



REPUBLIC OF KENYA
IN THE HIGH COURT AT HIGH COURT AT NAKURU

CIVIL SUIT 247A OF 2004

MOSES P. N. NJOROGE

JIM WAMBLE

DANIEL HINGA MUIRURI

THE REGISTERED TRUSTEES

NEW TESTAMENT CHURCH OF GOD.....PLAINTIFF

VERSUS

REVEREND MUSA NJUGUNA T/A CHARISMATA REVIVAL NETWORK

THE REGISTERED TRUSTEES.....1ST DEFENDANT

MUSA NJUGUNA MINISTRIES.....2ND DEFENDANT

R U L I N G

The Plaintiff/Applicant in this matter is the New Testament Church of God, a Christian Society duly registered under the Societies Act of the Laws of Kenya and is suing through its registered Trustees. It filed an application by way of a Chamber Summons dated 1st September, 2004 seeking, inter alia, the following orders:-

(a) That the defendants, their servants and/or agents be restrained from entering, attending, changing the sign posts, imposing their pastors, trespassing, conducting or otherwise taking over or in any other way interfering with the operations of the plaintiff's churches situated on L.R. Number MAU SUMMIT/MOLO BLOCK 1/181 (Mutirithia), MAU SUMMIT/MOLO BLOCK 1/182 (Mutirithia), Nakuru, Eldama Ravine and Njoro pending the hearing and determination of this suit.

(b) That the defendants, their servants and or agents be restrained from transferring, encumbering or otherwise parting with possession of the land on which the Plaintiff's churches at Nakuru, Molo, Njoro and Eldama Ravine stand pending the hearing and determination of this suit.

(c) That the defendants be compelled to release to the plaintiff forthwith all the movable property in their possession belonging to the Plaintiff or purchased with funds from the Plaintiff directly or from the mother and sister churches abroad namely motor vehicles, tent and public address system. There was an alternative prayer to the above one, that the defendants, their servants and or agents be restrained from transferring, wasting or otherwise parting with possession of the Plaintiff's moveable properties belonging to Molo, Njoro, Nakuru and Eldama Ravine churches including motor vehicles, tents and

public address systems pending the hearing and determination of this suit.

The said application was made on the grounds that the defendants were in flagrant breach of law in attempting to take over the Plaintiff's churches at the said towns, having trespassed into the said churches installing their own pastors, changing the church signboards at will to read Charismata Revival Network and threatening to evict dissenting members of the Plaintiff's churches. The Defendants' actions were causing great anxiety and tension in the churches and were likely to turn volatile, it was stated.

The application was supported by an affidavit sworn by Moses P. N. Njoroge, the Administrative Bishop of the New Testament Church of God, Kenya sworn on 1st September, 2004 and also by an affidavit sworn by Reverend Simon Ngure Ben sworn on the same date. Bishop Moses Njoroge also swore a further affidavit on 15th September, 2004 in response to the first Defendant's replying affidavit.

New Testament Church of God (hereinafter referred to as "the Plaintiff") whose headquarters is in Cleveland, Tennessee in the United States of America and was registered in Kenya on 7th November, 1985 in accordance with the provisions of Section 10 of the Societies Act. The Plaintiff has several churches in Kenya which are divided according to geographical regions and the Western region has Molo Worship Centre, Eldama Ravine New Testament Church, Njoro New Testament Church and Nakuru Town New Testament Church. Bishop Moses Njoroge deposed that the first Defendant was engaged and credentialed as a church minister of the Plaintiff and was assigned duties in the Western region and the Certificate of Ordination shows that he was so ordained on 5th January, 1994.

However, from the documents exhibited by both the Plaintiff and the defendants, it is evident that the first Defendant was ministering with the Plaintiff prior to the aforesaid date of ordination, for example P. exhibit MN. 3 is a letter addressed to the first Defendant and dated June 2, 1992 and is addressed to him as the church minister at New Testament Church of God at Molo.

From the aforesaid letter, the National Overseer of the Plaintiff pointed out to the first defendant the importance of following proper procedure in his work and he faulted the first Defendant for naming pastors of some new missions before consulting with the National Overseer and pointed out that the only person who had authority to appoint pastors was the National Overseer. The latter also summarised in the said letter the pertinent regulations regarding establishment of new churches.

Bishop Moses Njoroge further deposed that the Plaintiff built the Molo Worship Centre with the help of well wishers, the church members and the Plaintiff's headquarters. The Plaintiff also received considerable support from the sister churches in America and Europe. The first Defendant in his letter dated 29th March, 1996 addressed to Rev. Ronald Vaughan, the General Director of Church of God World Missions at Cleveland, Tennessee acknowledged on behalf of the congregation of Molo Worship Centre a cheque for U.S. Dollars 10,000 which money had been contributed towards completion of the said church.

The Plaintiff installed Rev. Simon Ngure as the Pastor-in-charge of Molo Worship Centre and remained as so until July 2004 when the defendants irregularly ousted him and took charge of the church without the Plaintiff's consent. In his affidavit, Rev. Ngure deposed that he was appointed Pastor of the said church on 12th June, 1998 and at the time of his appointment, the first Defendant was serving as the Regional Overseer of the Plaintiff's churches in Western region. He further deposed that about June 2004 the first Defendant moved his base to Molo Worship Centre and had since taken it over and dissolved the Pastor's Council contrary to the Plaintiff's policy and the first Defendant appointed himself founder and Senior Pastor of Molo Worship Centre.

