



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL CASE NO. 162 OF 2012

1. AMOS NZEKI

2. EMMA MUSYOKA

3. DAVID MUTHAMA KILONZO

4. DOUGLAS MUTUA

(SUING ON BEHALF OF AIC MATHEINI**PLAINTIFFS**

VERSUS

1. REV. JAMES MAKAU

2. BENARD MWANGANGI

3. PHILIP MATUTUE

4. THE OFFICER INCHARGE, KINYUI POLICE POST.....DEFENDANTS

RULING

1. The Application dated **14th May 2012**, is brought pursuant to Section 1A, B, 3A and 63 of the Civil Procedure Act; Order 40 Rules 1 and 2; Order 51 Rule 1 of the Civil Procedure Rules.
2. Orders sought are:-
 - i. A temporary injunction restraining the respondents/ defendants by themselves, their agents, servants and/ or whomsoever from interfering with, harassing, intimidating, threatening, disrupting, locking up the church and/or in any way meddling with the affairs of **AIC Matheini DCC** pending the hearing of the main suit.
 - ii. A permanent injunction restraining the defendants by themselves, their agents, servants and/or whomsoever from interfering with, harassing, intimidating, threatening, disrupting and/or in any way meddling with the affairs of **AIC Matheini DCC**.
 - iii. **Sengani DCC** or the purported **Matheini DCC** under **Kangundo RCC** cease to interfere with **Matheini Junior Academy** which belongs to **Matheini LCC** under the **1981 Constitution**;
 - iv. Immediate return of the church keys to the plaintiffs/applicants by the 4th respondent.
3. The application is based on grounds that the respondents have disrupted the church meetings of the plaintiffs; they have purported to close the church in a bid to deny the plaintiffs access; they have refused to release the keys to the church unless ordered by the court and that the respondents

- have no colour of right to do so.
4. In a supporting affidavit thereof, **David Muthama Kilonzo** the 3rd Applicant having been authorised by the co-applicants depones that when **AIC Matheini Church** was established in **1939**, it was under **Sengani DCC** that is chaired by the 1st respondent who is also the Regional Chairman Kangundo area. **AIC Matheini** being unhappy with the leadership of **Sengani DCC** or the faction of the Church led by **Rev. Silas Yego** to which the defendants belong recognize a Presbyterian type of leadership while the defendants are enforcing on them an Episcopal type of leadership. The church opted to pledge allegiance to the true **AIC Church**. The membership comprised of over **two hundred persons** as per the **6th May, 2012** under the plaintiffs who were constituted as their **District Church Council**.
 5. Consequently, the respondents who were dissatisfied with the constitution moved to disrupt the congregation at the church service. With the help of the police they locked up the church and retained keys that they vowed to release pursuant to a court order. The action taken by the respondents amounted to an eviction of the plaintiffs from the church. That freedom and right to worship was also curtailed.
 6. No replying affidavit was filed by the respondents. Ideally the application stood unopposed. Both parties however filed written submissions to the application. It was submitted on behalf of the respondents that orders sought by the applicants could not be granted as there were orders in force in respect of the **African Inland Church in *Petition Number 395 of 2012, Rev. Bishop Silas Misoi Yego and 2 Others versus Minister for State for Provincial Administration and Internal Security and 7 Others*** where orders granted by **Odunga, J** on **13th September, 2012** subsist.
 7. To obtain the relief sought, the applicant must satisfy the principles outlined in the case of ***Giella versus Cassman Brown and Co. Ltd[1973] E.A. 358*** which states thus:-
 - a. ***An Applicant must show a prima facie case with a probability of success;***
 - b. ***An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury and***
 - c. ***When the court is in doubt, it will decide the application on the balance of convenience.***
 8. The Respondents have alluded to a multiple of cases filed in the High Court concerning the **AIC Church**, Kenya, where injunctive orders have been issued restraining parties, individuals inclusive from intermeddling with the affairs/worship at the **AIC Church** in **Kenya** pending determination of the said suits. In the instant case contending parties belong to **AIC, Mathieni**. The problem at the church as stated in the affidavit in support of the application has its roots in the main contention at the highest level of the leadership of the **African Inland Church in Kenya**. The gist of the problem being the type of leadership preferred namely, **Presbyterian** or **Episcopal**.
 9. It is averred that the **Mathieni AIC** being dissatisfied with the leadership of **Sengani DCC**, a faction lead by the **Bishop** of **AIC**, they constituted a **District Church Counsel** which has over **200 members**. They uphold the constitution of the church. (*Revised in 1981*). According to their constitution a **District Church Council** would be chaired by an ordained Pastor and have another pastor as a member.
 10. I have perused minutes of the meeting of **28th April, 2012** where a resolution was made not to subscribe to a constitution drafted by **Yego**. It is not clear who chaired the meeting. Membership was drawn from individuals who were not pastors. Some of the members present were the plaintiffs herein who are presumed to be elders at the church. The question would be whether they have a *prima facie* case with a probability of success? Their *status quo* being in question the first principle cannot be established.
 11. Secondly, this is a matter where parties are fighting over leadership of the church; suffering irreparable damages does not arise. They can be compensated by way of damages. This brings in the third principle as to where the balance of convenience tilts. The decision made by some elders of the church (plaintiffs) resulted into fighting at the church. For the court to determine who is right in the circumstances, maintenance of *status quo* would be called for.
 12. **Prayer C** is for issuance of a permanent injunction. Such a relief cannot be issued at an interlocutory stage. The same can only be issued after the matter is heard on merit and determined. Similarly, whether or not **AIC Mathieni Academy** has been disrupted would call for

adducing of evidence which was not done; and an entitlement to keys of the church by the plaintiffs as sought in **prayer (e)** would also require to be proved by way of evidence.

13. From the foregoing, I do order that status quo be maintained pending hearing and determination of the suit.

DATED, SIGNED and DELIVERED at MACHAKOS this 28TH day of FEBRUARY 2014.

L.N. MUTENDE

JUDGE