

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 127 OF 2012

JOHN HENRY TULO & 4 OTHERS.....APPELLANTS

VERSUS

ISIAH AWINO & 2 OTHERS.....RESPONDENTS

J U D G M E N T

- 1). The appellants and the respondents are all members of Evangelical Christ Church of Africa (ECCA) an entity registered under the provision of the Societies Act. The appellants filed suit seeking injunctive orders against the respondents. The respondents raised several preliminary points of law which the lower court upheld and dismissed the appellants suit.
- 2). The appellant filed 7 grounds in their memorandum of appeal. The said grounds have attacked the trial court's decision on every point. The parties herein have file written submissions as well as several authorities in support of their case.
- 3). The first ground raised by the appellant is that the court was wrong in finding that this suit was a representative suit yet from the pleadings it was not. The appellants in the plaint have described themselves as officials of the church. They have not said that they are suing as the representatives of the church but as officials.
- 4). The court was of the opinion that since it was a representative suit they ought to have sought the leave of the court. This has been opposed by the appellants counsel arguing that Order 1 Rule 8 of the Civil Procedure Act 2010 does not require a party to seek leave of the court.
- 5). I have perused the said portion of the Rules and I do agree with the appellants' counsel that indeed it is no longer a requirement that such leave ought to be obtained. Further it would appear from the authorities to the application that there are no clear officials of the church. The letter dated 15-12-2010 from the Deputy Registrar of Societies shows the appellants to be officials whereas the annual returns contained in the respondents affidavits shows them to be the officials. Obviously this requires an inquiry and it cannot be determined by way of preliminary objection.
- 6). The court further found that the suit was premature and that the appellants ought to have exhausted the church or the societies constitutional dispute resolution mechanism. I have however read the attached constitution and I respectfully did not see any such clause.
- 7). Ordinarily, every constitution of a society or such body will provide a mechanism in which members will resolve their dispute. The courts will always be very reluctantt to interfere except where such fundamental rights are infringed or the principles of natural justices are abused. In this case there was actually nothing to stop the court from adjudicating on the matter since there was no express provision stopping the court from interfering in the internal disputes.
- 8). I do not think that the issues raised were strictly matters of law. Most points canvassed were a mixture of both law and facts it was incumbent upon the trial court to have permitted that all the relevant issues could be ventilated. The authority of **Mukisa Biscuits -VS- West End Distribution [1967] [EA] 701** clearly states that the points of law raised must be very clear of any disputes of facts. I do not find that the preliminary point in law raised was very clear. More inquiry ought to have been undertaken especially the question of *locus standi* raised by the respondent. As pointed above it was not very clear

whether the appellant or the respondents were church officials.

9). Consequently, and without going into the other issues raised in the appeal I think the above observations are sufficient to allow this appeal. The same is therefore allowed with costs.

Dated, signed and delivered at Kisumu this 23rd day of June, 2014.

H.K. CHEMITEI

JUDGE