



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 513 of 2007

BISHOP REV. SILAS YEGO & 3 OTHERS.....PLAINTIFF

VERSUS

DAVID MULEI MBUVI & 5 OTHERS.....DEFENDANT

RULING

The Applicants who are the Plaintiffs herein moved to this court vide a plaint dated 2nd July 2007 and filed on 4.7.2007 against the respondent's who are the defendants herein.

(3) The Plaint was accompanied by an interim application brought by way of chamber summons brought under order 39 rules 1,2,3, of the Civil Procedure Rules, Section 3 and 3A of the Civil Procedure Act and all other enabling provisions of the law. The application sought 7 prayers. Prayer 1 and 6 are spent. In prayer 2, and 3 sought similar prayers as those in prayer 4 and 5 pending the hearing inter parties and are therefore also spent. In prayer 4 and 5 the applicant sought injunction orders to be issued against the defendants restraining the defendants, jointly and severally by themselves, their officers, servants, agents or otherwise howsoever (2) from purporting to be A.I.C.

(4) From purporting to be A.I.C. National officials and/or seeking to obtain endowments on the pretence of being A.I.C. officials and or defaming the plaintiff by way of purporting to be the bona fide A.I.C. officials and or attempting to obtained control and/or management of and/or custody and/or occupation or threatening to obtain control or management of and/or custody and or occupation of A.I.C. facilities, together with A.I.C. assets (movable and immovable rights and accruals or in any manner whatsoever interfering with the leadership and affairs of the church known as African inland Church (A.I.C.) until and unless they have been duly elected as such A.I.C. officials in accordance with the Church Constitution, pending the hearing and determination of the case.

(5) From exercising any powers vested in the national officials of A.I.C. or any other organ as established in the Constitution of A.I.C. the societies Act Cap. 108, the Constitution of Kenya, or any other powers that national officials of A.I.C. and office bearers of a church exercise or would exercise with respect to A.I.C. Church until and unless they are duly elected as such A.I.C. officials in accordance with A.I.C.s constitution pending the hearing and determination of the case.

(7). That costs be provided for.

The interim application was brought by way of certificate of urgency. Interim orders were granted on 4.7.2007 and have been extended ever since pending the hearing inter parties and thereafter pending ruling.

The applicant has in support of his application grounds in the body of the application, supporting

affidavit, annexures written skeleton arguments and case law. The major points relied upon by the applicants are:-

- (1) The action is brought both on behalf of the 1st, 2nd, 3rd and 4th plaintiffs on their own behalf and also on behalf of a society African Inland Church A.I.C.
- (2) That in the year 2006 and pursuant to the pre-requisites of the A.I.C.'S Constitution, the National officials at the time, called for elections of officials at all levels right from the grass roots as hereunder:-
 - (i) November 2006 local church council
 - (ii) 10th December to 23rd December 2006 District Church Councils.
 - (iii) 11th January to 31st January 2007 Regional Church Councils.
 - (iv) 14th February 2006/7. National officials, Central church council including the Bishops.
- (3) That during the election held on 14th February, 2007 the first to 3rd Plaintiffs together with others were elected as officials for 5 years from that date with the 4th Plaintiff being confirmed as the A.I.C. Administrative secretary.
- (4) That after the said elections were concluded they filed returns with the registrar of societies and they are therefore the bona fide officials of A.I.C.
- (5) That the defendants attempt to have themselves registered as officials of the A.I.C. was turned down by the Registrar of Societies and as long as that position obtains, they plaintiffs are the bona fide officials of the A.I.C. and are entitled to protection of the law.
- (6) That despite knowledge of the plaintiffs being the bona fide officials of the A.I.C., the defendant respondents have gone ahead and held themselves out as the officials of the A.I.C. In this respect they applicants contend that the said defendant's impersonation and obtaining by false pretences and defamation of the plaintiffs are acts which are unjustifiable, performed in bad faith, wanton and illegal and border on criminality whose complaint has already been lodged with the police.
- (7) That they are within the ingredients governing the granting of the reliefs sought and should be confirmed as the only lawful persons to hold themselves out as the officials of the A.I.C. and the proper parties to manage the property of the A.I.C. and receive benefits on its behalf.
- (8) They further contend that allegations of impropriety on the part of some of the plaintiffs are matters which are being paraded in the wrong forum and do not count as being material towards the granting of the reliefs they are seeking.

On case law they rely on the case of **GIELLA VERSUS CASSMAN BROWN & CO.LTD [1973] E.A. 358** which lays down the ingredients for granting such a relief namely:-

- (i) An applicant must show a prima facie case with a probability of success.
- (ii) An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury.
- (iii) When the court is in doubt it will decide the application on the balance of convenience.

The case of **FILMS ROVER INTERNATIONAL LTD. AND OTHERS VERSUS COMMON FILM SALES LTD. [1986] 3 AER 772** where it was held inter alia that in determining whether to grant an interlocutory injunction, the question for the court was not whether the injunction sought was

mandatory or prohibitory but whether the injustice that would be caused to the defendant if the plaintiff was granted an injunction and later failed at trial outweighed the injustice that would be caused to the Plaintiff if an injunction was refused and he succeeded at the trial.

The case of **TRICOR ENTERPRISES LTD AND 2 OTHERS VERSUS MWOK – HANDA [1990] KLR 475** which reiterated the principles established by **GIELLAS** case (supra) but added that the burden of proving that he/she is within the principles is on the plaintiff. And lastly the case of **MWATHI VERSUS KENYA COMMERCIAL FINANCE CO. [1987] KLR 523** where it was held inter alia that courts invariably refuse to grant injunctions where damages would be adequate but in some cases there are sentiments which cannot be compensated in money entitling an Applicant to an injunction.

The respondents have opposed the application on the grounds set out in the replying affidavit, annexures and written skeleton arguments. The major points relied upon by them in opposition are:-

- (1) That the suit as well as the accompanying application are incompetent in so far as the same purport to have been brought on behalf of a non-existent entity known as A.I.C.
- (2) It is their contention that the Plaintiffs are the former officials of the A.I.C. Elections were held on 13.2.2007 where upon the defendants/respondents were elected as officials and are therefore in control of the church at all levels. That the Registrar of Societies was duly notified of the said change and the applicant's action of moving to this court is simply meant to seek the help of this court to run the said church contrary to the provisions of the constitution.
- (3) Allegations of defamation are unfounded but there are genuine complaints against the leadership of the first plaintiff in the conduct of the affairs of the church.
- (4) They contend that the court is not the proper forum for determination of the dispute herein. But the membership through the general election in accordance with the Church's constitution.
- (5) That since this is not the right forum for resolving the dispute the suit as well as the application should be struck out as both are an abuse of the due process of the court.

On the court's assessment of the facts herein, it is clear that from the reading of the papers presented in support of the plaintiff's application, the plaintiffs are seeking injunctive reliefs on three fronts:

- (i) On their own behalf as the only rightfully and procedurally elected officials of AIC who are also the only ones duly registered with the Registrar of Societies and are therefore the only proper and recognized officials mandated to run the affairs of the society.
- (ii) They also contend that they are the only proper persons with mandate to protect the property of the society.
- (iii) That due to the nature of the dispute herein the injury that is likely to be suffered is one that cannot be compensated for by way of damages. The injunctive order is sought to remain in force till the determination of the suit.

The defence on the other hand have moved to attack the application on two fronts, namely both on the technical front as well as the merit front. The technical objection arises because of the defendants' assertion that the applicants have no locus standi to present both the suit and the application. The merit front arises because of the assertion that the ingredients for granting the relief have not been satisfied as established by case law.

On the issue of locus standi there is no dispute that application is brought on behalf of the church on the one hand and the officials on the other but both twined up. The applicants have presented annexure DMA which is a certificate of exemption from registration no 1152 issued under the hand of one John Richard Longston Rumsy assistant Registrar of societies. He certified that on the date mentioned Africa,

Inland Church was ex-empted from registration. The certificate was issued on the 2nd day of December 1961. The exemption was granted under Section 5(2) of the Societies Act Cap 108 Laws of Kenya. The defence has also annexed the Constitution to their replying affidavit as annexure DTW1.

The existence of an exemption certificate and constitution brings to the fore the issue of the Africa Inland Church being a Jurisdic entity whose rights to seek relief from a court of law and how such a right has to be championed has to be determined first before the issue of the merits of the relief sought are gone into. The Court will turn to case law for assistance. In the case of **KENYA BANKERS ASSOCIATION AND OTHERS VERSUS MINISTER FOR FINANCE AND ANOTHER (NO.4) [2002] KLR 61** Mbaluto J. and Kuloba J. (as he then was) were called upon to determine one of the issues in controversy namely that the Kenya Bankers Association had no right to litigate on behalf of its members. It was held inter alia that:-

“(1) where an association or other organization exists for its members who are defined or are ascertainable and its constitutional document provides for it and it is not contrary to a relevant registration statute governing the organization, it is generally the organization or association which is better placed to litigate for and on behalf of the members.

(2) It would be unjust to require by an impending rule individual members to sue or defend when the Constitution of the association or organization says that legal proceedings may be taken or defended in the name of the association or organization or of the specified officials of that body”.

In the case of **KARANJA AND 2 OTHERS VERSUS MUNGAI AND 3 OTHERS [2004] 2 KLR 352**, the defendant/applicant’s sought to strike out the plaintiff’s suit on the ground that they lacked the locus standi to sue or be sued on behalf of Moto primary school. The plaintiffs had brought the suit as officials of the Parents and Teachers Association of the school. Kimaru Ag. J. (as he then was, now J) held inter alia (i) *“A Parents and Teachers Association exists independent of the management of the school and in some instances, the association and the school committee are the same thing. But in the case of Moto Primary School they seem to exist independently of the school committee.*

(ii) The PTA is a society which can only sue and be sued in the name of its officials and on this account the plaintiffs had locus standi to institute the suit as officials of PTA of Moto Primary School.

The central message in both decisions, which are decisions of courts, with concurrent jurisdiction, as this court, is that in order to determine the locus standi of non natural jurisdic persons one has to look at the statute under which created or governed and the constitution of the institution.

Herein the action is brought by plaintiff 1-4 in their own right and also on behalf of the 5th Plaintiff A.I.C., a society. DM1 indicates that the said society was exempt from registration under the society’s ordinance (now Act Cap.108). The exemption from registration was made under Section 9 of the said Act. The said exemption from registration does not however remove the society from the operation of the provisions of the Act because:

(i) Section 9 does not say so.

(ii) That is why Section 21 of the Act requires such a society to notify the registrar of societies about change of name or amendment of constitution.

(iii) That is why it has to comply with Section 41 by following the guidelines set on what should be contained in its constitution.

(iv) That is why Plaintiff 1-4 filed the results of their election with the Registrar of society and secured registration and like wise the defendants attempted to register theirs but were declined registration because the plaintiffs had already been registered. There foregoing being the position it is therefore proper to turn to this legislation to see if it offers help on determination of locus standi.

Section 41 (1) of the said Act provides “*where a society is charged with an offence under the Act or rules made there under, the society may appear by a representative who may enter a plea on behalf of the society and conduct the society’s defence on its behalf.*”

(2) *In this Section “representative” in relation to society means a person who the court is satisfied has been duly approved in writing by the society to represent it but a person so appointed shall not by virtue of such appointment be qualified to act on behalf of the society before any court for any purpose. Other than those specified in this Section.*

A reading of Section 41 by this Court reveals that a proper construction of the same reveals that appointment of a representative is limited to the defence of the society in circumstances where the said society faces criminal prosecution for offences stipulated under that Act. The mention in subsection (2) that such an appointment is not authority for such an appointee to act for the Society before any court in any other proceeding, is proof that the Societies Act does not give guidelines or that it is silent as to who is to represent the society in civil proceedings and how such a representative is to be appointed.

The Act however in part IV thereof makes provision for provisions governing the conduct and Administration of Societies. Section 19 thereof makes provision for what should form the content of the constitution of societies. Subsection 1 provides “*19 (1) The Constitution or rules of every registered Society formed after the commencement of this Act shall provide to the satisfaction of the Registrar for all the matters specified in the schedule to this Act and shall not be amended so that it (leaves to so to provide.*”

The schedule thereof provides matters to be provided for in the constitution or rules of every society:-

- (1)** The name of the Society.
- (2)** The whole of the objects for which the society is to be established.
- (3)** The persons to whom membership is open
- (4)** The rates of entrance and subscription fee (if any) for the membership.
- (5)** The method of suspension or expulsion of members.
- (6)** The titles of officer’s, trustees and auditory and their terms of office and the method of their election, appointment, dismissal and suspension.
- (7)** The composition of committees, if any, of the society, the terms of office of members of such committee, and the method of their election, appointment, dismissal and suspension.
- (8)** The authority for and the method of filling vacancies on committees.
- (9)** The frequency of, quorums for and dates of the general meetings referred to in Section 29 of this Act.
- (10)** The custody and investment of the funds and property of the society and the designation of the persons responsible therefore.
- (11)** The purposes for which the funds may be used and in particular the prohibition of the distribution of funds among members.
- (12)** The inspection of the books and lists of members of a society by any member or officer under Section 28(1) of this Act.
- (13)** The Annual or periodic audit of accounts.

