



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE NO 360 OF 2015

GODFREY SIMIYU.....1ST PLAINTIFF/APPLICANT
MATTEW KABURU.....2ND PLAINTIFF/APPLICANT
KOBIA MICHUBU.....3RD PLAINTIFF/APPLICANT
CHARLES KINOTI.....4TH PLAINTIFF/APPLICANT

VERSUS

REV. JOSEPH NTOMBURA
METHODIST CHURCH IN KENYA.....1ST DEFENDANT/RESPONDENT
TRUSTEES REGISTERED.....2ND DEFENDANT/RESPONDENT

RULING

The plaintiffs/applicants filed the application dated the 18th day of July 2017 seeking the following orders: -

1. **THAT** this application be certified urgent and be heard exparte in the first instance.
2. **THAT** this honourable Court be pleased to grant a temporary injunction to suspend the Kenya Methodist Annual Conference Delegates Meeting at the Methodist Resort and Conference Centre scheduled for 29th July to 3rd August, 2017 pending the hearing and determination of this application.
3. **THAT** Upon granting prayer 2 above this Honourable Court be pleased to grant an injunction to suspend the Kenya Methodist Annual Conference Delegate meeting at the Methodist Resort and Conference Centre scheduled for 29th July 2017 to 3rd August, 2017 pending the hearing and determination of this suit.
4. **THAT** upon granting prayers 2 and 3 above this Honourable Court be pleased to set aside the Standing orders and Agenda 2015 and direct that the church relies on the standing Order and Agenda of 2011.

5. **THAT** the officer commanding Kilimani Police station to supervise the Orders.

6. **THAT** the costs of this application be in the cause.

The same was filed under certificate of urgency and when it came up for hearing *ex parte* on the 18th July, 2017 Hon. Justice Mbogoli granted interim orders in terms of prayer 2 of the same which were to last for 14 days but they have since been extended from time to time when the matter came up for hearing.

The 2nd defendant being aggrieved with the said orders, moved to court under certificate of urgency by way of Notice of Motion dated 24th July 2017 seeking orders that; there be an order of stay of the *ex parte* order made on the 18th July, 2017, that the court be pleased to discharge the orders of injunction made on the 18th July 2017 and an alternative prayer that the court be pleased to hear and determine the plaintiff's application dated the 18th July, 2017 by the 28th July, 2017.

The application dated 18/7/2017 is based on the grounds:

- a. That orders were issued on 22/7/2016 restraining the first defendant from holding any office as a presiding Bishop of the Kenya Methodist Church (KMC).
- b. That the first defendant has definitely disobeyed court orders and has continued being in office and discharging duties as if no orders were made.
- c. That the first defendant with others in office caused to be published Standing Orders Agenda 2015 that changed the face of the church and other affiliate institutions and subjected the institutions to corrupt dealings.
- d. That if the conference is allowed to take place there is a like hood of great chance that it will affect the KMC and other affiliate institutions because it is the body that decides the way forward for the whole institution.
- e. There is a danger for the first defendant who has been barred by this Honourable court to hold any office to influence the outcome of the decision of the conference.

In the supporting affidavit by Godfrey Simiyu, it is averred that, in the tentative program for KMC scheduled to run from 3rd July 2017 to 17th September 2017, in particular, the Kenya Methodist Annual Conference Delegates meeting was scheduled to take place on the 29/7/2017 to 3/8/2017 and the first defendant has allegedly issued notices under the table and sent text messages to the Delegates who have been clandestinely selected by the first defendant to attend.

It is further averred that for the Kenya Methodist Annual Conference Delegates meeting to take place, all churches must be allowed to participate and the same must be communicated to all churches and the dates set at the previous Annual Conference. That it is during the Delegates Conference meeting that the presiding Bishop is elected, trustees for other affiliate institutions are elected, the Standing Orders and Agenda of that year are prepared among others.

It is contended that the current Bishop who happens to be the first defendant and who has been barred from holding the office of presiding Bishop by the court, presided over the Kenya Methodist Annual Delegates Conference that changed the Standing Orders which led to the crumbling of the church and other institutions. That the first defendant has refused to leave office in search of another term at the forthcoming Delegates Conference as it's the first one after the orders of the court barring him from holding the office of the presiding Bishop were given. That it is in the interest of the church and other affiliate institutions that the application be granted.

The application is opposed vide a replying affidavit sworn on 27/7/2017 by the first defendant wherein, he avers that the contents of the supporting affidavit are untrue and grossly misleading in that the

representatives of the conference are elected by various synods in accordance with standing order number 145 (25) and not by the presiding Bishop. He avers that the dates of the meeting are fixed according to Standing Order 22 which requires that the meeting be fixed at the previous meeting or by the standing committee and that the dates in issue were fixed on the 24/6/2016 by the said body but were later changed due to the General Elections. That the dates were communicated publicly during services to the delegates and to the congregations during church gatherings.

