



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO. 41 OF 2014

PAUL NDUNGU NDICHUPLAINTIFF

V E R S U S

1. AMOS MATHENGE KABUTHU
2. REGISTERED TRUSTEES

(AFRICAN INDEPENDENT PENTECOSTAL

CHURCH OF AFRICA).....DEFENDANTS

RULING

1. In the suit herein (plaint dated 27/02/2014) the Plaintiff has challenged the nomination, appointment and ordination of the 1st Defendant as an Archbishop of the 2nd Defendant. He has sought various declarations, injunctions and other reliefs.
2. Together with the plaint the Plaintiff filed notice of motion dated 27/02/2014 seeking, *inter alia*, temporary injunctions to restrain the 1st Defendant from holding the office of Archbishop of the 2nd Defendant, and 2nd Defendant from allowing the 1st Defendant to hold such office, both pending hearing and determination of the suit.
3. The 1st Defendant opposed the application by his replying affidavit sworn on 7th and filed on 12th March 2014. At paragraphs 4 and 6 thereof he has challenged the jurisdiction of the court upon the ground of the dispute resolution mechanism by arbitration set out in the 2nd Defendant's ***Constitution and Rules***, which mechanism he pleads has not been exhausted.
4. That preliminary jurisdictional point was canvassed on 26/03/2014. I have considered the submissions of the learned counsels appearing. The 2nd Defendant took the same position as the Plaintiff in opposing the preliminary objection. Indeed the 2nd Defendant does not oppose the Plaintiff's application for interim relief.
5. It is indeed common ground that the ***Constitution and Rules*** of the 2nd Defendant have established a ***Church Tribunal*** for settlement of internal disputes through negotiation, mediation and arbitration. It is also common ground that members of the Church are prohibited by the constitution of the Church from referring any dispute relating to the Church and its members to any court of law unless such dispute shall first have been referred to and determined by the ***Church Tribunal***.

6. That notwithstanding, **section 7(1) of the Arbitration Act, Cap 49** provides as follows-

“7. Interim measure by Court

1. **It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection, and for the High Court to grant the measure.”**

7. That is what the Plaintiff has done by the notice of motion dated 27/02/2014. It is indeed true that he has not pleaded in his plaint that he has come to court only for the interim measure pending invoking or completion of the dispute resolution mechanism set out in the Church constitution; but that is a defect that can be cured by appropriate amendment.

8. The suit is clearly properly before the court. I must therefore overrule the preliminary objection with costs to the Plaintiff as against the 1st Defendant. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF APRIL 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 4TH DAY OF APRIL 2014.