



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MISC. CIV. APPLI. 9 OF 2005
IN THE MATTER OF JUDICIAL REVIEW
AND IN THE MATTER OF THE SOCIETIES ACT
(CHAPTER 108 OF THE LAWS OF KENYA)

AND

IN THE MATTER OF THE REGISTRATION OF THE FULL
GOSPEL CHURCHES OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

AND

TGE REGISTRAR OF SOCIETIES.....1ST RESPONDENT

REV. SAMUEL MURRITHI NJOGU.....2ND RESPONDENT

REV. SAMUEL MBITHI KATHITA.....3RD RESPONDENT

REV. WILFRED MURIUKI GACHERU.....4TH RESPONDENT

RULING

By an application brought by way of a Notice of Motion dated 3-06-2005, the Exparte applicants sought orders for leave to file a Further Affidavit herein, and that costs of the application be in cause.

The application is supported by the supporting Affidavit of Rev. Jonathan Kiragu Njuguna the First Ex-parte Applicant sworn on 3.06.2005 and the grounds that:-

(a) The Replying Affidavit of the 1st Respondent herein and filed on 20-05- 2005 raises new issues which were not considered when the ex-parte. Applicants filed this matter, that is to say, that the 1st and 5th ex-parte. Applicants were not members of the Full Gospel Church of

Kenya at the time of filing this matter,

(b) the new issues raised by the First Respondent in their Replying Affidavit are of fundamental importance to this matter and that the ex-parte Applicants' case will be prejudiced if they are not granted leave to file a further Affidavit addressing the said issues.

The Rev. Jonathan Kiragu Njuguna depones in his Affidavit that the matters raised by the Assistant Registrar of Societies, one Hellen Koki, in her Replying Affidavit sworn on 20.05.2005 and filed in court on the same day have come to ex-parte Applicants as a big surprise and that the chief of those surprises concerns his and the ex-parte Applicants capacity to institute these proceedings and the further averments in the Replying Affidavit of the Assistant Registrar of Societies, the said Hellen Koki, that:-

(a) The 5th ex-parte applicant herein was not a member of the Full Gospel Churches of Kenya at the time of filing this matter,

(b) he is still a member of the Church Pastoral Council and had not ceased to be so,

(c) he and Rev. George Odoyo Owiti are still members and Ministers of the Full Gospel Churches of Kenya.

The Replying Affidavit of the Assistant Registrar of Societies sworn by Hellen Koki avers that that the Applicants had been dismissed from their positions in the Church, and the 1st and 5th ex-parte Applicants were not members of their church, and consequently had no capacity to sue the Registrar of Societies. These applicants did not expect a denial that they are still members of their church, and therefore have capacity to sue.

Mr. Mugo, learned counsel for the Applicants told the court that although the application was opposed, a Further Affidavit would not cause any prejudice to the Respondents, that the absence of a Further Affidavit would give the Respondents an undue advantage as it would deny the Applicants an opportunity to show that they were bona fide members of thier church.

Lastly Mr. Mugo, observed, and I ruled, that although the Replying Affidavit of Hellen Koki , the Assistant Registrar of Societies was duly executed, and also bore the stamp and signatures of the Commissioner of Oaths, and was undated, I would still admit if because the ex-parte Applicants had agreed to act upon it.

On that understanding, and my ruling Mr. Adera, learned counsel for the First Respondent opposed the application on five principal grounds:-

(1) that the Applicants had not complied with the mandatory requirements of Order LIII, rule 4(2) by failing to give notice as required by that rule, and consequently by that failure, the court has no jurisdiction to grant leave to file a further Affidavit.

(2) the Ex-parte Applicants have not met the legal threshold set by the said rule by failure to disclose any matter which has arisen to warrant the filing of a further affidavit, Paragraph 12 of the Replying Affidavit of Hellen Koki sworn on 20.05.2005 which is alleged to raise a new matter says that Rev. Owiti was disciplined. It does not say that the 1st and 5th Applicants are not members of the Full Gospel churches of Kenya at the time of filing this matter. The paragraph says that they are not members of the National Pastoral Council. This issue of their memberships cannot be raised as a new matter.

(3) the ex-parte Applicants have not challenged the authenticity of Annexure "HKI" being minutes of a meeting on which they were dismissed as members of the National Pastoral Council, and in particular paragraph 20 of the said minutes which confirms the dismissal of the 5th applicant.

(4) the ex-parte applicants are engaging the court in issues which have not been part of the suit herein, namely the membership of the Church and its organs. These are issues which are not even pleaded and are not in contention.

