



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 276 OF 2015**

**MUSANDA HOLY GHOST CHURCH EAST AFRICA**

***(Suing through its officials)***

**ARCH BISHOP JULIUS OWITI OKOMO (CHAIRMAN)**

**JOASH OCHUNG OLUOCH (SECRETARY)**

**FILMON ACHIENG(TREASURER).....PLAINTIFF**

**VERSUS**

**THE ATTORNEY GENERAL (*On behalf of the Registrar of Societies*).....1<sup>ST</sup> DEFENDANTS**

**MUSA OUMA OBWANGA. .... 2<sup>ND</sup> DEFENDANT**

**ANDRE ASIN MENYA..... 3<sup>RD</sup> DEFENDANT**

**R U L I N G**

The Plaintiffs/Applicants have moved this court by way of a Notice of Motion dated the 11<sup>th</sup> August, 2015. The application is mainly brought under Order 40 of the Civil Procedure Rules and Sections 3A, 1A and B of the Civil Procedure Act, Cap 21 Laws of Kenya.

The main prayer sought in the application is an order of injunction to restrain the Registrar of Societies or the Attorney General from deregistering the plaintiff’s society and equally from registering any other church societies using the name of the Plaintiff Church or Society with any qualifications or additions to that name.

The main grounds upon which the application is premised and the facts as captured in the Supporting affidavit of Joash Ochung Oluoch are that, the Plaintiff, Musanda Holy Ghost Church of East Africa is a registered church society which has been in existence since the year 1971 with its head office in Kisumu Town and has over 1500 branches across East Africa and a large following not only in Kenya but also in Tanzania and Uganda. That throughout all the years, the church, has had a very structured and peaceful succession and transition of leadership. That the church is also managed by elected officials and after every election the names of duly appointed officials are forwarded to the Registrar of Societies through the filing of annual returns.

It is averred that the Plaintiffs were elected upon a successful election conducted in May, 2014, and by letters dated 10<sup>th</sup> December, 2014 the registrar confirmed the said officials. That as per the constitution of

the Plaintiff, the election of the chairman (Arch. Bishop) and the Vice Chairman (Assistant Arch. Bishop) only becomes due upon the death or resignation and therefore their positions did not come up for elections at the said election.

It is deponed that the 2<sup>nd</sup> Defendant defected from the Plaintiff after elections after the people he wanted elected as officials lost in the election. The 2<sup>nd</sup> Defendant is unknown to the Plaintiffs. That the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have made representations to the Registrar of Societies, that the church has split into three different congregations and following the said misrepresentations, the Registrar has expressed his decision to deregister or disband the Plaintiff church and in its place register three different churches using three different names. That in so doing the Registrar has not followed the laid down procedure under the Societies Act in that he has not issued notices to the society's officials to show cause why the society should not be disbanded and giving reasons for the need to disband the society.

The Plaintiffs are apprehensive that such registration of other churches will cause confusion in the eyes of the general public, the government and within the church membership.

The 1<sup>st</sup> Defendant filed grounds of opposition on the 27<sup>th</sup> October, 2015 wherein it is averred that the application is incompetent and vexatious as it discloses no cause of action against the Defendants. It is also averred that the application is an abuse of the court process and it's based on non-existing facts.

In addition to the supporting affidavit, the Plaintiffs filed a further supporting affidavit sworn by Joash Ochung Oluoch on the 27<sup>th</sup> April, 2016 wherein he has deponed that the Plaintiffs are lawful officials of Musanda Holy Ghost Church of East Africa with a clear chronology of ascension to the authority which emerged from the lawful leadership of Arch-Bishop Alfred Odeda, to the current Arch. Bishop Julius Owiti Okumo and that the group led by Arch. Bishop Samson Kitondo operating under the name of Musanda Holy Ghost Church of Kenya was declared an illegal and an unregistered entity by the Registrar of Societies and the District Commissioner.

In a further affidavit sworn on 1<sup>st</sup> July, 2016 Elisha Ochieng Kungu has deponed that he has in his custody, the original church documents including the certificate of registration, the Church PIN Certificate and other church documents and letters dating from 1972 to date.

In his submissions, counsel for the Plaintiffs/Applicants submitted that the action taken by the Registrar of Societies to purport to impose a decision to deregister the church was unlawful and that the Registrar's duty is to deal with the lawfully registered officials of the church pursuant to lawful returns filed with him and in case of any disputes as to leadership, he is supposed to order fresh elections.

