



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO. 219 OF 2011
B E T W E E N

1. THE TRUSTEES KENYA REDEEMED CHURCH
2. BISHOP ALLAN NJERU.....APPELLANTS

AND

1. SAMUEL M'OBUYA MORARA
2. FLORENCE WANJIRU TIRUS
3. MARY WAMBUI MWANGI
4. DAVIS M. MALOBE
5. SOLOMON BURUDI RUKARIA
6. WILLIAM NYAMU.....RESPONDENTS

R U L I N G

The Respondents in this appeal are the plaintiffs in the lower court (**Milimani CMCC No. 881 of 2011**) while the Appellants are the defendants.

The Respondents filed the suit in the lower court by plaint dated 6th April, 2011. An amended plaint was filed on 15th April, 2011. They pleaded that they are members and officials of the **Kenya Redeemed Church (Kayole) – Western Zone** and that they brought the suit in their capacity as church members and officials in their own behalf and on behalf of the members of the Kenya Redeemed Church – Western Zone.

The Respondents also pleaded that the **Kenya Redeemed Church** is duly constituted and registered under the **Societies Act** and that it is governed by its statement of faith in accordance with biblical scriptures as well as orders and directives put in place from time to time by the leadership of the Church.

The case pleaded in the amended plaint is as follows:

1. That the Kenya Redeemed Church has two district zones, being the **Eastern Zone** and the **Western Zone**, both zones being autonomous of each other in terms of administration.
2. That the Easter Zone is led by the 2nd Appellant, Bishop Allan Njeru, while the Western Zone is led by one Bishop Absolom Ndungo.
3. That the Western Zone has some 15 named churches.
4. That the faithfuls in each of the churches in the Western Zone have invested heavily by building

churches, buying equipment and other materials, which properties are registered in the name of the Kenya Redeemed Church but in trust for members of the Western Zone of the Church.

5. That in particular, the Kenya Redeemed Church and the Appellants in particular are trustees holding a property known as **Plot D4 199** situated at Kayole together with all development thereon in trust for the Respondents and members of the Kenya Redeemed Church, Kayole.

6. That in the years 2010 and 2011 the Appellants engaged themselves in acts of interference with the running of the churches in the Western Zone, in particular with respect to the Kitengela Church and another Church, and that the legitimate leaders of those churches were dismissed and pushed aside by the Appellants and other leaders imposed.

The reliefs sought in the amended plaint include:-

1. A declaration that the Kenya Redeemed Church – Western Zone is autonomous from the Kenya Redeemed Church – Eastern Zone.
2. A declaration of trust in respect of Plot D4 199.
3. An injunction to restrain the Appellants from engaging in any acts of interference with the administration, leadership, programmes and properties of the Kenya Redeemed Church, Western Zone.
4. An order to direct the Appellants to execute transfers in favour of such trustees as may be appointed by the Respondents and members of the Kenya Redeemed Church – Kayole in respect to Plot No. D 199, Kayole together with any other properties of the said church which may be registered in the name of Kenya Redeemed Church.

Together with the plaint the Respondents filed notice of motion dated 6th April, 2011. They sought a temporary injunction to restrain the Appellants from interfering with the administration, organisation, leadership, membership, programmes and properties of the Kenya Redeemed Church – Western Zone, and in particular some 15 churches named in the application pending disposal of the suit.

The said application was stated to be brought under **sections 1A, 1B and 3A** of the **Civil Procedure Act** and also under **Order 40, rules 1, 2 and 3** of the **Civil Procedure Rules** (the **Rules**).

The Appellants opposed the application by replying affidavit filed in the lower court on 14th April, 2011. They also raised a preliminary objection to the application and the suit by notice dated 26th April, 2011. Two points were taken in the preliminary objection as follows:-

1. Kenya Redeemed Church is a registered society under the Societies Act. It cannot sue or be sued except through its officials as registered for the time being:

(a) Chairman

(b) Secretary

(c) Treasurer

2. The Appellants are therefore non-suited. Similarly, since the Respondents aver they are members of Kenya Redeemed Church, they cannot sue for and/on behalf of Kenya Redeemed Church, a society under

the Societies Act.

3. Even if the suit can be said to be properly before the court, the prayers sought in the application dated 6/4/2011 are not capable of being granted since the application has not specifically stated what orders they are seeking. Prayer 2 only seeks that “...the defendants... *be restrained*” but does not state by what or how.

Upon the preliminary objection being canvassed before the lower court, the same was overruled on 6th May, 2011, thus provoking the present appeal which was lodged on 13th May, 2011.

The ruling of the lower court itself has not been provided by either party. Upon inquiry, the court was informed by the learned counsels that a copy of the same has not yet been availed to them by the lower court.

On 20th May, 2011 the Appellants filed **notice of motion dated 20th May, 2011**. They sought one main order, that the proceedings of the lower court, and particularly the application by notice of motion dated 6th April, 2011, be stayed pending determination of the appeal herein.

The application is brought under **Order 42, rule 6** of the Rules. The grounds for the application appearing on the face thereof include:-

1. That under the Societies Act a registered society can only sue or be sued through its officials.
2. That the plaintiffs in Milimani CMCC NO. 881 of 2011 are not officials of Kenya Redeemed Church, and that even the defendants sued therein are not officials of the church.
3. That the suit therefore as filed contravenes the Societies Act thereby making the suit hopeless beyond any amendment and ought to have been struck out by upholding the preliminary objection that was dismissed by the trial court on 6th May, 2011.

There is a supporting affidavit sworn by the 2nd Appellant.

The Respondents have opposed the application as set out in grounds of opposition dated 20th May, 2011 and a replying affidavit sworn by the 1st Respondent, both filed on 30th May, 2011. The main grounds of objections raised are –

1. That the application is incompetent and an abuse of process.
2. That the application has no merit.

I heard this application on 20th June, 2011. I have considered the submissions of the learned counsels appearing, including the cases cited.

The second point in the Appellant’s preliminary objection taken before the lower court to the effect that the prayers sought in the Respondent’s application by notice of motion dated 6th April, 2011 cannot be upheld at all. It is a purely technical objection for want of form.

What was urged before the lower court on that point on behalf of the Appellants was that, since it was not stated in the application that what was being sought was a **temporary injunction**, that therefore the order seeking to have the Defendants “restrained from interfering howsoever with the administration, etc..... and properties of the Kenya Redeemed Church - Western Zone ... pending hearing and determination of the suit” could not be granted.

This is the kind of technical objection that sections 1A and 1B of the Civil Procedure Act were designed to address. Courts were wasting a lot of time and effort in adjudication over technical objections at the expense of adjudication of the real disputes between parties. In any event, any order of the court seeking to restrain a party from doing something, or requiring the party to do something, is by its very definition an injunction, either restraining or mandatory. A party does not have to state that he is seeking an injunction. If it is clear from the wording of the relief sought, no matter how inelegant or crude or ungrammatical, the court will hear him, and if merited, grant the order.

The first point of objection argued before the lower court was more substantial. It raised the legal issue whether the Appellants were properly sued. It was pleaded in the plaint that the defendants (Appellants) were “the Trustees and Presiding Bishop respectively of the Kenya Redeemed Church”.

Regarding 1st Appellant, it was not pleaded that, and it is not clear if, The Trustees – Kenya Redeemed Church, is a duly registered person with capacity to sue and be sued.

It is common ground that the Kenya Redeemed Church is a registered society under the Societies Act. It is trite law that a society under the Societies Act is not a legal person with capacity to sue or be sued. A society can only sue or be sued through its due office holders. It has not been pleaded that the 2nd Appellant has been sued in the capacity of an official of the Kenya Redeemed Church. Nor has it been pleaded that he has been sued in his personal capacity.

So, the issue of capacity of the Appellants, or lack thereof, to be sued is a substantial issue and the appeal before this court is thus arguable.

But the main issue in this application is whether or not in the circumstances of this case, it would be meet and just to stay the proceedings of the lower court pending disposal of the appeal herein.

I must state at the outset that the conditionalities under subrule (2) of rule 6 aforesaid for grant of stay of execution do not apply to stay of proceedings. The wording of the subrule is clear enough on this point. Nonetheless an applicant for stay of proceedings must demonstrate sufficient cause for such order.

Sufficient cause will be indicated for instance where, if the appeal were to be allowed and in the meantime the proceedings in the lower court have gone on, the entire exercise before the lower court would thus be in vain, and the courts valuable time wasted and the parties put to unnecessary expense.

The main point to be adjudicated in this appeal will be whether or not there is a proper suit before the court that can be heard and disposed of regard being had to capacity of the defendants to be sued. Should the appeal succeed, the effect will be that the suit before the lower will be struck out. If in the meantime the suit would have proceeded, or if any interlocutory application in the suit would have been heard and orders granted, it would all have been in vain. So, it is best that the proceedings before the lower court be stayed pending disposal of this appeal.

In the circumstances, I will allow the application. The suit before the lower court is hereby stayed pending disposal of this appeal. The stay is granted upon the condition that the Appellants shall expeditiously prosecute the appeal. They must within 30 days of delivery of this ruling seek directions with regard to hearing of the appeal. In default parties shall have liberty to apply. Costs of this application shall be in the cause.

It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF JULY, 2011

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 22ND DAY OF JULY, 2011.