(5) the 5th ex-parte applicant upon dismissal by the National Pastoral Council of the Church moved to court to challenge the dismissal in H.C.C.C. No. 699 of 2004, which suit was struck out.

Mr. Chemwuok learned counsel for the 2nd – 4th Respondents associated himself with the submissions of Mr. Adera, learned counsel for the 1st Respondent. I will consider his other submissions in my consideration of the Ex Applicant's application as a whole.

The application herein is premised the provisions of Order LIII rule 4 (2) of the Civil Procedure Rules. The said rule says:-

“4 (1) (2) the High Court may on the hearing of the Motion allow the said statement to be amended, and may allow further affidavits to be used if they deal with new matter arising out of the Affidavits of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he shall give notice of his intention and of any proposed amendment of his statement, and shall supply on demand copies of any such further affidavits”

The applicant has by the application under consideration in this Ruling given notice in writing of his intention to file and use further affidavits in this matter. He has therefore partially complied with the requirements of this rule 4(2) of Order LIII. The other part of the rule is that new affidavits will be allowed **“if they deal with new matter arising out of the affidavits of any other party to the application.”** The sole issue for determination here is whether there is a new matter to warrant the grant of leave to file further affidavits by the applicants.

Mr. Mugo, learned counsel for the applicants skirted this issue by submitting that the applicants would be prejudiced unless they were allowed to file further affidavits as they would not have another opportunity to file further affidavits before the hearing of the main application unlike the Respondents. As stated above in the submission of Mr. Adera, learned counsel for the 1st Respondent there are no new matters upon which the applicants may be granted leave to file further affidavits. The matters alleged to be new, were all known to the applicants before the filing of the main application of 24-01-2005: The facts known to the applicants were –

(1) the 1st Applicant Jonathan Kiragu Njuguna was once a member of the Full Gospel Churches of Kenya's National Pastoral Council, the Supreme decision making body of that Church. From the minutes of the Church's National Executive Council meeting of 20.11.2003, the 4 said 1st Applicant, Jonathan Kiragu Njuguna was disciplined by the Church and dismissed. He ceased being a member of the Church's National Pastoral Council long before swearing his Supporting Affidavit.

(2) The 5th Applicant, George Oduyo Owiti was disciplined by the church and his dismissal was confirmed by the National Pastoral council during its meeting of 10th June 2004. Upon dismissal he was replaced, and the current officials do not include him.

(3) The 1st Applicant, Jonathan Kiragu Njuguna having been dismissed as a pastor-in-charge of Githurai Local Church Assembly and therefore ceased being a member of the National Pastoral Council of the Full Gospel Churches of Kenya within the of Section 7(d) and 19 of the Registered Constitution of that church.

(4) the 1st Applicant Jonathan Kiragu Njuguna has since been replaced by a Reverend Geoffrey Mutetha who is also mandated to act as District Overseer for Nairobi Central by the National Executive Council, a mandate also ratified by the National Pastoral Council .

(5) the Githurai Local Church Assembly of which the said Jonathan Kiragu Njuguna was a pastor-in-charge is run by elders since the dismissal of the said Jonathan Kiragu Njuguna by the Full Gospel Churches of Kenya.

The principal application herein was first filed on 25-01-2005. It is dated 24-01- 2005. It was filed pursuant to leave granted on 7.01.2005. All the events described above and described in the Replying Affidavit of Hellen Koki, the learned State Counsel and Assistant Registrar of Societies, sworn on 20.05.2005, and the Replying Affidavits of Rev. Samwel Mbithi Kathitta sworn respectively on 23.03.2005, and 8.06.2005 are matters which are and were well known to the Applicants even before these matters were filed in court, and cannot be accepted as either new or as surprising to the Applicants.

I am tempted to adopt what Hellen Koki; the learned State Counsel depones in her Replying Affidavit filed on 13-06-2005 that the Applicants were treating this court to a circus, and engaging in gerrymandering. This application is to me an abuse of the process of this court, and a waste of valuable judicial time, and is intended to delay the speedy conclusion of the proceedings herein. I can see no prejudice will be caused to the applicants herein as they insist on coming to court without even decency of disclosing all material information to the court regarding their capacity.

As I am not at this stage dealing with principal application, I cannot draw any conclusion concerning it. I do however dismiss with costs, the application dated 3.06.2005.

It is so ordered.

Dated and delivered at Nairobi on this 21st day of June, 2005.

ANYARA EMUKULE

JUDGE

21.06.2005