He also argued that the Registrar of Societies has no authority to entertain breakaway groups as such a move would only lead to chaos and anarchy in the general populace and further that a society, can only be dissolved pursuant to the constitutional resolution of the members of the society at a general meeting in terms of the society's constitution but in the case before the court, the constitution of Musanda Holy Ghost Church of East Africa, does not have any provision for the dissolution of the society (church). That under Article 28 of the church constitution any aggrieved member of the church should seek arbitration.

On his part, counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and also holding brief for the 1<sup>st</sup> Defendant, submitted that all the parties herein are governed by the constitution of the church which provides for arbitration under Article 28 and for that reason, the court has no jurisdiction to hear the matter. According to him, there is nothing to show that parties had tried to negotiate the dispute before they came to court. He went on and told the court that where the Registrar is in doubt as to who are the bonafide office holders, the law allows him to take action. That the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are bonafide officials of the church and they have in their possession the original registration documents for the church dating back to 1972.

The Attorney General in his grounds of opposition states that the application has no merits and that the church should hold elections. That the registrar should be allowed to exercise his powers under the Societies Act Cap 108 Laws of Kenya.

The court has considered all the material before it, together with the submissions by the learned counsels for all the parties. The Plaintiffs have moved the court under Order 40 of the Civil Procedure Rules and also under Sections 1A, 3A and 1B of the Civil Procedure Act and have sought an order of injunction pending the hearing and determination of the suit. The Plaintiffs claim to be the bonafide officials of Musanda Holy Ghost Church having been lawfully elected as such on the 18<sup>th</sup> May, 2014. In a letter dated 23<sup>rd</sup> July, 2014, to the Registrar of Societies, the Secretary General of the church sought for a confirmation of the office bearers to enable the officials who were elected on 18<sup>th</sup> May, 2014 to manage the church affairs and vide a letter dated 10<sup>th</sup> December 2014, the Registrar confirmed their names as hereunder: -

Chairman	Julius Owiti Okumu
1 <sup>st</sup> Vice Chairman	Peter Ouma Muro
2 <sup>nd</sup> Vice Chairman	Simon Ayoki
Secretary	Joash Ochung Oluoch
Assistant Secretary	Maurice Otieno Owiti
Treasurer	Filmon Ndeda Achieng
Assistant Treasurer	Lazaro Otieno Ogore

That confirmation notwithstanding, the Defendants avers that the Plaintiffs are not the lawful office bearers of the church. That on the 24<sup>th</sup> April, 2014 in a meeting held at Ogenga Church, officials of the church were elected who includes the 3<sup>rd</sup> Defendant but none of the Plaintiffs. That the names of the elected officials were forwarded to the Registrar but they were given some requirements to fulfill before registration which they fulfilled and that vide a letter dated 16<sup>th</sup> April, 2015, the Deputy Registrar acknowledged them as officials of the church.

From what I am able to gather from the pleadings and the submissions in this matter, the suit herein arises from leadership wrangles in the church which are threatening to tear the church apart. The Registrar of Societies has threatened to deregister the Plaintiff (church) and in its place register three different churches namely: -

- 1) Musanda Holy Ghost Church of East Africa (St Alfayo) for the Andrew Asin Church),
- 2) Musanda Holy Ghost Church of East Africa – St Alfred (for the Musas Ouma Obwanga Church),
- 3) Musanda Holy Ghost Church of East Africa – St Sarah (Allegedly for the Plaintiffs' Church),

which the Plaintiffs are against. As it stands now, this Honourable Court is not in a position to identify the bonafide office bearers of the Plaintiff considering that there are two sets of officials as seen in the letters dated 10<sup>th</sup> December, 2014 and 16<sup>th</sup> April, 2015.

From the pleadings, it would appear that the dispute between the Plaintiffs and the Defendants has persisted for a long time. Though the Plaintiff's constitution provides for Arbitration, this court notes with a lot of concern that when the parties appeared before Aburili J, on the 27<sup>th</sup> October, 2015 she directed the parties to attempt mediation with a view to reaching an amicable out of court settlement in order to resolve the conflict but the mediation collapsed. In the mediation report duly signed by the advocates for both parties and filed in court on the 14<sup>th</sup> June, 2016, they agreed to have the dispute resolved by the court. It would, therefore, not serve any useful purpose for this court to refer the parties for arbitration.

In the meantime and pending the hearing and determination of the suit, it is important that the orders sought herein are granted after which the court will give the final orders upon hearing all the parties.

In the upshot, the application dated 11<sup>th</sup> day of August, 2015 is hereby granted in terms of prayer 3. Costs shall be in the cause.

Dated, signed and delivered at Nairobi this 24<sup>th</sup> day of November, 2016.

**L NJUGUNA**

**JUDGE**

*In the presence of*

..... *for the plaintiff*

..... *for the defendants.*