



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI**

CIVIL SUIT NO. 699 OF 2004

**IN THE MATTER OF THE FULL GOSPEL CHURCHES OF KENYA
AND
IN THE MATTER OF S.7 OF THE ARBITRATION ACT OF 1995
ORDER XXXVI RULE 5**

OF THE CIVIL PROCEDURES

**REV. GEORGE ODOYO OWITI1ST APPLICANT
REV. CHARLES KABIRU NDAIGA2ND APPLICANT
REV. STEPHEN MAINA MWANGI3RD APPLICANT
REV. JACKSON KIPKEMBOI KOSEGEI4TH APPLICANT
REV. JSEPHAT KAMU NG'ANG'A5TH APPLICANT
REV. ELUID KARANJA WANYOIKE6TH APPLICANT
REV. ENOCK K. KIPLAGAT7TH APPLICANT
REV. STEPHEN KIGURU KAMAU8TH APPLICANT
REV. STANLEY WAWERU KAMAU9TH APPLICANT**

AND

**REV. SAMEUL MURIITHI NJOGU1ST RESPONDENT
REV. SAMUEL MBITHI KATHITA2ND RESPONDENT
REV. WALFRED MURIUKI GACHERU3RD RESPONDENT
REV. ELIJAH CHERUIYOT4TH RESPONDENT
JOSEPH CHEPSERGON5TH RESPONDENT
MR. IBRAHIM WAIGANJO KARIANJAH I6TH RESPONDENT**

RULING

By their Originating summons of the 29th June, 2004 the Applicants seeks the following orders:-

2. **THAT** the Respondents herein either by themselves, individually, jointly or through their Servants, Agents, officials and/or employees be restrained by a permanent injunction from interfering with the leadership and the running and of and /or the properties of the Full Gospel Church, Langalanga Nakuru or any other full Gospel Church in Kenya without the authority of the said church (es) until a dispute concerning interference of the said churches to the churches referred to the Justice and Reconciliation Committee of the Full Gospel Churches of Kenya is resolved

3. **THAT** pending the holding of elections afresh as ordered by the Justice and Reconciliation Committee on 28th May, 2004 the National Regional, District and Local leadership of the Full Gospel Churches of Kenya and more particularly those in Western Kenya, Rift Valley, Central and Mount Kenya Regions be left to the officials who were in office before the sham elections which were purportedly held on or about 12th November, 2003.

4. **THAT** the 2nd, 3rd, 4th, 5th and 6th Respondents be restrained from holding the offices of General Secretary, Deputy National Treasurer, Deputy General Secretary. Regional Oversees Rift Valley, Region Secretary Rift Valley and Regional Treasurer Rift Valley respectively as decided by the Justice and Reconciliation Committee Arbitration report dated 28th May, 2004.

5. **THAT** the Justice and Reconciliation Committee Arbitration Decision dated the 28th May, 2004 be hereby adopted and made a Decision of this Honourable Court”

The Originating Summons is brought under O.36 rule 5 of the Civil Procedure Rules, which relates to the determination of any question of construction arising under a deed will or other instrument

Clearly none of the orders sought comes under this rule, as there is no instrument referred to in respect of which an issue is to be determined.

Mr. Mugo relied on O.50 rule 12 but with respect this rule cannot be invoked to turn what is sows ear into a silk purse. The relief sought in prayers 2,3, and 4 should be the subject matter of a plaint and cannot be brought by way of an Originating Summons.

So far as prayer 5 is concerned this raises other issues. Firstly is there a decision reached by way of arbitration, which can be made a decision of the court.

The Constitution of the church provides in part Viii paragraph 36 for Discipline and Referral as follow:-

“There shall be Justice and Reconciliation Committees created at all levels from National to local Church Assembly level to deal with disputes and referral cases as shall be stipulated in their policy. No matter or dispute shall be taken to court before referred to the said Committees.”

In this case the Applicant relies on what is said to be a decision of the Justice and Reconciliation Committee of the 28/5/2004 in the following terms:-

“The Committee observes that purported elections of National official conducted in Kisumu between 12 and 13th of December, 2003 and in Nakuru, Langa Langa by there two camps were contrary to section 37 of the Constitution. Secondly any purported disciplinary action on any National Official carried out between 9th October 2003 and May 2004 was done in period of conflict and vacuum in church leadership. The said elections and disciplinary actions should be null and void. The election of National Official that was stopped by a Court order on 9th October should be recognized afresh as soon as possible and in accordance with the Church Constitution.

The Justice and Reconciliation recommends that in future the composition of N.E.C. should be reorganized to bring officials in it who are there in their own right and not aligned to Camp”

It does not appear to me that the observation and recommendations is a decision pursuant to an arbitration procedure. There is no evidence that issues were framed and that the parties in dispute, of such they are, made submissions or appeared before the Committee in respect of disputes, which were being arbitrated on. So far as I can see the Committee was merely trying to reconcile the parties with a view to an amicable solution being obtained. It does not appear that the Committee intended to create legally binding decisions.

The Arbitration Rules 1997 provide for an award to be filed in Court. This has not been done nor do I see that what the Applicant relies on as an award is in the form of an award or is capable of being filed in Court. Further the Applicant applies for injunctive relief in prayers 2 and 4 of the Application.

Even if the Applicant has a right to injunctive relief in an Originating Summons, which I am of the view they do not, injunctive relief in respect of a matter which is the subject matter of Arbitration is dealt with in section 7(1) of the Arbitration Act which states as follows:-

“It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for High Court to grant that measure”

As can be seen the relief is as an interim measure and does not permit the court to grant injunctive relief after the arbitration is completed. With regard to prayer 3 it is not clear what is being asked for. It appears to be in the nature of a declaration but it is clearly raising contentious issues as to whether certain election were sham or not which can only be dealt with in a plaint seeking an order that the elections were a sham. Even if I assume that what the Committee says is correct, namely that the elections in question are null and void I see no jurisdiction in court to grant the relief sought prayer 3.

Mr. Chemwok relied on Official Receiver V. Sukhdev (1970) E.A. Page 243 in which Madan J (as then was) held that an Originating Summons is not the procedure by which a decision on disputed matter of fact ought to be obtained.

It appears to me that this Application by way of an Originating summons is totally misconceived.

For the reasons given I am doubtful whether the procedure laid down in the Disputes and Referral referred above was intended to create a formal legally binding award. The procedure is not expected to lead to a decision, which is formal and binding on the parties. Indeed the words “**No matter or dispute shall be taken to court before being referred to the said Committee**” tends to indicate that reconciliation was a preferred method of dealing with disputes rather than a full blown case in court.

So far as the elections and the injunction relief sought is concerned this should have been the subject matter of a plaint.

For these reasons given I dismiss this Originating summons with costs to the Respondents.

Dated and delivered at Nairobi this 28th day of October 2004

P.J. RANSLEY

JUDGE