



REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL SUIT NO. 15 OF 2016

BETWEEN

ARCHBISHOP JOHN MWERESA KIVULI II 1ST PLAINTIFF
AFRICAN ISRAEL NINEVEH CHURCH 2ND PLAINTIFF
BETTY AKETCH ANYANGO 3RD PLAINTIFF
ISAIAH KIPKOECH RUTO 4TH PLAINTIFF

AND

REGISTRAR OF SOCIETIES..... 1ST DEFENDANT
RT. REV. MICHAEL AMONDI 2ND DEFENDANT
REV. EVANS AMUGUNE CHADIVA 3RD DEFENDANT
REV. DANIEL LANONWA JUMBA 4TH DEFENDANT
REV. KEMELI RUGUT 5TH DEFENDANT

AND

REV. WILSON PETERSON MBANDU 6TH DEFENDANT

JUDGMENT

1. This is another suit involving an indigenous church, the 2nd plaintiff, African Israel Nineveh Church (“the Church”) founded by the late Paul David Zakayo Kivuli in 1932. It was formally registered as a society on 30th June 1956. In recent times, it has seen constant wrangles among its leadership.

2. The 1st plaintiff, who describes himself as the bona fide leader and the High Priest of the Church, commenced this suit against the Registrar of Societies (“the Registrar”) and Rt. Rev Michael Amondi, the 1st and 2nd defendants, claiming to be the *bonafide* leader and High Priest of the Church. By a ruling delivered on 20th December, 2016, I ordered that Rev. Isaiah Ruto and Rev. Betty Onyango be joined as the 3rd and 4th plaintiffs to the suit and Rev. Evans Amugune Chadiva, Rev. Daniel Lanonwa Jumba and Rev. Kemeli Rugut as the 3rd, 4th and 5th defendants to the suit. I also ordered that Rev. Wilson Peterson

Mbandu be joined to the suit as an interested party. I also granted parties leave to amend their pleadings.

3. The gravamen of the claim against the defendants is that sometime in 2012, the Church commenced the process of constitutional amendments. This process was not only contentious but also divisive and it ultimately led to the approval of a new Constitution which was recognized by the Registrar. Some of the parties were dissatisfied by this state of affairs. They moved the High Court at Kisumu for orders of Judicial Review seeking to quash the Registrar's decision to approve the new Constitution and to prohibit the new office bearers from assuming their positions under the new Constitution. They also applied for an order of mandamus to compel the Registrar to convene a meeting of all stakeholders and call for a referendum on the constitution. That case, **Kisumu HC JR No. 26 of 2013 (*Republic v Registrar of Societies, Safina Lungazo Aluse, Mathia Obwotho and Tosi Anono*)** was heard and dismissed by Chemitei J., on 30th July 2015.

4. As they were dissatisfied with the decision of the High Court, the applicants moved to the Court of Appeal in **Kisumu Civil Appeal No. 93 of 2015 (*Paul Auma Orwa and Wilson Peterson Mbandu v Registrar of Societies, Safina Lungazo Aluse, Mathia Obwotho and Tosi Anono*)**. After hearing the appeal, the Court of Appeal concluded, by a judgment delivered on 2nd June 2016, that the processes of amendment were not inclusive. It held that;

[32] The conclusion reached by the learned Judge that all “warring factions were represented” in the process is not supported by evidence. We are therefore satisfied that the Judge erred in holding that the process of amending the constitution of the Church was consultative and all-inclusive. We accordingly allow the appeal and aside the Judgment of the High Court and substitute therewith an order allowing prayers 1 and 3 of the appellants’ notice of motion dated 9th July 2013.

5. The effect of the judgment was to quash the decision and approval by the Registrar ratifying the new Constitution and recognizing the appointment of an interim officials namely the Chairman, Secretary, Treasurer and Board of Governing Council and the purported replacement of current officer bearers namely the Archbishop, the General Secretary and the General Treasurer. The Court of Appeal also granted the order of mandamus compelling the Registrar to convene a meeting of both stakeholders and call for a referendum touching on the Church and its current office bearers. Prayer 2 of the notice of motion referred to in the judgment was as follows:

That this honourable court be pleased to grant the applicants an order of mandamus, compelling the 1st respondent – the Registrar of Societies to convene a meeting of both stakeholders and call for a referendum on the Constitution touching on the interested party and its current office bearers i.e. Archbishop, General Secretary and General Treasurer.

