



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO.395 OF 2012
REVEREND BISHOP SILAS MISOI YEGO
REVEREND GEOFFREY GICHURE
REVEREND SIMEON OTIENDE.....PETITIONERS/APPLICANTS
VERSUS
MINISTER OF STATE, PROVINCIAL ADMINISTRATION
AND INTERNAL SECURITY.....1ST RESPONDENT
COMMISSIONER OF POLICE.....2ND RESPONDENT
THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT
DAVID M MBUVI.....4TH RESPONDENT
DAVID TIMKU WAWERU.....5TH RESPONDENT
FREDRICK MUSYOKA MUUNDE.....6TH RESPONDENT
SAMSON BETT.....7TH RESPONDENT
SOLOMOM KIPTANUI CHESIBOI.....8TH RESPONDENT
AND
CROSS CURRENT INDIGENOUS NETWORKS.....INTERESTED PARTY

RULING

1. On the 13th day of September, 2012 Odunga J granted interim orders to the Applicants upon hearing their Application dated the 12th September, 2012 ex-parte. The Application dated 12th September 2011 is premised on the provisions of **Section 19** of the **Sixth Schedule** of the **Constitution** of Kenya, 2010 as well as **Rules 20** and **21** of the **Constitution** of Kenya (*Supervisory Jurisdiction and Protection of*

fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules 2006.

2. The 4th to 8th Respondents in their Application dated the 25th of September, 2012 contend that the *ex parte* orders issued to the Applicants as against them in regards to the leadership of the church and running of the affairs of the African Inland Church ("AIC") are at variance with various other orders that have previously been issued, are misleading and have not been served upon the 4th -8th Respondents and are therefore a contravention of the rights of the 4th - 8th Respondents as well as other true adherents of the AIC church. The 4th-8th Respondents argue that the said *ex parte* orders should therefore be lifted forthwith and the interim orders be set aside and/or discharged.

3. The Interested Party in its Application dated the 28th of September, 2012 argue that the *ex parte* orders issued on the 12th September, 2012 granting injunctive orders against the Respondents and granting the Applicants quiet possession of the property known as L.R. No. 11635 Nairobi is misleading as the Interested Party believes they are the rightful owners of the said property. The Interested Party's complaints are also that if they are not heard on the issues raised in the Petition then there is an imminent danger that the Applicants will cause irreparable interference with the Interested Party's quiet and legal enjoyment of the said property and its interests in the subject property and its claim in HCCC 535 of 2000 will be prejudiced severely. It is the Interested Party's prayer that the ruling of 12th September, 2012 be either revoked or varied.

4. The Applicants, in response to the 4th-8th Respondent's Application, reiterate that they are the bona fide officials of the AIC church and that the various AIC congregations are undergoing great suffering as a result of the divisive actions of the 4th-8th Respondents. The Applicants also argue that as the registered officials and trustees of the AIC church are only the authorized and lawful custodians of AIC property.

5. By their Application dated the 12th of September, 2012 the Applicants specifically seek the following Orders:

a. That this Application be certified urgent and be dispensed within the first instance

b. That this Honourable Court be pleased to issue an injunction restraining the 4th to 8th Respondents either by themselves or through their servants, agents, employees and/or followers from interfering with the Petitioners /Applicants' running of the Africa Inland Church Kenya affairs in the National, Regional, District or Local Church Councils and or any other branch of the Church pending the hearing and determination of this application interpartes or the Petition herein.

c. That this Honourable Court be pleased to issue a temporary injunction restraining the 4th to 8th Respondents their agents, and/or their servants and/or their employees from in any way interfering with the Petitioners quiet possession of the premises known as L.R No. 11635 pending the hearing and determination of this application interpartes or the Petition herein.

d. That this Honourable Court be pleased to issue an injunction restraining the 4th to 8th Respondents and other ex-communicated former pastors and/or their servants and/or their agents and/or their employees from preaching, disrupting, interfering, holding meetings and/or worshipping in any of the AIC churches pending the hearing and determination of this application interpartes or the Petition herein.