- (14) The formation of branches and how these may be formed.
- (15) The manner of amending the name, constitution, rules of the society.
- (16) The manner of the dissolution of the society and the disposal of its property on dissolution.

It is evident from a reading of the above check list that it does not envisage, dispute resolution within societies although these are mere guide lines. There is however no mention that individual society constitutions must conform with that check list. They can of course modify them to suit their own needs.

The provisions that deal with disputes in relation to officers is Section 18 of the Act. It reads:

“18(1) if the Registrar is of the opinion that a dispute has occurred among the members or officers of a registered society as a result of which the Registrar is not satisfied as to the identify of the person, who have been properly constituted as officers of the society, the Registrar may by order in writing require the society to produce to him, within one month of service of the order evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the society or of the institution of proceedings for the settlement of such dispute.

(2) If an order under subsection (1) of this Section is not complied with to the satisfaction of the Registrar, within the period of one month or any longer period which the Registrar may allow, the Registrar may cancel the registration of the society..

(3) A society aggrieved by the cancellation of its registration under subsection (2, may appeal to the High Court within thirty days of such cancellation”.

Section 18 procedure applies where the wrangling as to who is the rightful official is brought to the attention of the Registrar of Societies society. It appears that the Registrar of societies can only interfere where no dispute has reached the courts. As noted earlier, with the exception of the provisions referred to herein, the societies Act Cap.108 Laws of Kenya is silent as regards procedures that are to be invoked in the event of disputes arising there under go beyond the Section 18 procedures. Having failed to get assistance from the statute the court has no alternative but to the society’s constitution. This is annexed by the defendants as annexature DTW1. The ideals of the society are found in the preamble, the AIM and the Doctrinal Basis of the constitution. The preamble reads *“Gods word is the authority for his great commission which He has chosen to share with his people, the saints, the church. The church universal is seen in concrete form interacting with the community in the form of local congregations (Churches of believers). The church is the salt” of the world. It has a responsibility to demonstrate the biblical love and judgment of God to the world. The responsibility of the church is based on the purpose of God as revealed in his word. Its priority and primary focus is to proclaim the word of God to all mankind, of all ages in all parts of the world persuading them to place their faith in Christ who reconciles them to God. Those believing men experience the indwelling of the Holy Spirit who assures them of peace and hope.*

The church (emphasis own)

Local churches are institutions, instruments and vessels for providing a true Christian community which expresses itself in oneness of fellowship co-operatively working together, making disciples for Christ. Africa Inland Church Kenya believes that the world wide united witness to the gospel on the part of all believers is the most essential need of a world torn by conflicting ideologies and philosophies and as yet is aware that Christ is the only solution to its grave problems. We believe that all Christians are brothers and sisters in Christ, which is the corner stone of being fellow citizens of God’s kingdom and on this basis we are all members of the team fore telling the great commission.

The African Inland Church Kenya have to (emphasis own) and those who shall subsequently qualify for membership declare their purpose to join their hearts and hands honouring God and His word in the priority task of:

§ *The Great Commission as stated in Mathew 28.19-20 and Mark 16: 15-16,*

§ *The Furtherance of the Gospel in its totality Acts 20.27.*

§ *The defence and confirmation of the Gospel. Jude 3*

§ *The Fellowship of the Gospel: Galatians 3: 28”*

The AIMS of the church are found at page 3 of the Constitution and these are:-

§ *To Fulfill the Commission of our Saviour Jesus Christ as we read in Mathew 28:19,20 “Go therefore and make disciples of all nations.*

(3) To Glorify God in everything

(4) To instruct and to strengthen church members in the faith and in holy living.

(5) To help Christians so that they may stand firm on the scriptures.

(6) To show and demonstrate Christ’s love and concern for people by engaging in selective community development projects based on biblical and evangelical principles and practices.

The Doctrinal basis is found at page 3-5 of the constitution and these constitute. “Members of the African Inland Church believe in.

(1) The unity and trinity of God, intently existing in three co-equal persons; the father, the son and the Holy Spirit.

(2) God the creator and preserver of all things who created man male and female and gave them dominion over the earthly creation.

(3) The duty and harmony of God the Son, the Lord Jesus Christ who being very God, also became man, being begotten of the Holy Spirit, born of the virgin Mary was crucified, dead and buried, was raised bodily from the dead and ascended to the right hand of the father, whose two natures continue eternally and inseparably joined together in one person.

(4) The duty and penalty of God the holy spirit and the necessity of His work to make the death of Christ effective to the individual sinner, granting him repentance toward God and faith in the Lord Jesus Christ and In his Ministry dwelling permanently, within and working through the believer for godly life and service.

(5) The divine, verbal and plenary inspection and infallibility of the scriptures of the old and new testaments as originally given and their absolute and final authority in all matters of faith and conduct.

(6) The universal sinfulness and guilt of human nature since the fall rendering man subject to Gods wrath and condemnation.

(7) The sacrificial death of our representative and substitute, the Lord Jesus Christ, the incarnation son of God, by the shedding of whose blood atonement was made for the sin of the whole world and whereby alone, men are redeemed from the guilt of penalty and power of sin and death.

(8) The necessity of the new birth as the work of God the Holy Spirit that men are saved by Grace through faith not by works.

(9) The eternal security of the believer based entirely on the atoning work of the Lord Jesus Christ whereby as a born again child of God, he has assurance of salvation and has the right to all privileges of

the Sons of God.

(10) *The maintenance of good works and obedience to the revealed will of God in life and service through which eternal rewards shall be received.*

(11) *The true church whose Head is the Lord Jesus Christ and whose members are all regenerate persons united to Christ and to one another by the Baptism of the Holy Spirit.*

(12) *The observance of the ordinances of Baptism and the Lord 's supper as appointed by the Lord Jesus Christ.*

(13) *The supreme mission of the Church as being to glorify God and breach Gods word to every creature.*

(14) *The personal, visible return of the Lord Jesus Christ:*

(a) *The Rapture (catching up of the Church 1Thesalonians 4:16,17.*

(b) *The tribunal- Rev 3:10, Math.24:29.*

(c) *The millennial Reign of Christ – Revelation 20.6.*

(15) *The literal resurrection of the body, the physical resurrection of all people.*

(16) *The eternal blessedness of the saved and the eternal punishment of the lost.*

The court has endeavoured to set out the preamble, Aims, and doctrinal basis in extensor because these contain the ideals that the church is supposed to stand for. They are as it were, the foundation stones on which the church structure and organization is to be founded.

None of these ideals envisages a situation where the church can take up its arms and then start fighting either with its members or itself. Disputes are therefore out of the question, and since there are out of the question, then inbuilt dispute resolution mechanisms are also out of the question. It is therefore apparent from these constitutional provisions that there is no locus standi for the church to proceed to court as a church to agitate any dispute resolution may it be between the church and its member or member against another member.