6. It is the process of compliance with the order of mandamus that has precipitated this suit. After the Court of Appeal judgment, the Registrar wrote to parties on 15th June 2016, giving directions regarding amendment of the constitution. On 27th June 2016, the Registrar again wrote to all the parties inviting the stakeholders to a meeting to deliberate on the way forward. The Registrar wrote as follows:

In that regard we hereby invite both factions for a stakeholders meeting to deliberate on the way forward with regard to amendment of your constitution and referendum to follow thereof. Both factions are hereby directed to appoint a delegation of five members only and appear before the Senior Deputy General, Sheria House, Ground floor on the 19th July 2016 at 10:00am.

You are required to confirm attendance to the stakeholders meeting on or before the 11th July 2016 and forward your list of delegates who will attend the meeting. Parties are also free to come with their legal representatives and you must confirm the appointment of such representative in your letter.

By this letter the directions contained in our letter of 15th June 2016 with regard to prayer 3 that the Secretary convene an annual general meeting to amend the constitution are to be disregarded.

7. On 29th June 2016, the 1st Plaintiff wrote to the Registrar and rejecting the invitation to the stakeholders meeting. In his letter the 1st plaintiff stated as follows:

The mandamus order that mandates the Registrar of societies to oversee the exercise does not mandate the registrar to appoint the Constitution Review Committee of ten on equal basis between AINC and the former rebels. There is need for rebels who want to participate in the general church affairs to subscribe to the approved AINC constitution in totality. There is no proof that the rebels have been absorbed in the mainstream church structures since 2/6/2016 when the ruling took effect. With due respect and as the chair of the Constitution Review Committee do hereby object to your scheduled meeting 19/7/2016 until the AGM directs us otherwise or the above issues are amicably and legally resolved. If your office proceeds with spearheading the amendment without out consent, we will move to the High Court for further interpretation of your letters.

8. On his part, the 2nd defendant responded to the Registrar by a letter dated 11th July 2016 in which he forwarded names of 5 members including the name of its legal counsel who would participate in the stakeholders meeting. On 12th July 2016, the Registrar wrote to the 1st Plaintiff requesting for names of 10 committee members to participate in the stakeholders meeting. The Registrar wrote as follows:

We are aware that the constitution of the church provides for the procedure of amending its constitution through an AGM.

Kindly follow the Constitution and give us ten committee members who will be elected by the members to spear head the amendments under the supervision of the Registrar of societies as directed by the Court of appeal in Civil Appeal No. 93 of 2015. [Emphasis mine]

9. On 21st July 2016, the Registrar addressed to the 2nd defendant on the following terms;

Pursuant to our invitation vide our letter dated the 27th June, 2016, we appreciate the attendance of some of the stakeholders as identified in the said letter and their representatives.

Pursuant to prayer number 3 that was granted by the court of Appeal Judgment, in Civil Appeal No. 93 of 2015 at Kisumu, we hereby direct that you call for a referendum of the amended constitution of African Israel Nineveh church and its current office bearers.

Once this is complete, kindly forward the amended constitution within 45 days of this letter for our approval.

10. While the 2nd defendant wrote back to the Registrar by the letter dated 25th July 2016 confirming that he had called a Special General Meeting, the 1st plaintiff wrote back to the Registrar by the letter dated 1st August 2016. In that letter, the 1st plaintiff complained that the 2nd defendant had no mandate to call the Special General Meeting as he was not the General Secretary. Instead, the 1st plaintiff called for an extraordinary general meeting on 21st August 2016 and according to the letter he explained that:

The main agenda shall be to constitute the ten member Constitution Review Committee to spearhead our Church amendment under the guidance of the Annual General Meeting to be held on 24-25th December 2016.

All registered members are invited to attend The Deputy Registrar is hereby invited to attend the AGM in person and provide direction on the way forward regarding the above agenda.

11. The Registrar received the letter dated 1st August 2016 from the 1st plaintiff and responded by confirming that the 2nd defendant was the Secretary General of the Church according to its records and that his intention to disrupt the meeting already scheduled would be rebuffed by institution of contempt

proceedings. In the meantime, the 2nd defendant proceeded with the arrangements to call the meeting set for 14th August 2016 by issuing a notice dated 25th July 2016. In the meantime, security concerns were raised by Vihiga County Security and Intelligence Committee concerning the date of the meeting. The Registrar directed the 2nd defendant to reschedule the meeting to another date. Accordingly, the meeting was re-scheduled to 4th September 2016. The 2nd defendant issued a notice dated 20th August 2016 for the said meeting whose agenda was stated to be;

A referendum on the constitution touching on the interest party –AFRICAN ISRAEL NIVEVEH CHURCH and its current office bearer's i.e. ARCHBISHOP, GENERAL SECRETARY and GENERAL TREASURER.

12. On 4th September 2016, the meeting was held as scheduled and a new constitution for the Church approved. The 2nd, 3rd, 4th and 5th defendants were confirmed as office bearers. Following this turn of events, the plaintiffs brought this suit by way of an amended plaint dated 18th January 2017. They contend that the defendants covertly planned the 4th September 2016 meeting at the Church headquarters with the core objective of conducting a referendum on an alien draft constitution after which the 2nd, 3rd, 4th and 5th defendants with their followers forcefully took over the affairs of the Church purporting to the new elected leaders. That this was done in total disregard of the fact that the 1st plaintiff had called for an Annual General Meeting with the main and sole purpose of selecting representatives who would be involved in the constitution amendment process as ordered by the Court of Appeal. The plaintiffs sought the following prayers:

1. The Honourable court to grant an order declaring the meeting held 4th September 2016 and the proceeding thereon as being in breach of the Court of Appeal ruling dated the 2nd June, 2016.

2. The Honourable court grant an order quashing any registration of the Rev Evans Amagune Chadiva as the chairperson, RT. Rev Michael Amondi as General Secretary, Rev. Daniel Lanongwa Jumba as the Deputy General Secretary and Rev Kemeli Rugut as the General Treasurer and approving a non-existent constitution.

3. The honourable court issue an order of prohibition prohibiting the defendants from interfering with the running of the church by the plaintiff unless they properly ascend to office through legitimate elections organised in accordance with the Court of Appeal ruling and the churches constitution.

4. The honourable court issue restating (sic) the registrar of societies from declaring, appointing, empowering and approving most Rev Evans Amagune Chadiva as the chairperson, RT. Rev Michael Amondi as General Secretary, Rev. Daniel Lanongwa Jumba as the Deputy General Secretary and Rev Kemeli Rugut as the General Treasurer of African Nineveh Church.

5. The defendants be issued restraining orders from convening any meetings in the name of the church.

6. A declaration that the plaintiffs are the bonafide officials of the church.

7. A permanent injunction restraining the defendants or their agents or anyone acting through them from preventing the plaintiffs from carrying out their duties as officials of the church.

8. The 2nd defendant be ordered to render accounts for the period they took over running of the church.

9. The Honourable court issue an order to the registrar of Societies to start the referendum process afresh and in compliance with the court of appeal ruling.

10. *Costs of the suit*

11. *Interest on (10) at court rates*

12. *Any other relief that this honourable court may deem fit in the special circumstances of this suit.*

13. The defendants countered the plaintiffs' claim with their amended statement of defence dated 14th February 2017. They pleaded that all the parties had sufficient and proper notice to participate and contribute in the execution of the judgment of the Court of Appeal but the plaintiffs chose not to participate. They contended that the entire referendum process was carried out in accordance with the Church's constitution and that the 2nd to 5th defendants thereafter peacefully took over the conduct of all affairs of the Church and with the approval of the Registrar. The defendants pray that the plaintiffs' suit be dismissed with costs.

14. At the hearing, the 1st plaintiff (PW 1) told the court that the meeting held on 4th September was irregular as it did not involve the sitting leaders of the Church and the constitution that was passed was the impugned constitution that led the parties to go to court in the first place. PW 1 admitted in cross-examination that he indeed received the letters sent by the Registrar inviting stakeholders the meetings but he did not attend them because the parties addressed as leaders of the Church were not the elected leaders of the Church but imposters who wanted to take over the Church. PW 1 was categorical that the 2nd Defendant was not the General Secretary of the Church and as such he should never have been addressed as such in the invitation letter. PW 1 was of the view that the Registrar was working in concert with the other defendants to oust the bonafide leaders of the Church.

15. The 4th Plaintiff (PW 2) supported PW1's testimony and stated that he was the bonafide Secretary General of the Church as per the Church's registration certificate. He testified that their side was denied a chance to participate in the amendment process as the stakeholders meeting was held before they had a chance to select representatives in accordance with the Church constitution for the meeting intended for 4th September 2016. He complained that the Registrar addressed the 4th defendant as the General Secretary when he was not as he had only been elected on interim basis and in line with the quashed constitution.

16. The 3rd plaintiff (PW 3) referred to herself as the General Secretary of the Church. She confirmed that she saw the letters of 15th and 27th June 2016 from the Registrar giving directions on how the amendment process was to be carried out. She objected to the fact that the letter of 27th June 2016 gave different directions which were not adhering to the Church constitution and referred to the 2nd defendant as the General Secretary yet he was not.

17. The 2nd defendant (DW 1) countered the plaintiffs' evidence. He stated that he was elected as General Secretary in the year 2009 and served for three years till December 2012 where after no elections were held to replace him. DW 1 testified that all parties were invited to participate in the stakeholders meeting but the plaintiffs declined to attend. He told the court that during the whole process he followed the instructions of the Registrar and never at any one time did he act on his own whims. He testified that the Special General Meeting held on 4th September 2016 was called following instructions from the Registrar after the plaintiffs had boycotted all the stakeholders' meetings and the Registrar directed that the quashed constitution be put up for referendum. The testimony of DW 2 echoed the evidence of the 2nd Defendant.

18. The Registrar's did not call any witnesses and took the position that it was ready and willing to abide by any court orders to ensure that all disputes within the Church were resolved. The interested party supported the plaintiffs' case.

19. As I stated earlier the Church is divided and it is for this reason that the Court of Appeal, in its judgment, directed the Registrar to oversee the referendum process by convening a stakeholders meeting

and calling a referendum on the Constitution of the Church and Church leaders positions. As I understand, the plaintiffs' claim is that they did not participate in the stakeholders meeting and neither were they involved in the referendum. They complain that the whole process was irregular and the outcome thus null and void as it was not carried out in accordance with the Church constitution. The main issue for determination is whether the process was carried out in line with the Court of Appeal judgment.

20. It is common ground that the Registrar was required to proceed in accordance with the Court of Appeal judgment hence the answer to the issue for determination must be found in the decision of the Court of Appeal judgment as follows;

[28] The constitution of the Church, which both warring factions agreed was in need of amendments, had provision for amendment in these terms:

THE AMENDMENT OF THE CONSTITUTION:

The constitution shall be revised after every seven years by the constitution review committee of ten people appointed at an annual general meeting proceeding the year of revision. The HIGH PRIEST, the secretary general and the treasurer general shall automatically be members of the committee.

The High Priest shall be the chairman, the secretary general shall be the secretary and the treasurer general shall be the treasurer of the constitution review committee. The seven other committee members shall be appointed by the annual general meeting prior to the year of revision. Revision shall take only one year.

Notices to be reviewed shall be sent to the secretary general before the annual general meeting approving the constitution. The members shall be notified in writing by a notice of twenty one (21) days.

In the absence of any church member with knowledge on legal matters in relation to the constitution, the church shall seek assistance from competent persons with approval from the HIGH PRIEST.

[29] There is no contest that the Registrar has the power to intervene in the affairs of the Church in accordance with the Societies Act. Section 19 of that Act in particular is relevant in that it empowers the Registrar to require any society to amend their constitution or rules if the same are not in line with the Act.

[30] In exercising that power, it was incumbent upon the Registrar to follow due process. In our view, the beginning point for the Registrar should have been to have regard to the procedure for amendment as set out in the constitution of the Church that was to be amended. As we have already indicated, there is no evidence that the composition of the 'committee' that produced the constitution that the Registrar approved was itself constituted constitutionally. In our view, the Registrar did not act with procedural fairness towards ensuring that the process of amending the constitution of the Church was fair and inclusive.

21. In considering this matter, I think the Registrar's letter dated 12th July 2016 [see para 8. above] is germane. The Registrar was aware that she had to have regard to the Church constitution hence there reference to, "Kindly follow the Constitution and give us ten Committee members" It is for this reason that the 1st plaintiff wrote to the Registrar on 1st August 2010 informing her that an extra ordinary Annual General Meeting was called to elect the 10 members to be part of the Committee. This was in line with the part of the Constitution that states that seven other Committee members, shall be appointed by the Annual General Meeting in addition to the High Priest, the secretary general and the treasurer. I therefore find and hold that the referendum could only proceed unless the members of the committee were duly appointed at the General Meeting.

