conducting, presiding over and or ordaining any persons as clergy of the AIPCA church on 25th May, 2014 or such other time.

3. THAT pending the interpartes hearing of the application dated 12th May 2014 the honourable court be pleased to reinstate, re issue and validate the orders initially issued on 20th may 2014 restraining and stopping the defendant, his fellow bishops, his agents or servants, followers or otherwise from carrying on, conducting, presiding over and or ordaining any persons as clergy of the AIPCA church on 25th may 2014 or such other time.

4. THAT this application be heard together with the application dated 12th may 2014.

5. THAT the honourable court be pleased to issue such other appropriate orders in this matter in the interest of justice.

2. The motion is supported by the affidavit of James Njeru Maingi.

3. When served, the defendant filed the replying affidavit he swore to oppose the motion. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the motion disposed of by written submissions.

4. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have also taken into account the rival submissions. It is the submissions of the plaintiff/applicant that on 20.5.2014, Hon. Justice Waweru, issued interim restraining orders stopping the defendant and others from carrying on, conducting, presiding over and or ordaining

any persons as clergy of the AIPCA church on 25.5.2015 or such other time. It is said that the interim orders were contravened by the defendant and was subsequently convicted for contempt. It is stated that while the matter was pending sentencing on the contempt application, the original court file disappeared making it impossible to deliver the ruling. The plaintiff further stated that the court order issued on 20.5.2014 was extended on various occasions before the court file disappeared. It is also argued that there has been an increase in the wave of ordination in recent times by the defendant's agents or persons acting on his authority in an effort to defeat the orders of this court issued on 20.5.2014. For this reason, the plaintiff urged this court to reinstate, validate and extend the orders of 20.5.2014 and quickly deal with the application of 12.5.2014.

5. The plaintiff stated that unless the order is given the AIPCA church and its 4 million followers will be thrown into chaos.

6. The plaintiff/applicant submitted that the transfer of the judge who initially handled the matter and the subsequent disappearance of the file are matters which were beyond his control hence he cannot be blamed for the lapse of the interim orders.

7. The defendant vehemently opposed the motion. The defendant pointed out that the court file got lost and later traced and that the last time the interim order issued on 20.5.2014 was extended was on 14.7.2014 to last upto 26.9.2014. The defendant submitted that he was convicted for contempt on 3.10.2015 by Justice Waweru in the absence of the plaintiff and his counsel. The defendant argued that there is no reasonable explanation as to why after the sentence was meted out to the defendant on 6.10.2015 and no request to extend the interim orders was made.

8. After considering the rival submissions, it is clear to me that there is no dispute that the interim order issued on 20.5.2014 was not extended. It is also apparent from the record that no one applied for the extension of the interim order when the matter came up for sentencing on 6.10.2015. The current motion was filed on 15.3.2016, about five months after the interim orders lapsed. The main explanation given by the plaintiff for the failure to apply for the extension of the interim order is that the court file disappeared.

9. It cannot be denied that the sentence meted out against the defendant on 6.10.2015 was pronounced in the presence of learned counsel for the plaintiff. It is not therefore correct to state that the court file had disappeared. I am therefore convinced that I should not exercise my discretion in favour of the plaintiff. Let the parties fix the motion dated 12.5.2014 for interpartes hearing on priority basis. Consequently the motion dated 13.3.2016 is dismissed with costs abiding the outcome of the suit.

Dated, Signed and Delivered in open court this 27th day of January, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant