



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 44 of 2007**

**REVEREND HUDSON  
JUMBA.....PLAINTIFF**

**VERSUS**

**THE PENTECOSTAL ASSEMBLIES OF GOD  
(NGARA CHURCH) & 9 OTHERS.....  
DEFENDANTS**

**RULING**

The plaintiff filed this suit against the defendants jointly and severally for judgment for:-

- (a) A Permanent Injunction to restrain the 10 Defendants, their respective agents, servants assigns successors and/or personal representatives, jointly and severally from continuing to interfere, obstruct and/or purporting to demand the expulsion of, suspend and/or expel the plaintiff from the position of pastor of the Pentecostal Assemblies of God – Kenya Ngara Church Assembly within Nairobi Area during the duration of the plaintiffs appointment for a term of 4 years with effect from 28<sup>th</sup> November 2004.
- (b) The dispute between the parties therein he referred to arbitration pursuant to the Provisions of Article 23, 24, 25 and 26 of the Pentecostal Assemblies of God, Kenya Constitution 1998.
- (c) Costs of the suit.

Simultaneously with the Plaint the plaintiff brought a Chamber Summons under Certificate of Urgency dated 22<sup>nd</sup> January 2007 seeking similar prayers as those contained in the plaint.

The application is based on the ground that the Defendants/Respondents have threatened to expel the applicant from the position of Pastor at Ngara Church Assembly.

The applicant appeared before the Duty Judge ex parte and the judge certified the application as urgent and ordered that the applicant do serve the defendants and the application be heard inter partes on 31<sup>st</sup> January 2007. Service was effected and the respondents filed a Replying Affidavit which was sworn by HUDSON GUZIRA MAGOMERE the 8<sup>th</sup> defendant. The defendants also appointed the firm of

Makhandia & Makhandia Advocates to represent them.

On 12<sup>th</sup> February 2007 the plaintiff raised a Preliminary Objection based on the ground that the firm of Makhandia & Makhandia & Co. Advocates are not legally authorized by the First Defendant to act on its behalf under the Societies Act (Cap 108 Laws of Kenya

that the Replying Affidavit sworn by the 8<sup>th</sup> Defendant on 30<sup>th</sup> January 2007 and further affidavit sworn on 8<sup>th</sup> February 2007 are fatally defective and contravenes the Provisions of the Oath and Statutory Declarations Act (Cap 5 Laws of Kenya) and also the Provisions of Order XVIII Rule 6 of the Civil Procedure Rules.

Jaoko counsel for the applicant submitted that the firm of Makhandia & Makhandia & Co. Advocate's instructions to represent the defendants was irregular as it contravened the provisions of Article 12 (1) of the Constitution of the Church which provide that the General Superintendent shall be the head and official spokesman of the church.

Mr. Mugala counsel for the Respondent in opposing the Preliminary Objection submitted that the plaintiff cannot purport to act for the defendants as to who should act for them. The said firm of Makhandia & Makhandia Co.

Advocates was duly instructed to act for the defendant and it is properly on record. The second issue raised by the plaintiff is the swearing of the Replying Affidavit.

He submitted that the deponent had the authority of the co-defendants to swear the same. The 8<sup>th</sup> defendant is just one of the defendants. With due respect to counsel, what position a party holds in an organization is a point of fact and not a point of law and once evidence is required to prove an issue, it ceased to be a point of law and becomes a point of fact and hence outside an issue to be raised as a Preliminary Objection.

Secondly where several persons are sued in a suit it is upon them to authorize one of them to swear an affidavit. The defendants having authorized the 8<sup>th</sup> defendant to swear the Replying Affidavit on their behalf there is no irregularity.

For the reasons stated above the plaintiff's Preliminary Objection is dismissed with costs to the defendants.

Dated at Nairobi this 19<sup>th</sup> day of February, 2007.

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**J.L.A. OSIEMO**

**JUDGE**