

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

JUDICIAL REVIEW NO. 26 OF 2013

REPUBLIC.....APPLICANT

VERSUS

REGISTRAR OF SOCIETIES.....1ST RESPONDENT

SAFINA LUNGAZO ALUSE.....2ND RESPONDENT

MATHIAS ABWOTHO.....3RD RESPONDENT

JOEL ONONO.....4TH RESPONDENT

R U L I N G

By an application dated 2nd October 2014, filed at the High Court of Kenya at Kisumu, the applicant sought orders to restrain one Mr. John Mweresa Kivuli from interfering with the activities of and/or disposing the assets of the African Israel Nineveh Church (the church) pending hearing and determination of judicial review herein.

In the affidavit sworn by one Rev. Michael Amondi Obudho in support of the application, it was deposed that the said John Mweresa Kivuli was forcefully ex-communicating members from the applicant church and had closed down several church branches including Chavakali, Owalo and Emakhwenje branches. That such ex-communication and deregistration of members from the church is against the constitution of the church and outside the mandate of John Mweresa Kivuli.

John Mweresa Kivuli though not a party to the suit filed a replying affidavit. He stated that he has been the leader of the church since 1983 and has never been ousted from the leadership of the church and as such his leadership and actions were bona fide. He deposed further that an illegal meeting was convened by non officials on the church on the evening of 20th April 2014 and the conveners of the meeting purported to elect new officials against the church by laws. That participant in that election were not registered members of

the church. It was his averment that the trustees of the church have to court with unclean hands.

The ex parte applicants also filed a replying affidavit sworn by the 1st interested party. It was averment that the imposed leaders of the church were using the court as a pawn in order to attain fully the leadership of the church and as such their application.

Parties elected to file written submissions, surprisingly, only the applicants filed submissions. It was argued for the church that his actions were likely to cause irreparable loss if the interim orders sought were not granted.

Determination

On the onset, I must state that this application is brought seeking orders against a person who is not a party to suit. It is now trite law that no order cannot be made against a person not a party to the suit. As was stated by the court of appeal in **Andrew Meme M'mwereria -VS- Registrar Igembe South District & Another [2014]eKLR** it is trite law that no order can be made and enforced against any person who was not a party to the proceedings and was not heard in those proceedings.

That being the case, the court must restrain itself from making orders and findings that may embarrass this court and the parties and that may be prejudicial to any party before hearing the main motion. Because of this restraint, it may seem that the court has not analysed all the issues raised and/or has not made findings on them. To my mind, suffice is to state here that the legality or otherwise the leadership of the church can only be fully addressed after the full trial of the substantive motion herein. My opinion is that Mr. Mwareasa Kivuli and all the other mentioned parties should be joined into the suit and allowed to present their evidence. This will result in an informed decision of this court.

In any event this was a Judicial Review application. Leave was granted on 11-12-2013. The current application is actually improper and the same was filed in total oblivion of the fact that there was a substantive motion pending.

In the premises and without delving into the substantive issues raised in the main motion the same is dismissed with costs.

Dated, signed and delivered at Kisumu this 16th day of December, 2014.

H.K. CHEMITEI

JUDGE