He depones that important decisions are made during the Annual Delegates Conference and issues touching on the presiding Bishop can only be Legitimately discussed at a conference and therefore, if the applicant has a genuine case, he should leave it to be ventilated in the conference.

In a supplementary affidavit sworn by the first plaintiff he avers that Standing Order No. 22 is clear on what would happen if the conference cannot take place. He averred that the 2nd defendant is not fully registered and therefore not a legal entity that has capacity to sue or be sued.

On the part of the 2nd defendant, the application is opposed vide a replying affidavit sworn by **Rev. Dr. Zablon Nthamburi** who is one of the trustees of the Methodist Church. He avers that they wish to set aside the exparte orders issued on the 18/7/2017 as the annual Conference is critical to the governance and operations of the church which includes inter alia electing a presiding Bishop, Secretary, Treasurer, Conference representatives, appointment of Bishop of synods among others. He stated that it would not be possible to run the church lawfully and in good governance unless the Annual Conference is held which has always been held in August of every year since the year 1967 when the church became autonomous. The same is also provided for in the Constitution of the church and in its by-Laws which require that the Conference be held every year and it is not therefore true that the plaintiffs were not aware that the Conference was scheduled for the month of August.

It was also deponed that according to the Constitution of the MCK, the Conference is the Supreme authority and that the powers vested in the presiding Bishop derives from the Constitution and the Standing Orders of MCK which were not enacted by the first defendant. He denies having presided over any Delegates Conference that changed the standing orders leading to Crumbling of the church and other institutions as alleged. He averred that none of the institutions can crumble as long as they continue to function under the Constitution and the Standing Orders.

He contended that the plaintiffs have no locus stands to sue or agitate the interests of MCK and its institutions.

On the other hand, the application dated the 24/7/2017 is premised on the grounds set out on the body of the same and it is supported by the affidavit of the first defendant sworn on the 24/7/2017.

In summary, he contends that the court has no Jurisdiction to issue the main relief sought of setting aside the Standing Orders and Agenda 2015 and direct the church to use those of 2011. He averred that the plaintiffs have not challenged the Legality of the standing orders and Agenda 2015 or the legality of the Kenya Methodist Annual Delegates Conference meeting scheduled for the 29th July to 3rd August 2017.

That there is no nexus between the plaintiffs' suit against the first defendant and the 2nd defendant's right and duty to hold the AGM of the church in accordance with the church and the Standing Orders. It was further averred that the exparte orders were obtained through non disclosure of material facts on the part of the plaintiffs. He deponed that by the time the orders were issued the delegates had already finalized arrangements for the Conference at a considerable cost to the church which is estimated to be over Ksh. 10 Million in direct costs.

The application is opposed by way of a replying affidavit sworn by the first plaintiff on 31/7/2017. He avers that the application dated the 24/7/2017 is misconceived, vexatious, bad in law and an abuse of the court process and that the application has been overtaken by events since the purported Conference was to start on the 29th July to 3rd August 2017.

It was deponed that no one has any authority to remove another from being a church member and as far as they are concerned the plaintiffs are still members of the MCK.

In response to the issue of costs incurred by the 2nd defendant in preparation of the conference, he averred that the defendants were aware of the court order granted on the 22/7/2016 suspending the first defendant from holding any office yet he has disobeyed and had gone ahead to handpick the Delegates to attend the conference and hence the reason for the application dated 18th July 2017 and the orders sought herein.

The 2nd Defendant filed a further affidavit sworn by the first defendant on 14/7/20017 wherein he states that he is a duly appointed trustee of the 2nd defendant whereby he was appointed vide a notification dated 2nd September 1993. He deponed that the Standing Orders of 2011 were not suspended but were rejected in total by the Delegates conference. He avers that the church has an internal machinery to solve disputes but no resolution has been attempted in this case as the plaintiffs have been difficult. On whether the 2nd defendant is a necessary party to the suit, he has referred to the ruling dated 10/4/2017 vide which they were enjoined as a party to the suit.

He contended that the plaintiffs are using the orders of the court made on the 22/7/2016 to procure unconstitutional removal of the first defendant from office even before the suit is heard and determined which is clearly illegal and abuse of the court process.

That the exparte orders issued on 18/7/2017 have adversely affected the 2nd Defendant having been issued without its participation in the proceedings preceding their issuance which amounts to condemning it unheard and it is only just that they be set aside.

