



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 897 OF 2001

**KAGWI CATHOLIC CHURCH DEVELOPMENT FUND SACCO LTD.....
.....PLAINTIFF**

VERSUS

DR. REV. FATHER NGURE & SIX OTHERS.....DEFENDANTS

RULING

1. The Application dated 28th April 2004 seeks the remedy under Order VI Rule 13 (b) (c) (d) of the Civil Procedure Rules that the counter-claim filed herein be struck out. The Grounds are that: -

- i) The Counter claim filed herein is incompetent and is only meant to buy time and cause injustice to the Plaintiff and the Defendants in the Counter-claim.
- ii) The 1st Defendant has no legal capacity to institute the counter-claim.
- iii) The suit is an abuse of the court process.

2. The Supporting Affidavit raises really just one issue; that Dr. Rev. Father Ngure “is a stranger to the suit and is therefore not entitled to any of the relief’s sought .”

3. I will dismiss the Application for a very simple reason; at paragraph 9 of the Plaintiff, it is averred as follows;

“The Plaintiff further states that from the time the 1st Defendant was posted to Kagiri Parish, he has been seeking to gain the financial control of the Plaintiff Company. In order to further his interests, he has continuously harassed the Executive Committee of the Plaintiff and has incited some members against

the Plaintiff's bona fide officials.”

4. Paragraph 10, 14 and 15 of the Plaintiff details out other alleged misdeeds of the 1st Defendant. Paragraph 16 then states as follows: -

“The Plaintiff further states that the 1st and 2nd Defendants are strangers to the Plaintiff's business as they are neither members nor officials. The Plaintiff contends that the 1st Defendant would want to control the finances of the Plaintiff Company and holding such control evade the payment of Kshs.250,000.00 which he borrowed from the company on 14th December 1997. The said loan was borrowed at an interest of 2% per month and the 1st Defendant was to repay the same by the end of March 1998. However, to -date he has not paid the same.”

5. The 1st Defendant is by the Applicant's own Plaintiff, one Dr. Rev. Father Ngunjiri. How can he have no right to defend himself and if need be, raise a counter-claim? It is the Plaintiffs that brought him to the suit, level numerous allegations against him, and then turn round and call him “a stranger to the suit”. That approach to litigation is ridiculous.

6. An Application under Order 6 Rule (1) (b) (c) and (d) of the Civil Procedure Rules should show that a pleading is scandalous, frivolous and vexatious or may prejudice, embarrass or delay the fair trial of the suit or is an abuse of court process. None of these essential elements have been remotely met in the Application before me and counsel made no attempt to meet the challenge in submissions. As I have shown, the Application itself was far from meeting the expectation of that Rule. I need not repeat that striking out of a pleading should only be done where the same is so hopeless that no breath of life by any means known to procedure including amendment can resuscitate it. In the case before me, it is the Application seeking striking out of a pleading that is itself irredeemable.

7. The Application dated 28th April 2004 should find its way to the realm of irredeemability as it is hereby dismissed with costs to the Defendants/Respondents.

Orders accordingly.

Dated and delivered at Nairobi this 24th day of September 2004.

I. LENAOLA

Ag. JUDGE

24/9/2004

Coram: Makhandia, Ag. J.

Mrs. Mungai for the Applicant

Mang'a for Mwaura Chairi for Respondent

CC: Ndung'u

Ruling delivered in court by Justice Makhandia on behalf
of Justice Lenaola who is away on duty at Embu High Court.

MAKHANDIA

Ag. JUDGE