The foregoing notwithstanding, the court has to go through clauses of the constitution dealing with the organs of the church to see if it can trace the mandate to file and defend a suit or civil proceedings.

The congregation is provided for at page 9 of the constitution. It is simply a group of people gathering together to worship God. These grow to form a local church, administered by the local church council. These grow to form branches of the District Church Councils whose mandate is at page 10 clause 4. These grow into regional Church Councils catered for at clause 6 on page 15. Their mandate is at page 18-20 of the constitution. These region grow into the central church councils. Their mandate is set out at page 21-23 of the Constitution. The composition of the central Church Council is as follows:-

(a) Bishop of Africa Inland Church, Kenya.

(b) Assistant Bishop Africa Inland Church, Kenya.

(c) Administrative secretary (Assistant).

(d) Treasurer

(e) Accountant.

- (f)** Representatives who are elected (appointed) every five years by the Regional Church Council – three from each region, chairman, administrative secretary and treasurer.
- (g)** Heads of the National Departments.
- (h)** Chairman of the National Department Boards.
- (i)** Chairman of Scott Board and the Principal of Scotts Theological College
- (j)** Chairman of the Trustees Board
- (k)** Chairman and Secretaries of these committees, staffing, finance, planning of orientation and language, ordination and education and immigration co-coordinator.
- (l)** Chairman of Press Board and Manager to press.
- (m)** Co-opted members not exceeding four appointed by the central church council.

The mandate of the Central Church Council is set out from page 21 to 23 of the Constitution. I will only set out those that are relevant to the ruling. These are:

“The overall direction of the work and activity of the Africa Inland Church.” A reading of all the mandates of the administration of the church right from the lower levels to the higher levels does not include litigation.

The Plaintiffs have described themselves in paragraph 1 of the plaint as the Bishop, Assistant Bishop, Treasurer and Administrative Secretary. Their mandate is also provided for in the Constitution. The office of the Bishop as well as its mandate is provided for from page 24-26. Among others:-

- (i)** The Bishop is the Spiritual leader of the church and is responsible for kindling and maintaining the spiritual momentum of the whole church. He shall make known plans to the church council and the church of accomplishing this.
- (ii)** He is Chief Executive officer of the Council and his office is at the Head quarters. He is responsible for maintaining team spirit with those in the Headquarters, Departmental Heads and Regional leaders.
- (iii)** He is responsible for the supervision and direction of Africa Inland Church work and activities by delegate.
- (iv)** He shall provide leadership for the church in accordance with the Bible, Constitution and by laws and decisions of the central church council in corporation with other officers.
- (v)** His authority for the administration of church activities shall be derived from the directions of the Council as is customary in the Africa Inland Church, Kenya. Responsibility Vi-xii touch on general administrative activities in the course of duty.

The Assistant Bishop is the next executive officer to the Bishop and assists the Bishop in the duties of oversight of the church, takes the place of the Bishop when the Bishops is not present to carry out the decision of the central church council, and the church, and to ensure that the activities at the Head quarters are effectively carried out. These are set out at page 27 - 28 of the Constitution.

The office of the Administrative Secretary (Assistant) is set out at page 28 clause 3. The responsibilities are on page 29 item 3(b). Main role is to receive information and instruction from the Bishop related to the central church council, and Headquarters activities and work. The rest are routine administrative duties.

The Treasurer is provided for at page 29 to 30 of the Constitution. His main role is to ensure that Finances are properly administered by the Accountant and all accounts properly audited annually by a competent auditor. The rest are routine administrative duties.

Turning to the general provisions of the constitution, there is provision for other staff such as the Accountant, personal co-coordinator, Executive Council, Finance Committee, Planning Committee, Co-ordination Committee, Staffing Committee, Scholarship Committee, orientation and language committee, Scotts Board of Governors, property, station management committee at (pages 30 - 38).

There is also provision for departments. These are; the training, church Evangelism, Community Development, Mass media and Administration Departments.

This far, there is no mandate vested in the church as a society either through itself or its local church councils, District church Councils, Regional church councils to undertake litigation. Also going through the mandate of the Chief Officers of the church holding the posts of the 1st to 4th Plaintiff, there is also no mandate to undertake litigation on behalf of the society. There is also no department established dealing with litigation.

As regards property issues, the Constitution makes provision as to which body or person is to have charge of the property at each level of the church hierarchy. At page 9 clause 3(b) (c) the local church council is responsible for the supervision of local church offerings, property and the Finances.

Vide item seven (7) of the District Church Council, it has the responsibility for the collection of funds from the local churches and administration of such funds for the ministries and work of the District, Regional and central church council and any other evangelical organization whose work and ministries are related to the A.I.C.

The Regional Council on the other hand vide responsibility 9 and 10 at page 19 of the Constitution, is mandated to process funds assessed from the District to the central church council, other evangelical organizations whose work and ministries are related to the African Inland Church, Kenya and to receive spend and account for funds assessed from the districts for its work activities and ministries.

Turning to the central church council, vide responsibility 18 at page 23, it is mandated to process and give directions as required for funds and properties to assist the work, activities and ministries of any other evangelical organization whose work and ministries are related to the A.I.C. vide responsibility the central council is mandated with the arrangements and accountability of funds and properties for the achievement of the objectives of A.I.C. from other than local resources which are to be used as designated by the donors.

At page 37 there is provision for establishment of a property/station management committee. Each church council has to establish its own property/station management committee as provided by the By laws of the church. The committee is responsible for the development of properties, the supervision and management of the properties and stations. The Board of Trustees of the central, church council hold the property/station management committee responsible through their executives for the running and care of the properties.

The same constitution makes provision for the establishment of a Board of Trustees at page 43. The Board of Trustee comprise not more than 15 members including the Bishop, Assistant Bishop and members of the regions of A.I.C. appointed by the central council. The Administrative Secretary (Assistants) and Accountants attend meetings by invitation without vote.

The responsibility of the Board of Trustees are set out at page 43 as:-

- (1) To receive and hold safely all properties belonging to the African Inland Church Kenya.*
- (2) To keep in the bank or in the Head quarters of the Africa Inland Church Kenya all documents related*

to their functions.

- (3) To ensure that copies of title deeds are given to the relevant councils, departments, institutions in whose area of jurisdiction, specific plots/properties are situated.*
- (4) To ensure that the delegation of responsibilities are properly communicated to the councils and property/station management committee.*
- (5) To give a written report to the central church council once a year.*

The exercise of functions of the Board of Trustees are to be carried out within the limitations at page 45. These are:-

- (1) The Board of Trustees is responsible to the central church council for all its actions.*
- (2) No property may be bought or sold by the AIC except by specific decisions and action of trustees as approved at a meeting of the trustees called for that purpose.*
- (3) No property may be transferred, loaned or borrowed by the AIC, except by specific decisions and action of the trustees as above.*
- (4) Any decision of trustees related to No.2 and 3 above shall have to be approved by the central church council.*

By virtue of the property being vested in the trustees, in addition to the requirements that the said trustees do operate within the AIC constitution which requires them to be subject to the central church council, by virtue of them being trustees, they are also required to comply with the provisions of the trustees (perpetual successions Act Cap.164 Laws of Kenya. Section 3(1) and (b) thereof states.

“Trustees who have been appointed by any body or association of persons established for any religious, educational, literacy, scientific, social, athletic or charitable purpose or who have constituted themselves for any such purpose may apply to the minister in the manner provided in this Act for a certificate of incorporation of the trustees as a corporate body”

3(3) The trustees shall thereupon become a body corporate by the name, described on the certificate and shall have perpetual succession and a common seal, and power to sue and be sued in their corporate name and subject to the conditions and directions contained in the certificate to hold and acquire, and by instruments under the common seal to convey, transfer, assign charge and devise any movable or immovable property of any interest therein now or hereafter belonging to or held for the benefit of the trust concerned in the same manner and subject to such restrictions and provisions as trustees might so do without incorporation.

(4). The certificate of incorporations shall vest in the body corporate all movable and immovable property and any interest therein belonging to or held by any person or persons for the benefit of the trust concerned”.

Other relevant provisions worth noting are that section 3 (2) empowers the minister to grant a certificate of incorporation to the trust. The certificate so granted would contain certain information such as:-

Qualification and number of Trustees, their tenure and avoidance of office, mode of appointment, use and custody of the common seal, the movable or immovable property which the trustees may hold and the purpose for which the property is to be held.

Other considerations under the Act are that vacancies in the Board of trustees are required to be filed whenever they arise and that the existence of the certificate of incorporation is sufficient proof of the

existence of the trust. There is provision for variation in the trust deed. There is also requirement that the said trust deed be registered with the Registrar of documents.

The constitution of the A.I.C. does not give the details and qualifications of the trustees. The documentation displayed herein does not disclose whether the Board of Trustees has been established or not.

On discipline there is provision at page 45 of the constitution to the effect that any person or group of people, church or a group of churches who shall enter into inappropriate activities with the intention of upsetting the good relationship of the A.I.C., and thereby undermine or preventing the basis, constitutions, Aims, activities and ministries of the A.I.C., shall be warned in accordance with Mathew: 15-15 (a). If the warning is resisted the church council will take disciplinary action which may lead to Mathew 18: 17(b).

The net result of the foregoing assessment on the issue of locus standi of the A.I.C. to bring suit on its own and on the locus standi of the 1st – 4th Plaintiff to bring the Action on behalf of the AIC as well as the right to protect the property of AIC leads to the following findings.

(1). As per case law cited herein earlier on, locus standi of A.I.C is to be determined by the provisions of statute creating the society and its constitution. This court has ruled that despite the exemption from registration under the societies Act, A.I.C. as a society is still subject to the provisions of the said Act. This court has perused the same and construed the relevant provisions and arrived at the conclusion that the said Act does not provide guidelines as regards representation in civil litigations both in the main Act as well as guidelines on what should be contained in the constitution as per the schedule made there to.

(2). As for the Constitution, the provisions set out herein relating to the preamble, Aim and doctrinal basis of the church, do not advocate for litigation. This is borne out more particularly by the fact that the church structure and the organization does not provide for a legal department. Neither does it provide for the post of a legal officer within its establishment.

Further it is specifically provided that matters of discipline are to be dealt with in accordance with the biblical provisions on the subject. This is proof that litigation is not anticipated.

(3). The plaintiff 1-4 have asserted that they are validly elected. By virtue of position ascribed to them, they qualify to be called chief officers of the A.I.C. They therefore qualify to be members of the central church council. Their mandate is clearly defined in the constitution. They are subject to the central church council. From the A.I.C. Constitutional Provisions, the central church council transacts business through meetings. It would therefore appear that in order for any action taken on behalf of A.I.C. to be valid, it has to be sanctioned by the central church council. Such sanctioning would be proved by presence of resolutions passed during properly convened meetings.

This court has traced on record among a bundle of documents marked annexure DME minutes of A.I.C. Kenya central church council meeting at A.I.C. Ziwani on 21-22-03.07. This court has perused the said minutes. Vide minute 21/22/03/BK/07, it is noted that there is mention that those elected at A.I.C. Milimani on 14.02.07 had been registered as the officials and care was to be taken to ensure that there are no parallel officials who had been registered. It is further noted that the church had written to the Registrar and the process of deregistration of such (rival) leaders had commenced. It is noted that the government was to be requested to restrain those purporting to be A.I.C. officials from continuation to do so, the law was to be applied to the later. Further that *“the office of the Bishop needs to be empowered to take any further action they deem necessary. A total of 9 resolutions were passed under this minute. Resolution 5 reads “The office of the Bishop shall use all legal means possible to stop the rebels from using the name of the church and church property to propagate their cause”* These statements can be taken to be general administrative empowerment. It does not amount to authority to file suit. In the premises this court is satisfied that there is no authority from the central church council authorizing the four plaintiffs 1-4 to file suit on behalf of A.I.C.

(4). As for the right to protect the property of the church, the minutes quoted above annexed as part of DME gave general administrative power to the office of the Bishop to take measures to protect, the church property. These however, cannot be taken to override the constitutional arrangements concerning protection of the church property. The constitutional provisions set out herein reveal that the A.I.C. has put in place structures to protect its property right from the local church councils, through the District and Regional church councils up to the Board of Trustees culminating in the overall authority being vested in the Central Church Council. This would mean that any preservative order which is to be made by this court has to respect the A.I.C. constitutional arrangement. These provisions enjoin the Board of Trustees if properly established in accordance with the trustees (perpetual succession Act) Cap 164 Laws of Kenya to move to Court in their own corporate name and file suit for the protection of church property.

In view of the A.I.C. constitutional provisions mandating the local, District, regional and central church councils to look after church property under their respective jurisdiction, it was necessary for the said resolution in order to hold to specify the type of property to be protected. The blanket authority does not therefore hold.

(5). Turning to the 1st to 4th Plaintiff. It is evident from the annexures DMB that it contains a schedule of A.I.C. elections right from local to central church councils. Vide a letter dated 21st January 2007, the Registrar of societies was notified that central church council would hold its elections on February 14th 2007. There is a form annexed showing that indeed the said elections were held and Rev. Silas Yego was elected as Bishop, Rev. Geoffrey Gichure as assistant Bishop and Rev. Simeon Otiende as the treasurer. There is a communication to the Registrar of societies notifying the Secretary A.I.C. that the three had been registered as officials of A.I.C. They have therefore moved to Court to protect their position as officials.

As noted earlier on, the A.I.C., constitution does not provide for litigation by the members or officials in their own right or on behalf of the A.I.C. The question is whether by virtue of these provisions the plaintiff 1-4 stand non suited. In the case of **GATHUNA VERSUS AFRICAN ORTHODOX CHURCH OF KENYA [1982] KLR 356**, in which the appellant was a Bishop in the African Orthodox church of Kenya until he was defrocked and deposed to the position of a layman by the Holy Synod of the Apostolic and Patriarchal throne of the Greek Orthodox Patriarchate metropolitan of Alexandria, the church moved to court for an injunction restraining the appellant from interfering with the affairs of and claiming to be a Bishop of the church. The application was allowed. A Preliminary Objection, was taken that the Court had no jurisdiction to entertain matters involving ecclesiastical law and that a judgment of the Holy Synod was not a foreign judgment and therefore could not be enforced in Kenya was overruled. The court held that Kenyan courts had jurisdiction and that the judgement of the Synod was enforceable in Kenya as foreign judgment.

On appeal the CA held inter alia that the matter before court was not concerned with ecclesiastical law. The matter concerned a dispute between and within members of a society registered under the societies Act Cap 108). The court has jurisdiction in a suit by such a society registered under the Laws of Kenya.

(2). *A judgment of the Holy Synod of the church sitting in Alexandria is not a foreign judgment and is not enforceable as a foreign judgment in Kenya.*

(3) *Whenever a question of jurisdiction is raised, the court must take into account the issues and make a finding on it.*

(4) *Matters of mixed spiritual and temporal character with temporal consequences affecting legal rights fall within the High Courts jurisdiction but each case depends on its own pleadings and facts. The high court may exercise its discretion to hear or not to hear the matter.*

Although the Judgment of the Holy Synod is not a foreign judgement within the meaning of Section 9 of the civil procedure Act, such a judgment is relevant as evidence of the appellant's status in relation to the society.

In the case of **HINGA AND ANOTHER VERSUS P.C.E.A. through REV. DR. NJOYA (1986) E.A. 317**, the Plaintiff moved to court to seek an order restraining the 1st defendant, a church organization, from inducting the 2nd defendant as a cleric. At the inter parties hearing, two preliminary points were taken namely:-

- (1) That the issues raised in the plaint were not justiciable in law.
- (2) That the suit was incompetent because in bringing a court action against a church, the plaintiffs should have filed a representative suit in accordance with order 1 rule 8 of the Civil Procedure Rules.

Aluoch J. as she then was (now JA) held thus:-

- (1). *In order for an issue to be justiciable, it must constitute a cause of action in law and it must be an issue concerning a right to property, contract or any other legal right.*
- (2). *The issue must not be a domestic matter that can be dealt with by the laws and regulations concerning a particular body or organization.*
- (3). *The issues complained of in the plaint were issues touching on the conduct and integrity of the 2nd defendant as a priest and the constitution of the PCEA Church made sufficient provision for dealing with those complaints. The issues before the court were not therefore justifiable*
- (4). *A Court of law should be slow in interfering with church matters unless the rules of natural justice were being violated. In this case the court was satisfied that there was no such violation.*
- (5). *As the procedure laid down in the constitution had not been exhausted the case had come to the court prematurely.*
- (6). *As this was a course of action against a church, the plaintiffs should have filed a representative suit in accordance with order 1 rule 8 of the Civil Procedure Rules naming the office of the PCEA Church as defendants.*

There is also the case of **MBUGUA VERSUS OLANG AND ANOTHER [1989] KLR 595**. in which the Plaintiff filed suit against the Archbishop of Kenya and the Diocesan Synod of Nairobi, challenging what he termed as their decision to write a letter to him intended to terminate his services as a clergy of the church. On an application to discharge an interim injunction and strike out the second defendant from the proceedings on the ground that it was not a proper party to the suit. Hancox J. (as he then was (rtd as JA) held inter alia.

- (1) Recourse to summary procedure should only be had in plain and obvious cases.
- (2) The court would not arrogate to itself powers to decide on matters which are not ordinarily justiciable by the courts and pronounce upon the conclusiveness or otherwise of the decisions taken in respect of disciplinary matters affecting the clergy. The court could however step in to correct clear breaches of natural justice.

Applying the foregoing decisions to the facts of this case, one of which is a court of appeal decision binding on this court, while the other two are decisions of Courts, of concurrent jurisdiction, the guiding principles derived therein by this court are that, in order for a court of law to intervene in matters affecting a church organization such as the A.I.C. herein, the court has to ensure that:-

- (i) There is a cause of action disclosed.
- (ii) There is a threat of breach of rules of natural justice either by the institution or the official named.

(iii) The institutional constitutional preliminaries must have been exhausted.

Applying these to the facts herein, it is clear that the plaintiffs 1-4 assert to be the rightful officials of the A.I.C. as opposed to the defendants who also allege to be the rightful officials of the same church. An issue arises as to which of the two rival camps comprises the rightful officials of the A.I.C.. There is therefore a triable issue hence a cause of action for determination:

(ii) If the court declines to hear the plaintiffs, that will result to a breach of natural justice.

(iii) This court has already ruled that the A.I.C. constitution does not have an inbuilt dispute resolution mechanism. This absence leaves the aggrieved parties may they be adherents, officials or A.I.C. itself as an institution with no option but to tap on the unlimited jurisdiction of the High Court conferred by Section 60 of the Kenya Constitution to resolve the matter so long as the proceedings are initiated within the provisions of the A.I.C. Constitution.

In addition to the foregoing principles, this court would like to add that access to justice by any litigant is a basic right. Section 77 (9) of the Kenya Constitution makes provision that a court or other adjudicating authority prescribed by law for the determination of the existence or extent of a civil right or obligation shall be established by law and shall be independent and impartial and where proceedings for such a determination are instituted by a person before such a court or other adjudicating authority, the case should be given a fair hearing within a reasonable time.

Section 82 (1) and (2) on the other hand makes provisions inter alia that “*subject to sub section 4, 5 and 8 no law shall make any provisions that is discriminatory either of itself or in itself and subject to subsection 6,8,9 no persons shall be treated in a discriminatory manner by a person acting by virtue of any written law in the performance of the functions of a public office or a public authority*”.

This court, is a public institution, established by law, to adjudicate over disputes, of whatever nature, and it will be wrong for it to decline jurisdiction solely because the constitution of A.I.C. does not make provision for the same, subject of course to the same having been procedurally initiated. Herein there is a leadership wrangle within the church. There is room for the dispute to be resolved within internal mechanism but until that is resorted to by both parties, the court, has a duty to hear the dispute.