The two applications were argued together and parties made oral submissions. The court has carefully considered the applications and all the material before it, including the submissions by the respective parties.

The plaintiffs have sought an injunction to suspend the Kenya Methodist Annual Delegates Conference which was scheduled for 27/7/2017 to 3/8/2017. They have also sought orders that the court do set aside the Standing Orders and Agenda 2015 and direct that the church relies on the those of 2011.

From the material placed before the court, the main bone of contention by the plaintiffs is that the first defendant was suspended from holding the office of the presiding Bishop vide a court order issued on 22/7/2016 and that he has continued to hold the said office and has clandestinely chosen the Delegates who are scheduled to attend the conference. Let me state that I have perused the record of the proceedings in this matter and it is true that the first defendant was restrained from holding the office of the presiding Bishop pending the hearing and determination of the suit. The said orders were given in the year 2016. I note that there is an application for contempt of court that is pending before the court and it is yet to be heard and determined. I appreciate that I am not dealing with the said application and I will leave it at that for now.

It has been submitted that the conference has been organized by the 2nd defendant and in so doing 13 synods have been involved and though the first defendant has taken part in it, he has not been the major decision maker. It is not therefore true as alleged by the plaintiffs that he is the sole decision maker in the organization of the Conference. This court appreciates that there is a court order against the first defendant whom the plaintiffs seems to have an issue with but the 2nd defendant is a separate organ and the two have to be looked at and considered separately and distinctly.

The plaintiffs have also argued that the first defendant has contributed in mismanaging the institutions owned by MCK. In their respective affidavits, it is admitted that it is during the Delegates Conference meeting when important decision to do with MCK are made including but not limited to election of the presiding Bishop, the trustees for other affiliate institutions and the standing orders and Agenda of the year. It has not been denied that the said Conference takes place in the month of August every year and has been a tradition since 1967 when the MCK attained autonomy.

That notwithstanding, the plaintiffs waited until the last minute to move the court for an order of injunction to top the conference and even after they obtained interim orders the same was not served immediately, but was done three days thereafter in total disregard of the fact that the 2nd defendant was in an advanced stage in preparation of the conference. And as submitted by Counsel for the 2nd defendant, the plaintiffs are not challenging the legality of the Conference.

With regard to the costs incurred and as would reasonably be expected a reasonable amount of money would be expected to go into the preparations, indeed the 2nd defendant has annexed a budget for the conference which is estimated at 10 million. The court was also told that some of the delegates have already arrived in the country as the interim orders were obtained only a few days to the conference.

The orders sought by the plaintiffs are to suspend the conference pending the hearing and determination of the suit which may take some time before it is heard and determined in which case, the activities of the church would be adversely affected and to some extent paralyzed. Am persuaded by arguments advanced by the counsel for the 2nd defendant to that effect.

As to the submission that the first defendant will influence the decision that will be made by the Conference, I can only say that those are mere allegations without any evidence.

On the plaintiffs prayer (4) to this court to set aside the Standing Orders of 2015, and order the church to rely on those of 2011, I wish to observe that no evidence was placed before the court to prove that the first defendant interfered with the changing/adoption of those of 2015 and therefore I would be very reluctant to grant such orders as it would amount to interfering with the internal management and affairs of the church which ordinarily should be done through its Constitution and the standing orders.

Finally, the defendants raised the issue that the plaintiffs are not members of MCK having been excommunicated and evidence has been annexed to that effect. In the standing order No. 106 (l) (h) the church has authority to excommunicate any of its members.

Though the plaintiffs denied that fact, it is my view that the evidence available to the court is sufficient to make a finding that indeed the plaintiffs were excommunicated as members off the MCK. They have not challenged the excommunication in any court of Law or through the church's internal mechanisms. I therefore find that having been so excommunicated they have no locus to bring and/or sustain the application before the court.

I find that going by the principles of injunction as set out in the celebrated case of **Giella Vs Cassman Brown limited, (1937) E.A 358**, the plaintiffs have failed to prove a Prima facie case with a probability of success. Even on a balance of convenience, the 2nd defendant will suffer substantial loss if the orders sought are granted while the plaintiffs stands to suffer no loss as they have not succeeded in proving the same.

That said, I find and hold that the application dated the 18/7/2017 has no merits and it is hereby dismissed with costs. In that event, the application dated the 24/7/2017 automatically succeeds.

Orders accordingly.

Dated, signed and delivered at Nairobi this 4th day of **August, 2017**.

.....

L NJUGUNA

JUDGE

In the presence of

..... *for the Claimant/Applicants*

..... *for the Respondent*