

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 360 OF 2015

GODFREY SIMIYU.....1ST PLAINTIFF/RESPONDENT

MATTEW KABURU..... 2ND PLAINTIFF/RESPONDENT

KOBIA MICHUBU..... 3RD PLAINTIFF/RESPONDENT

CHARLES KINOTI 4TH PLAINTIFF/RESPONDENT

- V E R S U S -

REV. JOSEPH NTOMBURADEFENDANT

METHODIST CHURCH IN KENYA TRUSTEES

REGISTERED PROPOSED 2ND DEFENDANT/APPLICANT

RULING

1. Rev. Joseph Ntombura, the defendant herein, took out the motion dated 28th November 2016 in which he sought for *inter alia* that order the extracted on 26.7.2016 and 27.7.2016 be expunged from the record since it was not extracted in terms of the application dated 14.10.2015 and the ruling of this court delivered on 22.7.2016. The motion is supported by the affidavit sworn by the defendant/applicant. When served, the plaintiffs/ Respondents vigorously opposed the motion. When the motion came up for inter partes hearing this court gave directions to have the application disposed of by written submissions.

2. 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 application. I have also considered the rival written submissions. It is argued that the plaintiffs/respondents extracted an order which stated that the defendant/applicant is restrained from holding the office of the presiding Bishop of the Methodist Church in Kenya pending the hearing and determination of suit yet there was no such prayer in prayer 1 of the motion dated 14.10.2015. This court was urged to correct the confusion created by the ruling by expunging the extracted orders from court records. It is also pointed out that this court stated that prayer 3 is spent.

3. The plaintiffs urged this court to dismiss the defendant's application arguing that the defendant has already filed an appeal against the aforesaid ruling hence this court is *functus officio*.

4. Having considered the errors pointed out by the defendant, it is apparent that this court's ruling delivered on 22nd July 2016 contained some typographical errors. Those errors are the sort of errors envisaged under Sections 99 and 100 of the Civil Procedure Act.

5. The court in such circumstances can *suo moto* order for the same to be corrected without being regarded as *functus officio*. In exercise of this court's inherent power under the aforesaid provisions, this court moves to correct the confusion created by the aforesaid error by that stating this court meant to allow prayers 2, 3 and 10 of the motion dated 14.10.2015. Therefore the defendant's motion dated 28.11.2016 to the extent proposed herein with each party bearing its own costs.

Dated, Signed and Delivered in open court this 10th day of April, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent