



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE**

Civil Case 168 of 2007

HUMPHREY GOREN.....APPLICANT

=VERSUS=

REV. JOSHUA KIPKEMEI,

REV. JONTHAM MATIVA,

**REV. ELKANA SALAMBA AYIGA (SUED IN THEIR CAPACITY AS TRUSTEES
OF PENTECOSTAL ASSEMBLIES OF GOD CHURCH – KENYA.....DEFENDANTS**

RULING

In this application, the Applicant, a Pastor of the Pentecostal Assemblies of God Church – Kenya (PAG) attached to the Mukuyu P.A.G. He is seeking an injunction to restrain the Defendants, their agents and /or representatives from holding a convened General Conference scheduled for 12th to 16th December,2007 or any other future General Conference pending the hearing of the suit.

The two main reasons for the suit and application are:-

- (1) There is no Church Administrator to record proceedings of the said Conference and there being no provision in the Church's Constitution for an alternative person to record the said proceedings, then the Scheduled General Conference shall be a nullity for all intents and purposes for being improperly constituted.
- (2) That the Conveners of the General conference have failed to give a proper notice of the Conference inviting the Committee Members to the Conference as stipulated under Article 12.1 (f) of the Church Constitution.

It is my view that once a member of church is allowed to join the church there at that point is created a contractual relationship that he shall submit himself to the provisions of the Church Constitution and be bound by them. Equally, the church is bound to respect; comply with, enforce and protect the said Constitution the basis upon which it is established and exists in law.

As stated in the Court of Appeal decision in **TANUI & 4 OTHERS =VRS= BIRECH & 11 OTHERS (1991) KLR 510 at 511** – where it is shown that such an organization is conducting its affairs in a manner contrary to its Constitution and to the detriment of its members, then the High Court and the Court of Appeal would not only be entitled to but under a duty to compel it either by injunction or otherwise to obey its Constitution.

I have carefully studied Article 13.1 under which an Administrator is appointed. The Administrator from

the terms of reference is an employee and appears to be the Chief Executive Officer of the day to day management of the Church. He is not a Spiritual Leader, Council member, Executive Committee Member or Trustee.

One of his duties would be to be the recording Secretary of all Executive Committee and the Conferences. However, my interpretation is that this is one of his functions or duties. He would keep the minutes. I do not see any provision that states that he shall be the only person who can keep records at Executive Committee Meetings and Conferences of all types.

Constitutionally, the General Secretary is the Secretary of all the National Conferences, the Executive Committees and all the Credential Committees – Article 12.2.

I would think that the General Secretary would have the mandate, power and authority to record the proceedings or deliberations of the Conferences. I see nothing prohibiting him delegating such a routine function to a responsible, literate and qualified officer of the Church or even pastor or Cleric. Again the Executive Committee being the immediate Superior and appointing authority of the Administrator is not barred from delegating the simple function of keeping minutes of a Conference to another officer.

As a result, I hold on a prima facie basis that the Absence of the Administrator to record proceedings at tomorrow's Conference would not render the proceedings null and void.

The General Secretary and Executive Committee appear to have the authority to delegate this function to any other person.

On the question of Notice – under Article 12.1 the Convener of all National Conferences shall give notice of not less than three months.

In such a case, the burden or onus of proof would be upon the Defendants to show that they gave 3 months notice for tomorrow's National Conference.

In their Reply, the Defendants refer to notice dated 19th July, 2007. I have carefully looked at the said purported notice. I do find that it is not and cannot be a Notice for the National Conference Scheduled for 12-16 December 2007. It has no agenda, does not give any date and venue of the meeting set for tomorrow. It is not the 3 Months' Notice envisaged. There is no proof it was served or given to the persons required to attend the meeting including the Applicant.

What this Court finds quite certain is that by 3rd September, 2007, the Applicant appears to have had the minutes of meeting of Kongoni District Committee which proposed the National Conference of 12th – 16th December. The meeting was to be attended by, inter alia, pastors of which he was one. The Pastors were to collect contributions for the Conference on 4/11/2007. By his letter of 27th November the Applicant questioned legality or regularity of the intended General Conference. He set out his grounds and asked for intervention of the Appeals and Arbitration Tribunal.

It is clear therefore that by 3rd September, 2007, the Applicant seemed to have been aware of the meeting. How did he know of the meeting? How did he receive the minutes of the Kongoni meeting?

Again, there is no reference as to how the 3 Months' Notice was to be served. Counsel says that by personal service or through the media. This Court cannot dictate to the Church how to serve the notices. It was the duty of the Applicant to show the required mode of service of the notices. Reasonableness would suggest personal service, registered post or public announcement.

As stated by the Applicant, the people to attend the meeting were not all ordinary members of the church or congregations. They were qualified persons designated by the Constitution including pastors.

There is therefore some doubt as to the correct procedure of mode of service. Secondly, the demeanor

and conduct of the Applicant has placed this Court on the inquiry. He knew of the intended meeting by 3rd September 2007. He raised his complaints and appealed for arbitration on 27th November, 2007. He filed his suit on 7th December, 2007.

After obtaining an order certifying the application as urgent on 7/12/2007, he did not serve the application until 10th December 2007. I think he could have served by 8/12/07 at Nyangori considering the implications of the stoppage of the General Conference.

The Applicant who did not serve a hearing notice clearly showing that the hearing would be at Eldoret High Court. The Defendants despite the short notice prepared their documents and rushed to the High Court at Kitale as shown on the papers. Counsel appeared in Kitale in the morning only to be told that the matter was being heard at Eldoret since the Resident Judge was on leave. The Applicant had appeared before me on this basis.

The Conduct and demeanor of the Applicant shows that he did not come to this court promptly. He waited until such Conference of this magnitude had been arranged for and expenses incurred that he rushed to this Court. This suggests lack of good faith in the matter. The actions of this morning adds weight or credibility to this conclusions.

An Injunctive order is an equitable remedy. One must come with clean hands. The calculated delays of the Applicant and the attempt to mislead the Defendants on the venue of the hearing does not place the applicant within the Court's line of sympathy.

In any case, there is doubt on the correct or required mode of service of the notice under the Church's Constitution. Also the Applicant appears to have had actual notice of the meeting and knowledge well before the required 3 months. As a pastor and important member of the Church, he ought to have taken action earlier

In the premises, I hold that the balance of convenience is in favour of the General Conference going on and this application being rejected. The implications for the cancellation of the meeting are quite serious and prejudicial to the Church. The same cannot be said for the applicant, a single pastor who slept on any rights he had.

I therefore dismiss the application with costs to the Defendant/Respondents.

DATED AND DELIVERED AT ELDORET ON THIS 11TH DAY OF DECEMBER 2007

M.K.IBRAHIM,

JUDGE