



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL CASE NO. 94 OF 2010

**REV. PAUL MUJERA & 6 OTHERS.....PLAINTIFFS/
APPLICANTS**

VERSUS

**THE AFRICAN ISRAEL CHURCH NINEVE & 3 OTHERSDEFENDANTS/
RESPONDENTS**

RULING

1. In the Plaint (undated) filed on 7.7.2010, the Plaintiffs' main complaint is that the Defendants, on various dates in 1964, 1983, 1987 and 1990, purported to amend the 1st Defendant's original Constitution and by so doing, denied its membership of their democratic right to election of office bearers, administration of the church and trusteeship of church property without following the laid down rules and procedures.
2. The specific prayers sought are that;
 - i. A permanent injunction directed at the Defendants from unilaterally and illegally amending the 1st Defendant's Original Constitution.
 - ii. Pending the hearing and determination of this case, a temporary injunction to restrain the defendants from interfering with the Plaintiffs' SPIRITUAL ACTIVITIES in the 1st Defendant church.
 - iii. An Order canceling all the amendments from the Original Constitution by the purported 1983, 1987 and 1990 Constitutions.
 - iv. Costs of this suit.
 - v. Any other or further relief that the Honourable court deems fit and just to grant.

3. On 8.7.2010, the Plaintiff filed a Chamber Summons under Order XXXIX Rule 1A of the Civil Procedure Rules seeking the following orders;

1)

2)

3) That pending the hearing of this application inter-parties, the Defendants/Respondents, their employees, agents and/or servants, and the Police be restrained from interfering with the Plaintiffs possession, control and administration of their congregations at Koibarak, Kibaita, Ng'erek, Kechire, Chanda, Efeso, Ileho, Kabras and Nairobi (Kawangware/Kibera) Branches.

4) That the costs of this application be provided for.

4. I have read the grounds in support thereof as well as the Supporting Affidavit sworn by Paul Mujera and I note that whereas the 1st Defendant Church has been in existence since 1948 or thereabouts and it has various churches in Kenya including at Kiptile and Koibarak, what triggered the suit is;

5. That differences arose between the Plaintiffs and Defendants and by notice to all members of the Church on 1.2.2005, the Defendants expelled dissident members and excommunicated others. Further, members of the Kechire branch of the Church were also arrested and charged in court for trespass into the church, and the 2nd Defendant purported to issue instructions to the police to stop the 1st Plaintiff from performing his functions as a pastor in the Koibarak church.

6. The Plaintiffs have, in the Supporting Affidavit aforesaid, repeated the assertion that the Defendants have acted in breach of the Church's Constitution and should be restrained from doing so.

7. The Defendants filed grounds of opposition on 27.10.2010 and they are as follows;

1) That the said application is misconceived, bad in law and an abuse of the process of this honourable court.

2) That the application offends the mandatory provisions of order 50 rule 15 (2) of the Civil Procedure Rules.

3) That the application offends the mandatory provisions of order 1 rule 12 (1) and (2) of the Civil Procedure Rules.

4) That the application does not meet the requirement of injunction as provided for in the case of Geilla vs Cassman Co. Ltd (1973) E.A. 358.

5) That there is inordinate delay in bringing this application together with the suit which delay has not been explained.

8. On my part, having taken time to consider the Application, I am satisfied that it has no merit for the following reasons;

9. Firstly, I quite agree with the Defendants that the delay in bringing the suit and the Application is wholly unexplained. Equity does not aid the indolent and in the instant case, complaints are made that the church's Constitution was amended in 1948, 1964, 1983, 1987 and 1990. Why did it take the Plaintiffs in excess of ten years to suddenly realize that the amendments were not for the good of the church? I have read copies of the Constitution and the amendments, and *Prima facie*, there is nothing wrong with a legal entity amending its Constitution to reflect its changing nature and progression. No constitution is cast in stone and when David Zakayo Kiruli I founded the Nineveh Church in 1942, it would have been expected, reasonably, that the growth of the church would necessitate Constitutional changes. Incidentally, it is wholly unclear to me why, before he died on 10.11.1974, the Plaintiffs would not have challenged the Founder's legitimacy in effecting changes in 1948 and 1968.

10. Secondly, I have seen a copy of the 1987 Constitution and at clause 17, the amendment of the Constitution is envisaged after every seven years and any changes shall be approved by the Church's Annual General Meeting. Nowhere in the Application has it been shown that the said process or any other lawful process of legitimizing the changes, were never followed. It is not enough to allege an illegality and then purport to challenge the illegality without any evidence at all. I am not satisfied that the particulars of alleged illegal amendments at paragraph 6 of the Plaint meet the threshold expected in a case such as the one before me and *prima facie*, mere discontent cannot be the basis for grant of an interlocutory relief.

11. Thirdly, a party must be held to its pleadings and the interlocutory Application cannot introduce a cause of action not founded on the Plaint. I have elsewhere above reproduced the prayers in the Plaint. Prayer (ii) is superfluous and should not be in the Plaint and it is obvious why! Prayers (i) and (iii) relate to amendments of the Constitution, period! They do not relate to the effects of the amendments and any injury known to law that the Plaintiffs may suffer as a result thereof. Further, the purported injury cannot be presumed, nor surmised, neither can this court imagine what the injury may be.

12. The Application has introduced, a whole new cause of action regarding the "Plaintiffs possession control, and administration of their congregations at Koibarak, Kibaita, Ng'erek, Kechire, Chanda, Efeso, Ileho, Kabras and Nairobi (Kawangware/Kibera) branches!" Where is that issue pleaded in the Plaint? I submit nowhere.

13. Lastly, the Application in my view does not meet the expectations of Giella vs Cassman Brown [1973] E.A. 358 and if any advice is required, let the parties herein retreat to the Bible, seek a solution within the realm of their faith but from where I sit, the Application dated 7.7.2010 is without merit and is dismissed.

14. Let each party bear their own costs.

15. Orders accordingly.

Delivered, dated and signed at Kakamega this 14th day of April, 2011.

ISAAC LENAOLA

JUDGE