On his part, the first Defendant stated that the Molo Church was built with his own efforts and the assistance of donors and added that the land on which it was built was his but he later transferred it to the Plaintiff. And with regard to the help which the Plaintiff obtained from international donors he said it was through his efforts.

Another accusation that was made against the first Defendant was that he was using the words

“Charismata Revival Network” and “Charismata International Ministries” in referring to the plaintiff’s churches and had baptised them as Charismata Ministries Network; having incorporated the second Defendant in the United States of America without the Plaintiff’s knowledge and blessings.

The first Defendant denied the above contention but annexure SN2 in Rev. Simon Njure’s affidavit clearly proved that to be the case. Even the letterheads from Molo Worship Centre bore the name Charismata International Ministries.

When the first Defendant was questioned about the use of the above names within the plaintiff’s churches, he stated that he was still a part of the Plaintiff and that the operations of Musa Njuguna Ministries would not prejudice or interfere with the plaintiff’s ministry.

The Plaintiff also stated that the first Defendant stopped accounting to the head office and started creating some autonomy and the Plaintiff questioned that breach of the church policy. The Plaintiff further claimed that the first defendant purchased the land for the Nakuru church in his own name despite the fact that the money for its purchase and development was raised through donations from sister churches, the congregation through tithes and offerings. To the Plaintiff, that was fraudulent in spite of the fact that the first defendant had given a handsome donation towards the project. This was not denied by the first defendant but he explained in his replying affidavit that any support which he got from partners and friends to his ministry was towards support of his vision for God’s work in Kenya. The Plaintiff also accused the first Defendant of having received funds for the purchase of vehicles for the churches but the vehicles, which include a Toyota Hilux Pick up, 2 minibuses, an Isuzu Trooper and Peugeot 505 were registered in the first Defendant’s name.

The Plaintiff stated that the first Defendant had disposed of the motor vehicles and there was every likelihood he would dispose of or transfer other plaintiff’s properties or waste them so as to negate any orders which may be issued.

The first Defendant admitted that the vehicles were registered in his own name but stated that there was no evidence that he had received any money for purchase of the motor vehicles.

The Plaintiff further stated that the first defendant imported duty free tents and public address system for use in the Plaintiff’s churches at Nakuru and Molo respectively but the first Defendant had now taken personal possession of the said items but the first Defendant countered that by stating that the items were bought by his own funds.

The Plaintiff further lamented that the first Defendant continued to present himself to the Plaintiff’s donors as a member and minister of the Plaintiff organisation in order to solicit funds for use for his personal ministry. The first Defendant had also unilaterally changed pastoral leadership at the Plaintiff’s churches and was also accused of ferrying non members to the churches with the intention of intimidating the local congregations and particularly those who were opposed to him.

According to the Plaintiff, the defendants are engaged in building their church organisation, Charismata Revival Network on the goodwill of the New Testament Church of God – Kenya, by making it out to be the same entity as the Plaintiff.

On 14th July, 2004 the first defendant was excommunicated from the Plaintiff’s church after all efforts were made to sort out the issue within the church hierarchy and the Christian fraternity in Nakuru. Despite the excommunication, the first defendant continued to operate in the name Musa Njuguna Ministries in the plaintiff’s premises using the Plaintiff’s assets and goodwill and presiding over the churches services, collecting tithes and offerings of unknown amounts without accounting for the same. And on 22nd July, 2004 the Plaintiff’s advocates wrote to the first defendant demanding that he desists from his activities and in response, the first defendant maintained that he was still a part of the Plaintiff’s organisation. However, the plaintiff’s stand is that the first Defendant having been excommunicated by the church, he has no right to run any ministry in the Plaintiff’s churches and so urged the court to grant the orders as sought as the first Defendant was bent on continuing in his defiance and there was a

likelihood of total commotion and anarchy arising in the church which could lead to bloodshed.

For example; on 12th September, 2004 Bishop Moses Njoroge visited the Molo church and found that the first Defendant had given instructions that anyone who was sympathetic with the Plaintiff should not go into the church and on that day Pastor Ngure was dragged by the first Defendant's bouncers out of the church and there was general commotion. The Bishop had to seek help from Molo Police Station and the O.C.S. Molo visited the church to restore peace.

On his part, the first Defendant deposed in his replying affidavit that he was a Reverend of Musa Njuguna Ministries which was not a registered society in Kenya and which therefore had no legal capacity to be sued. The first Defendant had stated in his letter dated 8/12/97 that the said ministry was registered on January 27, 1997 under the Texas Non-profit Corporations Act in the United States of America. In my view, since it has never sought registration in Kenya, it is an unlawful society in terms of Section 3 as read with Section 4 of the Societies Act Cap 108, Laws of Kenya. The first Defendant maintained that Charismata Ministries Network was not an independent society but was a ministry within the framework of the Plaintiff and that its affiliation with the Plaintiff commenced in 1991 with oral approval of the plaintiff's general assembly in Tennessee Cleveland and that the setting up of the Plaintiff's churches in Nakuru, Njoro, