



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 22 OF 2007

JOSEPHAT KABUTIEI.....PLAINTIFF

TRUSTEES OF AIC KENYA1ST DEFENDANT

JOHN CHIRCHIR.....2ND DEFENDANT

JUDGMENT

By a Complaint dated and filed on 2nd February 2007, the Plaintiff a devout member of the African Inland Church sued the Trustees of African Inland Church Kenya (A.I.C.), and the Defendant who is described as the Chairman of the A.I.C. Church Koiserat local church, Baringo. The plaintiff prayed for the following orders -

(a) *a declaration that the Plaintiff is entitled to a fair and speedy hearing and determination of the dispute within the established mechanism of the Church, and that 1st and 2nd Defendant are obliged to constitute the Committee;*

(b) *a mandatory injunction compelling the Defendant to constitute a Dispute Resolution Committee to hear and determine the Plaintiff's case;*

(c) *costs and interest of this suit;*

(d) *any other relief that the Honourable Court may deem fit to grant.*

The Complaint and Summons were served upon the representative of the 1st Defendant, on 14th February 2007, and the 2nd Defendant personally on the 19th February 2007. Neither the 1st nor the 2nd Defendant entered either a Memorandum of Appearance or any Defence. In default of such appearance and defence, the Plaintiff's Advocates made a Request for Judgment dated and filed on 30th March 2007 and the matter proceeded with formal proof on 29th March 2011.

The Plaintiff's case is summarized in paragraphs 5 - 11 of the Complaint, and it was reiterated in his evidence to the court on 29th March 2011. The plaintiff's case is that he was the subject of damaging allegations in the year 1994 by a fellow worshipper accusing the Plaintiff of ungodly conduct to wit -

(i) *that the Plaintiff was against the female worshipper's relationship with the worshipper's betrothed husband,*

(ii) *that the plaintiff had himself requested to marry the female worshipper,*

(iii) that the plaintiff had a general intention of breaking the marriage to her betrothed,

The Plaintiff claimed in paragraph 6 of the plaint that these allegations caused him to be shunned, scolded and besmirched by his colleagues and church authority as well.

Unhappy with these allegations, and attitude towards him by his friends and the church authority, the plaintiff after many attempts, secured a meeting between himself, his accuser, and the accuser's husband, and in the meeting, his accuser **"owned up and admitted having made false accusations against the Plaintiff."**

The Plaintiff testified, though he did not object to the apology that he wanted his name cleared by purging what had been spread widely from the churches and the members of the community.

The Plaintiff testified that despite his initial success in persuading to have his name cleared, and recommendation to the Regional Church Officer the local church leaders frustrated his efforts, and no delegation of 15 members was sent to the Regional Offices, and in his efforts to have this delegation sent, he was arrested and charged for disturbance of a Religious Assembly and was released on bail. There is no record that he was prosecuted. For all his troubles, the Plaintiff wants his name to be cleared - in terms of the Gospel of Matthew 18:15-17 which say:-

"If your brother sins (against you), go and tell him his fault between you and him alone. If he listens to you, you have won over your brother. If he does not listen, take one or two others along with you, so that "every fact may be established on the testimony of two or three witnesses." If he refuses to listen to them tell the Church. If he refuses to listen even to the Church, then treat him as you would a Gentile, or a tax collector."

In this regard, Article VI(3)(d) of the A.I.C. Constitution provides inter alia - **"that the duty of the Local Church Council is the oversight and care of the welfare and pastoral ministry of the local church to its members."** It seems to me that having resolved that the dispute be forwarded to the Regional Church Office, the Pastor in charge of the Local Church was bound to sent the resolution to the Regional Church Office, for further action for the full exoneration of the plaintiff and his rehabilitation in the local church. Deeply religious Christians like the Plaintiff herein, are bound to be exonerated of their errors or mistakes, real or perceived when the local church leadership adheres to its resolutions. In the absence of such **"absolution"** such persons as the Plaintiff will continue to feel that they are not truly exonerated.

In this case, the 15 elders having been appointed by the local church, their duty, I would perceive, in terms of Matthew 18:15-17, is to tell or advise the higher hierarchy, in the presence of the plaintiff, that all allegations of impropriety levelled against the plaintiff have been fully investigated by the local church, and that the plaintiff was fully exonerated. This is what I understand to be the plaintiff's prayer, first set out above.

The matters complained of by the plaintiff happened way back in 1994, that is some 17 years ago, and although the plaintiff remembers the matters clearly, the institutional memory may be not be as clear as of the plaintiff. Of course it also goes without saying that not only the plaintiff but every member of his church who has a dispute with his church is entitled to a fair hearing and determination within a reasonable time. The plaintiff's evidence shows that he was actually heard by his local church, but at his insistence, he wanted his matter determined at a higher level than the local church.

With great respect to the Plaintiff, his matter having been heard and a 15 member delegation having been appointed to report to the Regional Church, I am of the considered view that he had been heard, and exonerated and the Report by the 15 elders was merely to confirm that exoneration. Further having heard the apology from his accuser, who was now duly married to the very person he was accused by her of dissuading her not to marry him, there is little else that the Committee would sit to resolve, and

in my view the matter ended when the accuser apologized to the plaintiff, in her house, and in the presence of her husband.

I think that this is fully in consonance with the admonition of Apostle Matthew - "***If your brother sins (against you), go and tell him his fault between you and him alone. If he listens to you, you have won your brother.***" I do not therefore think that the prayers sought would serve any useful purpose.

I would however direct the local church do send a delegation of 15 elders conversant with the issue, and forward a report suitably drawn by the plaintiff's Advocates that the allegations against the plaintiff by the former then unmarried lady were fully discussed, and had been resolved by way of apology to the plaintiff by the former lady.

This order when acted upon by the 1st Defendant should in all fairness satisfy the plaintiff, and also protect the integrity and the marriage and family of the former unmarried accuser, now married lady.

I therefore decline to grant the other orders sought, and direct that each party will bear its costs.

There shall be orders accordingly.

Dated, delivered and signed at Nakuru this 24th day of June 2011

M. J. ANYARA EMUKULE
JUDGE