22. On the other hand, the 1st plaintiff could not describe the respondent as rebels as the Court of Appeal and the courts that previously dealt with the matter recognized that there were warring factions within the Church hence the Registrar had power, having regard to the Constitution, to mandate a Committee to work out the process of the Constitution under **section 9** of the **Societies Act (Chapter 108 of the Laws of Kenya)** that was inclusive and took into account all interests.

23. In order to comply with the Court of Appeal decision, the Registrar had to allow the Church to comply with its constitution. I therefore find and hold that the Registrar failed to comply with the Court for Appeal decision that required the office to, “*have regard to the procedure of amendment set out in the Constitution of the Church that was to be amended.*”

24. Having so found I now turn to the what reliefs I should give. Since the proceedings that led to adoption of the new constitution were in breach of the Court of Appeal decision, I set aside the resolutions of the meeting held on 4th September 2016 and the consequent registration of the 2nd, 3rd, 4th and 5th defendants as officials of the Church. The officials of the Church shall revert to the status quo ante. In that regard the Registrar is directed to give directions for an orderly handover within 14 days from the date hereof.

25. My decision should not be seen as a ringing endorsement of the plaintiffs’ position. They refused to participate in the initial meetings that were called by the Registrar to map out the process under the pretext that they were not being properly addressed. They were aware that the Registrar had authority to call for meeting yet they deliberately stayed away. They must bear part of the blame this outcome hence I decline to award them costs.

26. In order to bring this matter to conclusion, I direct the Registrar to constitute a team to sit and agree on a road map for amendment of the Church Constitution within a year and to resolve all outstanding issues within 60 days. This Committee shall, *inter-alia*, set down the time table for the Annual General Meeting that shall appoint the 7 members to the Committee that shall spearhead the process. In order to prevent filibustering of the process the final program shall be filed in court.

27. Before I make the final orders, I wish to echo the words of my brother Ngaah J., in **Stephen K. Wang’ombe & 2 Others v Archbishop A. Kabuthu & 2 Others** NYR HCCC No. 17 of 2016 [2017]eKLR as follows:

According to the book of 1 Corinthians 6:1-3 (KJV) Christians are admonished to resolve their differences in love and not to subject them before what the scriptures refer to as “the unjust”. They are reminded that they are, by their very calling, saints who shall judge not only judge the world but also the angels. “The unjust” whom Paul the apostle was referring to when he wrote to the church in Corinth were the non-believers in the new faith at the time of the early church but who, incidentally, controlled institutions of governance including the courts to which the new converts were apparently submitting their disputes. The relevance of Paul’s advice in the present age is that while nothing stops Christians from submitting themselves to courts of law, they should be hesitant to find answers to their internal disputes from the law of man which by its nature, is fallible and subservient to the divine and perfect law of God. The apostle should not be mistaken to have passed a blanket verdict on judges that they are inherently unjust; indeed he could not have been passing such a harsh verdict when the judges’ role in God’s plan for mankind since the times of Moses the prophet is all too well documented to be assailed.

28. I now enter judgment as follows;

(a) *I hereby declare that the meeting held 4th September 2016 and the proceedings and resolutions thereon are in breach of the Court of Appeal judgment dated the 2nd June, 2016 in Kisumu Court of Appeal Civil Appeal No. 93 of 2015 and therefore null and void.*

(b) *I hereby quash the registration of the Rev Evans Amugune Chadiva as the chairperson, Rt. Rev*

Michael Amondi as General Secretary, Rev. Daniel Lanongwa Jumba as the Deputy General Secretary and Rev Kemeli Rugut as the General Treasurer and reinstate the officials duly registered prior to the resolutions of 4th September 2016

(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 June, 2016 in Kisumu Court of Appeal Civil Appeal No. 93 of 2015.

(e) Further to order (c), the Registrar shall constitute a team of 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.

(f) There shall be no order as to costs.

DATED and DELIVERED at KISUMU this 23rd day of May 2017.

D.S. MAJANJA

JUDGE

Mr Okatch with him Mr Lore instructed by Okatch and Partners Advocates for the plaintiffs.

Ms Kamande instructed by the Office of the Attorney General for the 1st defendant.

Mr Misati instructed by Nelko Misati and Company Advocates for the 2nd, 3rd, 4th, and 5th defendant.

Interested party in person.