



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL CASE NO. 566 OF 2003

PASTOR CHRISTOPHER PARK & 12 OTHERS..... PLAINTIFFS

VERSUS

KENNEDY W. MUSOKE & 3 OTHERSDEFENDANTS

RULING

The applicants herein comprising of the 14 Plaintiffs herein have moved the Court by way of a Chamber Summons dated 4th June 2004 brought under Order XXXIX Rules 1, 2, 2A of the Civil Procedure Rules S 3A of the Civil Procedure Act. They seek orders against Kennedy Musoke, Albert Chesoli, Patrick Wachiye and James Kamau (who they purport to sue on behalf of Glory Ministries in Kenya) inter alia for the following orders.

1. That the Defendants either by themselves, their servants, agent or otherwise howsoever be restrained from interfering with the Plaintiffs leadership of Glory Ministries in Kenya pending the hearing and final determination of this suit.
2. That this Court be pleased to cancel the names of the Defendants with the Registrar of Societies and order for election of the Society.

The application is premised on six grounds and supported by a supporting affidavit of 4.6.03 and a Further Affidavit of 4.7.03 both sworn by the first Plaintiff/Applicant, Christopher Park. Grounds 2 and 4 allege that the leadership of the subject society, Glory Ministries has been “handed over” to the Defendants by its Vice Chairman Paul S. R. Lee without the knowledge of other members and/or Pastors and without formal elections being conducted. Other grounds are that the Defendants have caused a division “in the Ministry” and have threatened to take over the operations of the Society.

Save for paragraphs 12, 19, 20 and 22 I find the supporting affidavit verbose and full of irrelevances. The Further Affidavit, sworn in reply to the Respondents’ Replying Affidavit sworn by James Mutitu on 20th June 2003 is equally verbose and does not add value to the application.

The Respondents have opposed this application being an abuse of the process of court and contend, inter alia, that the election of the office bearers currently registered as such was proper and that they hold office legally. Facts in support of this are contained in Replying Affidavit sworn on 16th July 2003 by Kennedy Wesonga Musoke the first Respondent herein. At the hearing inter parties the Respondents through their Counsel submitted that the principles for the granting injunctions laid down in **GEILLA –vs- CASSMAN BROWN** [1973] E.A. 358 have not been met herein, in that the application

has no likelihood of success, that the Applicants do not show any locus standi and that if granted, the orders sought would have the effect of terminating the suit at an interlocutory stage. Other technical objections were raised which I find immaterial, viewed against the question of whether the principles under which the Court must act have been met.

I am unable to see how this application on the facts presented before court qualify to be brought under Order 39 Rules 1, 2 and 2a of the Civil Procedure Rules which reads as follows:

“1. Where in any suit it is proved by affidavit or otherwise

(a) that any property in dispute in a suit is in danger of being wasted, or alienated by any party to the suit, or wrongfully sold in execution of a decree or

(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit,

the court may be order grant a temporary injunction to restrain such act, or make such order for the purposes of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

2. In any suit for restraining the Defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed or not the Plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right. “2A The court may by order grant such injunction, on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise as the court thinks fit.”

It is quite clear from the above wording that the purpose for the orders intended under the above provisions is to

- (1) Preserve property in danger of waste, alienation or wrongful disposal
- (2) Prevent a such threatened disposal/dispossession.
- (3) Prevent a possible obstruction to the execution of a decree,
- (4) Restrain a defendant from breaching a contract
- (5) Prevent a defendant from causing injury relating to a contract, property or legal right.

I do not find that the threat or injury complained of herein, namely, “interfering with the Plaintiffs’ leadership of Glory Ministries in Kenya” falls under any of the above possibilities. The Applicants have not established a right the breach of which would cause them to suffer irreparable damage incapable of compensation in damages. All they contend is that a dispute has arisen which threatens the break up of their society. It is not for this court to manage the affairs of any society or to reconcile parties. The equity of injunction is intended only for the purposes of preserving or protecting legal rights where they are proven to exist. The Applicants have not established a prima facie case. It is unfortunate that the Applicants have been advised by their advocates to ignore the directive of the

Registrar to reconcile their own differences and instead have filed this suit, which as rightly pointed out by the Respondents is unlikely to succeed.

Having found that the applicants have not established a prima facie case against the Defendants, have not shown that there is any likelihood they would suffer irreparable loss, it follows that the balance of convenience is obviously not in their favour and the application must fail. I uphold the Respondents submission that the second prayer cannot be granted in proceedings of this nature being in the form of a mandamus order.

In the circumstances and taking all the above factors into consideration the application is dismissed with costs to the Respondents.

Dated, Signed and Delivered at Nairobi this 21st day of January 2005.

M.G. Mugo

Judge

In the presence of

Ms Kinuthia present for Kamotho & Maiyo Advocates for the Applicant

Mogere & MoIndi present for Moindi & Company Advocates for the Respondents