



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPL. NO. 1084 OF 2003

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW FOR ORDERS OF
CERTIORARI, PROHIBITION, MANDAMUS,
INJUNCTION AND DECLARATION

AND

IN THE MATTER OF: THE CONSTITUTION OF THE REPUBLIC
OF KENYA.

AND

IN THE MATTER OF: THE SOCIETIES ACT CHAPTER 108 LAWS
OF KENYA.
BETWEEN

JACOB NJENGA MUHIRURI.....1ST APPLICANT

JASON CHEGE MWANGI2ND APPLICANT

SOLOMON MAINA THUO3RD APPLICANT

DOMINIC NJOROGE4TH APPLICANT

MARY WANJIRU MWANGI5TH APPLICANT

IBRAHIM MWANIKI CHARIKIA6TH APPLICANT

AND

MOSES NG'ANG'A MWANGI1ST RESPONDENT

MICHAEL KAMAU NG'ANG'A2ND RESPONDENT

JOB MWANGI MACHARIA3RD RESPONDENT

(Being sued on their own behalf and on behalf of Kenya Foundation of the Prophet Church)

THE HON. ATTORNEY GENERAL4TH RESPONDENT

THE REGISTRAR OF SOCIETIES5TH RESPONDENT

RULING

1. The ex-parte Applicants in this matter are all adherents of a church called Kenya Foundation of the Prophet Church. They also claim that they are the bona fide officer bearers of the Church in Kenya. They have come to court under Order 53 Rules 3, 4 and 5 of the Civil Procedure Rules and the Law Reform

Act, Cap. 26 Laws of Kenya and these are the orders that they seek: -

1. That this Application be heard in the 1st instance without service due to the nature of its urgency.
2. That the Applicants herein 1, 2, 3, 4, 5 and 6 be granted leave to apply for an order of certiorari to remove into the High Court of Kenya and quash the decision of the 5th Respondent herein the Registrar of Societies vide a letter dated 16th July 2003 confirming the 1st, 2nd and 3rd Respondents as office bearers of the Kenya Foundation of the Prophet Church.
3. That the Applicants 1, 2, 3, 4, 5 and 6 be granted leave to apply for an order of prohibition directed to the Registrar of Societies and its officers prohibiting them from interfering with the running and management of the Applicants' operations and running of the Kenya Foundation of the Prophet Church except in accordance with the strict provisions of the societies Act Chapter 108 Laws of Kenya and its constitution.
4. A Declaration that the purported elections held on 6th July 2003 in which the 1st, 2nd and 3rd Respondents were allegedly elected as office bearers of the Kenya Foundation of the Prophet Church is a nullity.
5. A Declaration that the 1st, 2nd and 3rd Respondents were not properly elected in accordance with the strict provisions of the Societies Act and therefore, not the bona fide officials of the Kenya Foundation of Prophet Church.
6. An Order of Certiorari to issue into the High Court of Kenya and quash the names of the 1st, 2nd and 3rd Respondents from the Registrar of Societies as office bearers of the Kenya Foundation of the Prophet Church.
7. An Order of injunction to issue directed to the 1st, 2nd and 3rd Defendants from purporting to deal with the affairs of the Kenya Foundation of the Prophet Church until proper handing over is conducted and the Applicants call for the Annual General Meeting.

2. The Grounds in support and the Statement of facts detail out the reasons that necessitated the instant suit. It is claimed by the Applicants that they were elected as officials of the Church on 3rd January 2002. The Respondents were apparently the previous officials of the church and it is said that they have refused to hand over crucial documents and general management of the church to the Applicants. The documents include; chequebooks, bank statements, title deeds, church books, registration certificate, etc.

3. I have seen a number of letters exchanged between the 5th Respondent (Registrar of Societies) and the District Officer, Kandara Division in an attempt to resolve the dispute between the parties.

4. On 7th June 2002, for example, the 1st Applicant, Jacob Njenga writing to the Registrar of Societies in his Capacity as "General Chairman" and on behalf of the Supreme Council of the Church sought assistance in getting the documents earlier referred to and also the church seal, keys, stamps and post office key. On 27th June 2002, the Registrar wrote to the 1st, 2nd and 3rd Respondents and stated as follows: -

"Please arrange to hand over the church documents to the chairman of the Kenya Foundation of the Prophetic Church, JACOB NJENGA as a matter of urgency as the church cannot function without these documents."

5. Earlier on 6th June 2002 and appearing to be replying to a letter dated 18th April 2002 from the 2nd Respondent, Mrs. C.K. Nyiha writing on behalf of the Registrar of Societies, stated as follows: -

"As per my records, the current officers of the above church are those

elected on 3 rd January 2002 viz: - Chairman - JACOB NJENGA MWANGI

V/Chairman - JASON CHEGE THUO

Secretary - SOLOMON MAIN THUO

Asst. Secretary - PAUL NDUATI CHEGE

Treasurer - LEAH NJERI MWANGI A

asst. Treasurer - MARY WANJIRU MWANGI

Also note that the last returns you filed are for 1999 and you cannot therefore claim to be officers of the above Church .”

6. On 25th March 2003, Mrs. Nyiha now wrote to the District Officer, Kandara, and stated as hereunder: -

“The above named church has been engaged in leadership wrangles for several years now. The following are the names of the current officers who are expected to call an Annual General Meeting of the society: -

Chairman - Jacob Njenga Muirur i

V/Chairman - Jason Chege Mwangi

Secretary - Solomon Maina Thuo

Asst. Secretary - Dominic Njoroge

Treasurer - Ibrahim mwaniki Charikia(?)

Asst. Treasurer - Mary Wanjiku Mwangi

Kindly supervise the elections and thereafter forward your report to this off ice.”

7. A follow up letter dated 29th May 2003 was in similar terms. However, on 16th July 2003, the same Mrs. Nyiha wrote to the Secretary, Kenya Foundation of the prophet church, Kaguthi headquarters, Thika and stated as follows: -

“I refer to yo ur letter dated 15 th July 2003 and note that elections of the above church were held on 6 th July 2003 and the following were elected officials of the church: -

Archbishop – Moses Ng’ang’a Mwangi

Secretary – Michael Kamau Ng’ang’a

Treasurer – Job Mwangi Macharia.”

8. This letter is now the subject of the judicial review orders sought by the Applicants. It is said that the decision contained in that letter is contrary to law and public policy and is contrary to the Rules of Natural Justice and was made without due process.

9. The Respondents on the other hand, contend that the Application is riddled with falsehoods and the court should not be guided by it. In a Replying Affidavit sworn on 10th December 2003 by Moses Ng’ang’a Mwangi, the 1st Respondent, it is deponed that whereas Paul Nduati Chege and Leah Njeri Mwangi are listed as officials of the church (see page 5 paragraph 5 above) they denied being elected and

filed affidavits in that regard in another suit filed at the Gatundu Senior Resident Magistrate's Court in SRMCC No. 383 of 2002. The Affidavits are exhibit as "MNM2". Paul Nduati Chege depones that he has "never been elected as the Assistant Secretary of Kenya Foundation of the Prophet Church." He further states that "there were no elections on 3.1.2002 and the inclusion of my name as assistant secretary is malicious, illegal and fraudulent"

Leah Njeri Mwangi similarly depones that; -

"I am an ordinary member of the Kenya Prophet Foundation Church and I attend church service every Sunday at Kaguthi Headquarters but I am not aware of any election having taken place on 3.1.2002 or any other day where I was elected as the treasurer of the church (society)."

10. I should pause here and note that as is clear from the list of officials in the letter dated 25th March 2003 (page 5 paragraph 6 above), the two were no longer listed as officials. The process of their removal has not been explained by the Applicants.

11. The Respondents have also exhibited a number of letters whose import is this; the Applicants refused to call any meeting to discuss church affairs forcing the Registrar of Societies to write to the District Officer, Kandara directing him to supervise the holding of an Annual General Meeting of the church and at that meeting fresh elections would be held. The Respondents prior to the meeting handed over all the church documents and other items to the District officer for safe custody pending the elections.

12. On 6th July 2003, the Annual General Meeting was finally held and the Respondents elected as officials. The District Officer, Kandara was the Returning Officer and after the elections, the Respondents became officials of the church in place of the Applicants.

13. I have looked at the documents exhibited by both parties and listened to submissions by counsel. I shall on that basis and from what I have set out above reduce the issue that I should address to this one sentence, namely: -

Whether the Applicants on the basis of the evidence before me are entitled to the prayers that they seek and to what avail.

14. Firstly, I see nothing illegal about the decision contained in the letter of 16th July 2003 by the Registrar of Societies. The Annual General Meeting of the church must be held within one year and it was the obligation of the Applicants to hold an Annual General Meeting on or before 3rd January 2003. They did not do so. They may well have been frustrated by the Respondents in their one year term but the law must be upheld by those who seek its protection. By not calling an Annual General Meeting and to wait for the Registrar of Societies to seek the District Officer, Kandara to call for the meeting is in my view a blow to the Applicants' case. They had notice of the elections but chose to boycott the same.

15. Secondly, the District Officer, Kandara certified the results of the elections and on that basis, the Registrar of Societies amended the list of officials to reflect the new positions in the church. This in my view was proper and necessary to end the wrangling in the church.

16. Thirdly, regarding the church items allegedly held by the Respondents, it may well be that the Respondents held onto them for far too long. But it is now clear that on the basis of instructions from the Registrar of Societies, it was necessary to secure the items by placing them in the custody of the District Officer pending elections. Again good sense would dictate that a third party would be the best custodian in a wrangling environment as was the case in this church.

17. To my mind, the Applicants' complaint is all water under the bridge. They may wish to lead the church. Fine. But they should now wait for another Annual General Meeting and fight their cause there. Elections are in any event due mid this year. This court should not disturb the status quo and increase the in-fighting.

18. I see no merit in the Application dated 15th October 2003 and the same is hereby dismissed with costs. Orders accordingly.

Dated and delivered at Nairobi this 3rd day of February 2004.

I. LENAOLA

Ag. JUDGE

3.2.2004

Ruling read in the absence of both parties.

I. LENAOLA

Ag. JUDGE