In addition to section 77 (9) of the Kenyan Constitution, it is also worth mentioning that this court too is bound by provisions in Regional and international human rights instruments that Kenya as a nation is party to. Article 7 and 8 of the Universal declaration of human rights, Article 14 of the international covenant on civil and political rights, and article 7 of the African Charter on human and peoples rights all enjoin state parties to those instruments to guarantee equality before the law, a right to one to have ones cause determined by a competent court or tribunal however incompetent it may be, guarantee for an effective remedy from a competent tribunal.

These provisions in both regional and international treaties derive their binding effect on this court by virtue of Article 26, 27 and 46 of the Vienna convention on the law of treaties. They provide:-

“Article 26 every treaty in force is binding upon the parties to it and must be performed by them in good faith. Article 27 – A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46. Article 46 – A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as in validating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

(2). A violation is manifest if it would be objectively evident to any state conducting itself in the matter in accordance with normal practice and in good faith”.

The treaty provisions just go to fortify the Constitutional provisions that the door of access to justice is always open to any litigant who feels aggrieved irrespective of whether the constituting instrument makes

provisions for such an access or not.

On that account the court makes a finding that plaintiff 1-4 have locus standi before this court to agitate their own cause as regards their status as the now duly registered officials of A.I.C which position is being contested by the defendants. They however do not have locus standi to agitate the cause for the protection of property belonging to A.I.C. as that mandate is vested elsewhere as shown above by the Church's Institution which provisions in this courts opinion cannot be overridden by the general administrate remarks or directives in the minutes referred to herein.

The case of Plaintiff 1-4 as demonstrated by their deponements and annexures is that they were elected as officials of the 5th Plaintiff on 14.2.07 and were duly registered on 15.02.07 as official of A.I.C. by the Registrar of societies. That as contrasted by the defendants who held their election on 13.02.07 and unsuccessfully sought to be registered as officials of the A.I.C. but their request for registration as officials was declined by the Registrar of Societies because another set of officials had already been registered.

The principles of law that the applicants are required to satisfy are already set out in the assessment. The duty of this court is just to determine whether or the set of facts displayed herein the applicants are within all or some of these principles and if so what the implication of the revealed status is. The Court has to bear in mind is that the bone of contention is the right or mandate to lead the A.I.C. as a church organization.

A. Those established by **GIELLA VERSUS CASSMAN BROWN (supra)** are prima facie case with a probability of success, irreparable injury which cannot be compensated for by way of damages and the balance of convenience.

On the ingredient of establishing a prima facie case, the Court is of the opinion that there is proof elections were held, officials elected and the said officials were registered by the registrar of societies. There is also proof that the defendants had held an earlier election on 13th February 2007 but did not move fast enough to have their officials registered before those of the plaintiffs. By the time their request reached the registrar of societies, the plaintiffs' had already been registered leading to the registrar declining to register the defendants. From the deponements and submissions of the defence, they defendants have not accepted the plaintiffs stand and position to be the correct position. There is therefore a contest. This means that at the end of the trial, the court will be called upon to inquire into the legality of both elections and then determine which election is to be upheld and which one to be upset. The upholding and or upsetting either of the two elections will have a bearing on the status of officials paraded by each camp. Should the court uphold the plaintiff's camp, then the elections will be confirmed. For this reasons the court is satisfied that the plaintiff 1 -4 have an arguable case with a probability of success.

On the ingredient of suffering irreparable damages, the test is whether the injury likely to be suffered if the injunctive relief is withheld can be compensated for in damages. The yard stick for measuring irreparable damage which cannot be compensated for by way of damages is set out in the persuasive authority of **FILMS ROVER INTERNATIONAL LTD AND OTHERS VERSUS COMMON FILM SALES LTD (supra)** which is that "*the Court has to determine whether the injustice that would be caused to the defendant if the plaintiff was granted an injunction and later failed at the trial, outweighs the injustice that would be caused to the plaintiff if an injunction was refused and he succeeded at the trial.*" A long side this yardstick is also the exception to the damages rule where there exists sentiments which cannot be compensated for by way of damages as was the position, in the case of **MWATHI VERSUS KENYA COMMERCIAL FINANCE CO. (supra)**. Other instances are where the defendant has breached the law like in the case of **AIKMAN VERSUS MUCHOKI 1984 KLR 353**. This is a Court of appeal decision. The salient features of this decision is that equity does not assist law breakers.

(ii) A wrong doer cannot keep what he has unlawfully taken just because he can pay for it.

(iii) An injunction can be granted even where liability is in dispute on the basis of contingent liability yet

to be ascertained.

In this category there is also the case of **WAITHAKA VERSUS INDUSTRIAL AND COMMERCIAL DEVELOPMENT CORPORATION [2001] KLR 374** A DECISION OF A Court of concurrent jurisdiction by Ringera J. a she then was. The salient features of the decision is that even where damages would be an adequate remedy an injunction can issue where the opponent has acted in a high handed and oppressive manner.

Applying these principles to the facts demonstrated herein, it is the finding of this Court that this is one of the cases falling within the exceptional rule of damages not being an adequate compensation, not because the resultant injury to the plaintiff will be irreparable, but because of the peculiar nature of the case. The quarrel is over leadership of the church. There is both sentimental value and prestige that accompanies the high profile positions both within and without the church. This cannot be compensated for in terms of money.

There is also the issue of who is the right party to pay damages is it the officials personally, or the members of the church. Ordering the officials to pay personally. When they were vying for seats to run the affairs of the church, would be too unjust and unfair to them if not punitive. Likewise to order the members of the church to pay damages for the wrangling of officials would be too punitive to the church and is likely to cause hardship as well as disharmony. The case is therefore a proper candidate for the grant of an injunction as opposed to an award of damages. It should be noted that there may be some element of monetary gains, in terms of emoluments and other benefits and privileges that accompany the office. In this courts; opinion this weigh less than the injustice and hardship that the general members of the church would be ultimately be called upon to shoulder on behalf of their quarreling officials. Status quo would be appropriate notwithstanding that there has been no demonstration of law breaking as well as high handedness and oppressiveness on the part of the opponent. What appears to have happened here is that each camp marshaled support from their own followers, and then held rival elections on different dates and at different venues and one party rushed to register its flag bearers ahead of the other.

As for the balance of convenience the court is of the opinion that since the matter involves church leadership and one party has already registered itself and both have not initiated measures to have the matter resolved amicably, it is only fair that status quo do remain pending the hearing and determination of the suit limited to the holding of office of Plaintiffs 1-4 only.

