



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

**Civil Suit 643 of 2000**

**KAMBI MAWE CENTRAL DISTRICT CHURCH COUNCIL....1<sup>ST</sup> PLAINTIFF**

**JULIUS MUTISYA .....2<sup>ND</sup> PLAINTIFF**

**PETER YUMA .....3<sup>RD</sup> PLAINTIFF**

**STEPHEN KITHOKOI .....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**AFRICAN INLAND CHURCH OF KENYA.....1<sup>ST</sup> DEFENDANT**

**BENSON MUTHOKA MULATYA .....2<sup>ND</sup> DEFENDANT**

**TITUS KIVONZI .....3<sup>RD</sup> DEFENDANT**

**R U L I N G**

(1) This Notice of Motion was taken out by Benson Muthoka Mulatya, the Second Defendant, on the 8<sup>th</sup> May 2003. He asked for a stay of the order of this court made on the 11<sup>th</sup> December 2002 pending the hearing of this application and for a review of two consent orders made on the 16<sup>th</sup> October 2002 and the 11<sup>th</sup> December 2002 respectively. The application is brought under Order 44 rule 1 of the Civil Procedure Rules on the ground that James Makori, Esq., Advocate who represented the Applicant had no authority to act for him in relation to those consent orders.

(2) In his supporting affidavit dated the 8<sup>th</sup> May 2003, the Applicant depones that the firm of Mwaura & Mwaura Waihiga, Advocates were duly instructed to act for the Defendants in this case. In paragraph 8, he says he did not instruct the Advocate to include clause 2 in the consent order dated the 16<sup>th</sup> October 2002 which made the decision of the Central Church Council of the African Inland Church of Kenya, the First Defendant, final. He also says the Advocate did not explain to him the terms of the consent order before it was entered and recorded in court. He also says that he did not instruct the Advocate to record the consent order of the 11<sup>th</sup> December 2002.

(3) On the 11<sup>th</sup> December 2002, learned counsel for all the parties appeared before Githinji, J (as His Lordship then was). Mr. Mutua appeared for the Plaintiffs and Mr. Makori for the Defendants. Mr. Mutua informed the Judge that there was an Award dated the 2<sup>nd</sup> December 2002 which he and Mr.

Makori agreed record as a consent except for item 4. Mr. Makori confirmed to the Judge that that was the correct position. After the Judge had recorded the consent order, he asked the Advocates to sign the record and they each did so. And the suit was then marked settled.

(4) Mr. James Makori swore an affidavit on the 26<sup>th</sup> February 2003 in which he said he was an Advocate in the firm of Mwaura & Mwaura Waihiga, Advocates, the Advocates on record for the Defendants. He said the Applicant was present in court when the consent order was recorded and he explained its terms to him. He also says that on the 11<sup>th</sup> December 2002, he had a meeting with the Applicant in his office and the Applicant specifically instructed him to enter the consent.

(5) Mr. Peter Yuma, the Third Plaintiff, also swore an affidavit on the 27<sup>th</sup> February 2003 in which he confirmed that all the parties, including the Applicant, attended court on the 16<sup>th</sup> October 2002 when it was agreed to refer the matters in dispute to the Central Church Council of the African Inland Church of Kenya whose decision would be final.

(6) The only other affidavit I need to refer to is one dated the 29<sup>th</sup> October 2004 made by Bishop Silas Yego who is the head of the A.I.C. Kenya. In it, he confirmed that the Council met, deliberated on the dispute and made an Award.

(7) There is clearly no substance in the claim by the Applicant that he did not instruct Mr. James Makori to record the consent. It is also not true that Mr. Makori did not explain to him the terms of the consents. Mr. Makori was counsel duly instructed in the matter. He explained in detail the steps he took including a meeting with the Applicant to discuss the terms of the consent. As between the accounts given by the Applicant and Mr. James Makori, I believe the account of Mr. Makori. I have no hesitation in holding that the Applicant has lied on oath.

(8) For the reasons I have given, there are no grounds for reviewing the orders by consent of the 16<sup>th</sup> October 2002 and the 11<sup>th</sup> December 2002 respectively as they were entered with the knowledge and full and informed consent of the Applicant. Mr. Makori was cross-examined at great length by Mr. Ndungi, learned counsel for the Second Defendant, on his affidavit and I thought Mr. Makori acquitted himself very well.

(9) In the end, I find no merit whatsoever in the Notice of Motion dated and filed on the 8<sup>th</sup> May 2003 and order that it be and is hereby dismissed.

(10) As this is essentially a dispute between members of the same Church which occurs quite often in Kenya, I will make no order as to costs.

Dated and delivered at Nairobi this Fifteenth day of December 2006.

P. Kihara Kariuki

Judge