e. That this Honourable Court be pleased to allow the bonafide officials of the AIC duly accredited by the Registrar of Societies in terms of the Societies Act to perform their duties as officers of the Church and the 1st and 2nd Respondents be ordered to extend all such police assistance as they may stand in need of.

f. That this Honourable Court be pleased to issue an order directed to the 1st and 2nd Respondent to offer protection to the Pastors of the Africa Inland Church, Kenya and their congregations while experiencing their right to worship within the property of the church

particularly the following pastors under the AIC Machakos Area Church Council pending the hearing and determination of this Application:

- i. Rev Nahashon Vundi _ AIC Kyamulendu**
- ii. Rev Stanley Mativo - AIC Katwanyaa**
- iii. Pr. Justus N Ngewa - AIC King'oti**
- iv. Pr. James Ngumb Musyoka - AIC Nguluni Town**
- v. Pr. Japheth Mwaka - AIC Uamani**
- vi. Pr. Kilonzi - AIC Nguluni**
- vii. Pr. John Kieti - AIC Immaculate**
- viii. K.R.C.C Office - AIC Katulu**
- ix. Pr. Wilson Musau - AIC Utooni**
- x. Pr. Jones Mutua Mutiso - AIC Kitwii**
- xi. Rev Stanley N Kasimolo - AIC Makutano/Mathunthini**

g. AllThat this Honourable Court makes such further orders as it may deem just, necessary and proper.

h. That the costs be in the cause.

6. The grounds in support of the Applicants Application dated the 12th of September 2012 are that:

a. The Petitioners are the Bona Fide Officials of the AIC Church in Kenya having been elected as the National Office Bearers legitimately by members of the church and having been duly registered by the Registrar of Societies in terms of the Societies Act

b. All the Petitioners are members of the Board of Trustees of the Africa Inland Church, Kenya having been registered as such by the Registrar of Documents in terms of the Land (Perpetual Succession) Act (CAP 206)

c. The Africa Inland Church, Kenya has over 4 Million members and more than 40,000 local churches spread all over the Republic of Kenya.

d. The 4th to 8th Respondents and their adherents are all ex-communicated former pastors of the AIC.

e. The 4th to 8th Respondents have used threats and physical violence to seize church property and forcibly so to prevent the Petitioners and their followers from entering particular churches and to use certain property of the church. Officers working under the 1st and 2nd Respondent have failed to investigate or take any other step to bring this unlawful violence to book.

f. The 4th to 8th Respondents have taken cash belonging to the church and are using the same unlawfully and also seized church buildings and properties in ways that are inconsistent with the church's objectives.

g. The 4th to 8th Respondents being ex-communicated former pastors are purporting to carry non-

sanctified activities in the name of the church and are spreading false doctrine amongst various congregations.

h. Some congregations have been thrown out of their churches by the 4th and 5th Respondents and have been forced to worship and fellowship in the open.

i. The 4th Respondent has taken over property of the Church known as LR No. 11635 Nairobi and now uses the facility as their headquarters.

j. The Petitioners being the legitimate officials of the church are entitled to the protection of the law in running the affairs of the church as guaranteed in the Constitution and the interference by the 4th to 8th Respondents violates the Petitioner's constitutional rights.

7. The only issue to determine on the material before me is whether the Applicants have established a *prima facie* case with a probability of success to warrant the grant of a temporary injunction pending the hearing and determination of the Petition. I will in doing so also determine whether if such a case exists, the Applicants have proved that they will suffer loss that is incapable of compensation by an award of damages and if in doubt about those two matters I will decide the Application on a balance of convenience. These are the well known *Giella* principles.