The granting of the said status quo has to bear in mind that the life span of the office holding is five years. The court has to guard against one party being given an open ended licence to run the full length by delaying the determination of the matter till after the period shall have expired. This therefore calls for the court to attach conditions to the said relief to prevent any mischief that may result should the beneficiary choose to use the injunctive relief both as a shield and sword at the same time.

At the beginning of the assessment of the facts by this court, the Court, noted that the plaintiff/applicant appear to be seeking the interim relief on three fronts namely:-

- (i) on their own behalf as the alleged duly elected officials of A.I.C. and who are also duly registered with the Registrar of societies and as such, they are the only proper ones who are properly mandated to run the Affairs of A.I.C. as opposed to the defendant/respondents which mandate, needs protection.
- (ii) That being so mandated as in no(i) above they are proper persons to protect the property of A.I.C.
- (iii) That being so mandated as in no(i) above, they are the proper persons to champion the interests of A.I.C. as a society.

In the course of the assessment this court has also noted that they plaintiffs/applicants have asserted that the facts presented satisfy all the three ingredients required for the granting of the injunctive reliefs namely.

(i) a prima facie case with a probability of success.

(ii) That the nature of the facts presented do not warrant an award of damages and lastly that the balance of convenience is in their favour.

When these assertions are related to the reliefs sought and considered in the light of the findings of the court as set out in the body of the ruling, the court has arrived at the conclusion that it will not be advisable and or prudent to allow the prayers as sought in prayers 4 and 5 in a blanket form as sought. This is so because the prayers contain several reliefs intertwined together, some components of which have been ruled not to be allowable for reasons given in the assessment, while others have been ruled allowable. This has made it imperative on the part of the Court to sift through those prayers and identify the reliefs that can be granted at this interim stage and those that cannot be granted at this stage.

For example in prayer 4 alone the injunctive relief seeks to restrain the defendants/respondents from:-

(i) purporting to be national officials of A.I.C.

(ii) purporting to seek endowment on the pretext that they are the national officials of A.I.C.

(iii) from defaming the plaintiffs by purporting to be bona fide officials of A.I.C.

(iv) from attempting to obtain, control and or management of and or custody or occupation of A.I.C. facilities together with the assets (movable and immovable).

(v) From interfering with the leadership of A.I.C..

Prayer 5 on the other hand seeks to restrain the defendant/respondents from exercising any powers vested in the National officials of A.I.C. or any other organ established in the constitutions of A.I.C., the societies Act, the constitution of Kenya or any other powers that National Officials of A.I.C. and other office bearers of a church exercise with respect to A.I.C.

It is this court's considered opinion, granting prayer 4 and 5 in their blanket form will render nonsense the A.I.C. Constitution on the basis of which the plaintiffs assert their claim to the reliefs sought. Further it is likely to interfere with the smooth functioning of the entire A.I.C. structures as mandated under the said constitution and as demonstrated in the assessment herein.

For the reasons given the final orders of this court on this interim application are:-

(1) No prima facie case with a probability of success has been demonstrated on the facts displayed, as regards the right of the plaintiff number 1-4 to champion the interim relief on behalf of the A.I.C. because:-

(i) The preamble, Aims and doctrinal basis, disciplinary provisions as well as the church structure does not provide for an in built mechanism for litigation on behalf of the A.I.C.

(ii) The societies Act Cap.108 Laws of Kenya only provides for representation in criminal prosecutions and not civil litigation.

(iii) No (i) and (ii) above notwithstanding A.I.C. as a juristic entity can access the seat of justice at the unlimited jurisdiction of the high court via Section 60 of the Kenyan Constitution and the provisions dealing with fundamental guarantees of human rights provided for in Sections 77-84 of the same Kenyan Constitution. Such access is conditional to the action being authorized by the central church council. No such authority was given to the Plaintiff by the central church council.

2. No prima facie case with a probability of success has been demonstrated on the facts displayed herein as regards the right of plaintiff number 1-4 to seek an interim relief to protect and safeguard

property belonging to the church because;

(iv) The A.I.C. constitution to which Plaintiff number 1-4 are subject and from which they drew strength to come to court makes provisions mandating the local, District and Regional Church Councils to safeguard church property within their jurisdictions:

(v) The same constitution creates an in built institution of a Board of Trustees charged with the mandate of protecting and safeguarding of church property.

(vi) The mandate in number (i) and (ii) above is subject to the central church council. This means that in order for the action of Plaintiff number 1-4 to hold, it should be accompanied by authority from the central church council which is lacking. There is therefore no locus standi in plaintiff 1-4 to seek protection of the church property.

(3) Injunctive relief sought for defamation and police action is declined for the reason that the complaint for defamation is on procedurally laid as it is not anchored on a defamation suit. Where as that relating to police action is in the wrong forum as the court has no supervisory powers over the police force in the discharge of their investigative duties, save where such supervisory powers are involved via judicial review.

(4). There is a prima facie case demonstrated on the facts displayed herein entitling plaintiffs 1-4 to an interim injunctive relief to protect their position as the current national officials of A.I.C. pending hearing and determination of the suit because:

(i) There is proof that elections were held though disputed, plaintiffs were elected in that forum, their names were forwarded to the Registrar of societies and were registered as national officials ahead of the defendant's respondents.

(ii) There is an obvious leadership struggle within the leadership, of A.I.C. between the Plaintiffs camp and the defendant's camp which needs to be resolved either amicably or through litigation. Since no amicable settlement has been initiated, it is only proper that status quo be maintained pending hearing of the suit.

(vii) The nature of the claim staged herein, namely a right to leadership though it carries with it some financial gain, more of it lies in the sentimental and prestige gain factors, which cannot be compensated for by way of damages. This is so because it will be unfair to visit the issue of damages on the defendants and through them to the general church membership as the defendants have staged a claim not so much for their own comfort but allegedly for the benefit of the church. In the circumstances an order of status quo would be appropriate.

(viii) The balance of convenience is also in the Plaintiffs favour as they have been registered by the Registrar of societies and can safely be regarded as the current National officials subject to upsetting the elections which brought them into office..

(5) In view of the nature of the scenario displayed herein, there is urgent need for a speedy disposal of the matter. Justice therefore demands that the grant of the relief in number 4 above be conditional to:

(i) The Plaintiffs moving with utmost speed to ready the suit for hearing and disposal within 60 days from the date of the reading of the ruling.

(ii) In default of number 5(i) above the interim relief granted in number 4 above shall stand lapsed.

(6). Due to the nature of the litigation subject of these proceedings interests of justice demands that each party do pay its own costs and it's so ordered.

DATED, READ AND DELIVERED AT NAIROBI THIS 11TH DAY OF MARCH 2008.

R.N. NAMBUYE

JUDGE