

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NUMBER 843 OF 2002

**PAUL OGOLA MBIJA & 6 OTHERS.....APPLICANT/
PLAINTIFFS**

VERSUS

**THE CHILDREN OF GOD REGENERATION CHURCH AND
ANOTHER.....RESPONDENT/DEFENDANT**

R U L I N G

The application before the court is the Notice of Motion dated 3rd July, 2013. It seeks, inter alia, that this court do grant temporary injunction orders restraining the 1st respondent from holding the intended special general meeting then scheduled to come on 20th July, 2013 at Sugarland Hall, Awendo concerning the administration and management of the Defendant church.

The court granted interim orders to the effect that status quo at the time of filing the application, be maintained.

I have carefully perused the application and the submissions on record. There is no dispute that the application's immediate concern and therefore prayer, was to maintain the status quo which was intended to forestall the general meeting scheduled to take place on 20th July, 2013. If the meeting took place it would probably allow election of new office bearers which might end in replacing the applicants. Indeed, the main purpose of filing this suit and this application was to prevent that from happening.

The Respondents have however, in their affidavit, deponed that the meeting had taken place by the time the interim or status quo orders were granted. The applicant has confirmed that position in his supplementary affidavit. That is to say that the orders granted in the interim on 12th November, 2013, ordering status quo, ended up in maintaining the new leadership status which had elected and installed new leader in the 1st Defendant church from the 20th July, 2013. In a way, the status quo order, paradoxically also fitted in with the applicants prayer number (4) which had sought a status quo of the office and officers then holding office although the effect thereof was the opposite of what the applicants had intended.

The aim of granting an injunction is to preserve the subject matter of litigation so that the court can fairly and justly finally have an unrestricted opportunity to decide the dispute before it on as a pure merit as possible. The court, therefore, tries to maintain a fair and equal position for both or all the parties in the dispute and thus give each an equal opportunity to put their cases so that merit alone can dictate the court's final orders.

In this case, the court's hands are tied. It cannot grant orders of injunction in retrospect. It is not clear whether the applicant explained the then current position before the court granted the status quo putting in place an opposite situation from the one the applicant had sought. Be that as it may, the court cannot easily apply the **Giella** case principles in this case since the orders of status granted will in effect maintain the Respondents in office until the suit be heard and determined, if that will be of any use to the applicant/plaintiff.

For the above reasons this application as it stands, has no merit and is hereby dismissed with cost. Orders accordingly.

Dated and delivered at Nairobi this 25th day of September, 2014.

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D A ONYANCHA

JUDGE