8. In *Giella vs Cassman Brown Ltd [1973] E.A. 358*, the issue revolved around a contract of employment between the parties. One of the clauses of the contract was that upon determination thereof, the Appellant would not engage in a similar undertaking within a radius of 10 miles from the Central Post Offices of various towns in East Africa including Kampala and Jinja. Once the contract was determined, it was alleged that the Appellant had been engaged to work for a company on the same street in Kampala as his previous employer. The Respondent then filed a Chamber Summons to stop the Appellant from continuing with his employment and on those facts, the Court of Appeal sitting in Kampala, by the words of Spry V-P set out the immortalized grounds for grant of temporary injunctive Orders. He stated as follows;

“The conditions for the grant of an Interlocutory Injunction, are now, I think, well settled in East Africa. First, an Applicant must show a prima facie case with a probability of success. Secondly, an Interlocutory Injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an Application on the balance of convenience. (E.A. Industries vs. Trufoods, [1972] E.A. 420)”

9. Is there a Prima Facie case with the probability of success?

The evidence before me shows that as per the records of the Registrar of Societies, the Petitioners are the bona fide officials of the AIC church. The evidence before also shows that the bona fide officials are the Registered Trustees and as such the custodians of all the properties belonging to the AIC church. The evidence before me also shows that the 4th to 8th Respondents are former pastors of the church who were subsequently ex-communicated from the AIC church following diverse meetings of the Central Church Council. Whether the ex-communication was lawful or not is not for me to determine as I am aware the issue is live in other proceedings before another court. Suffice it to say that they are certainly not the Registered Trustees of the AIC church. The Respondents argument that the ruling of the 12th of September 2012 be lifted and the orders set aside is therefore defeatist as setting aside the same does not in any way discharge the duties and obligations of the bona fide officials of the AIC church. Balancing the interests of both parties I believe that there is established a prima facie case by the Applicants with the probability of success as non-officials cannot derive any benefit of the law.

10. Have the Applicants proved that they will suffer loss or damage that is incapable of compensation by way of damages?

The Applicants are the bona fide registered officials and registered trustees of the AIC church. The church

has over 4 million congregants and over 40,000 local churches spread all over the Republic of Kenya, a fact undenied by the Respondents. The officials have duties and obligations as stipulated under the Church constitution and the Constitution of Kenya to perform their duties within the protection of the law.

To deny them the right to fulfill those obligations; to deny them the right to lead their flock within the doctrines of their church; to deny them the right to use church properties for the ends of the church and conversely to allow a break away group to do so ill cause irreparable injury. I do not know how spiritual nourishment can be adequately compensated by an award of damages.

Perhaps the Respondents have a legitimate claim to leadership in the church but where is *prima facie* evidence to that effect? Perhaps they were unlawfully ex-communicated but the issue is unresolved. Their protestations cannot be the sole basis for finding in their favour.

Balance of convenience

Having held as above, it follows that on a balance of convenience, the scales of equity must favour the Applicants for reasons I have give above.

Conclusion

11. This Court reiterates its oft-stated position that it will not micro- manage church institutions. They have a higher law to adhere to and it is a failure on the part of church leadership that the words “*wrangles*” should be used in cases of disagreements within the church.

12. In the present case, let the Interested Party pursue its claim to L.R. No,11635 Nairobi in the Environment and Land Court and the Respondents pursue their ex-communication complaint either within the church or at the Civil Court.

13. As for me, the Application dated 12th September 2012 is allowed as prayed and the Respondents' Application dated 25th September 2012 and the one by the Interested Party dated 28th September 2012 are dismissed.

14. The nature of the dispute, would necessitate that each party shall bear its own costs.

15. Orders accordingly.

DATED, DELIVERD AND SIGNED AT NAIROBI THIS 11TH DAY OF JANUARY, 2013

ISAAC LENAOLA

JUDGE

In the presence of:

Irene – Court clerk

Applicant present

Mr. Khaminwa for Applicants

Mr. Miyare for Respondents

Mr. Opondo for Attorney General

Order

Ruling duly read.

ISAAC LENAOLA

JUDGE

Further Order

- 1. Copies of the Ruling to be supplied o parties*
- 2. Further Mention on 7/3/2013*