



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT 29 OF 2005

PENTECOSTAL ASSEMBLIES OF GOD (K) suing through

JOHN JUMAPLAINTIFF

-VERSUS-

REV. JOHN MALWENYI & OTHERSDEFENDANTS

Coram J. W. Mwera, Judge

Musiega for Defendants/Applicants

Aboge for Plaintiff/Respondent

Raymond CC.

R U L I N G

The defendants placed before this court a chamber summons dated 18/10/2002. When Mr. Musiega rose to argue it, he abandoned provisions under Order 45 of Civil Procedure Rules and Section 3A Civil Procedure Act. He concentrated on Sections 35, 37, of the Arbitration Act No. 4/95, the Act. The prayers were that:-

- i) this court should not recognize and enforce an award of arbitration herein read on 28/9/2005.
- ii) the award should be set aside while the original dispute proceeds to hearing and determination.

The grounds listed in the application spoke of the award not stating the **place** and **date** (where and when) it was made and that this was contrary to the law. That the award was not signed by all arbitrators and no reasons given for those omitted. That the arbitral tribunal was not as per the agreement of the parties nor in accordance with the constitution of P.G.A - Kenya. It was in the grounds and arguments that the arbitral proceedings were not in accordance with the Act and the applicants were not given a proper notice of the appointment of arbitrators or the proceedings themselves and that the applicants were under capacity.

Mr. Musiega relied on the supporting affidavit of one Rev. John Malweyi with annexures thereto. The applicants, members/pastors of the P.A.G. Church got into conflict with the officials - the respondents. This court advised them and they went for arbitration as per their church constitution. An award followed. It was read in court. The applicants now want it set aside.

Grouping the prayers sought and following submissions by Mr. Musiega and Mr. Aboge, the court

adopted the following format regarding its determination.

1. Venue & Date: The venue was not stated in the award, that is so, but during submission, Mr. Musiega told the court that his clients were invited to and they attended arbitral proceedings at Nyangori P.A.G Church Headquarters. It seemed to have been appropriate to all. They knew the dates the proceedings went on and they attended. It is not stated and/or shown that absence of the date and place in the award prejudiced any party especially the applicants.

2. Composition: As well known to all parties, and therefore not requiring reproduction, Article 28 of the Pentecostal Assemblies of God - Kenya, Constitution (1998) sets out a total of eight people drawn from various groups to form an arbitral body in case a dispute arises as it did here. The disputants do not go out to propose who to sit on this body called the Appeals and Arbitration Tribunal. Its members' term in office is 7 years. The tribunal sits and hears all disputes and differences arising between and among members e.g of the pastors and executive committee as the case was here. The applicants included pastors who were suspended when they agitated for splitting what was termed a "district" of Goibei into two. The decision of this tribunal is final.

This church constitution does not say anything of the quorum at the tribunals sittings, manner of conducting meetings or replacement of any of its members who may die or resign. So it can be assumed that this tribunal conducts its affairs in a manner deemed fair, proper, open and at all times intended to minimize strains, stresses or other divisive acts in the church community. It must be assumed also to make its own rules/modalities of proceedings at its sittings including who takes the proceedings down and how. Accordingly this court, because it was not told otherwise, may be allowed to assume that the fair number of members attending a sitting to resolve differences is reasonable - half or more. In this case, five (5) members signed the award and that is considered fair enough. It is not said that they did not come from those listed in Article 28. Or that any side objected to the five (5) members arbitrating. That is not alleged or proved. So, all is assumed to have gone on well.

3) Signatures: Having said what it has said above about the quorum at the tribunal, and having perused the award as set out, this court is satisfied that the five (5) members who sat to deliberate on the dispute in question all signed the award acknowledging its content without dissent. It is a valid award which did settle the four points that the tribunal got from the material both sides presented to it. It is not alleged that the issues raised were not gone and decided on evidence. Indeed, even the big issue of suspending some of the applicants from their pastoral duties was determined and in their favour. The award stands.

4) Notice: Notices are served mainly to bring to the attention of its receiver of one thing or another. It may be presence, happening or other of a thing. The notified part is required/expected to do or not do one thing or the other as specified in the said, notices which should be served in good time. It then reacts one way or the other. Otherwise, if a party who ought to be served is given a short notice or none at all, yet a matter comes to pass to his prejudice, then on complaining, this court will listen to him with sympathy.

In this matter, Mr. Musiega spoke about notices to attend the tribunal proceedings. The court "advised" the parties to try the arbitration way with their dispute. They agreed to do it at their church headquarters. It has not been claimed that any side did not know of any sitting and therefore, suffered prejudice by not attending. Or is it alleged that any notice was too short to allow the party served to prepare adequately for any given sitting. In sum, both parties knew the dates for every session of the arbitral proceedings. They attended them and were heard. Thus, there is no valid complaint on account of notice.

5). The letter of 27.5.2005, Incapacity: Mr. Musiega combined these two points to the effect that the said letter was written to the applicants by one who was among the respondents. It was not said as to what was amiss with such an act, save that that put the applicants in a lower or subservient position with the respondents, while the law expected the two to be at par. And that the applicants were mere local pastors who were not as sophisticated or educated as the respondent's side. This court was not satisfied

that in any of the two aspects above, the applicants were dominated and they suffered. Apparently, the respondents went to the tribunal desiring it to declare that the applicants had not been submitting monthly returns. The tribunal did not agree. And as said above, the tribunal found the suspension of some of the applicants unwarranted and it was cancelled. It refused the applicants' wish to split their area, though. But all appears as fair as the situation warranted.

6). Fees: The court heard that no fees were paid to court, the mandatory Kshs 10,000/= before the award was registered and none has been paid since. Fair enough. In court when a matter is to be registered, a fee stated must be paid right away of as directed by the court, for that matter to be considered before it. Otherwise, the filed papers remain invalid for any further action.

Here after arbitration, either side having been interested in the outcome, had a duty on its own, paying the fee and requiring refund of the other side's contribution or simply each had to pay its portion to the court as the requisite fee.

The record shows that the arbitrators sent the award to court by their letter dated 15/7/2005, so that further action would be taken. It is this court's position that the filed and delivered award be returned to the arbitrators - particularly one N. O. Migiro, the author of the letter of 15.7.2005, to give the award the date of that day or any earlier one.

As for the fees, each side is ordered to pay half the required fee to the court, or if one side pays, the other to refund or as the parties may agree ON THE DAY the award is returned to court.

By fulfilling the two conditions above the award herein is recognized and will accordingly be enforced.

As for costs, may each side bear its own. They still belong to the same religious brotherhood and no doubt, peace amongst them comes foremost in their quest to serve the congregation.

In sum, orders are;

- 1) The award filed in court and read to the parties on 28.9.2005 to be returned to N. O. Migiro to date it.
- 2) Each said or as the parties may agree to pay half the requisite fee to the court for registration of the award.
- 3) From the date of returning and registering the duly dated award, the same to be enforced thereafter.
- 4) Each side to bear its own costs.

Delivered on 31st day of May 2006.

J. W. MWERA

JUDGE

JM/hao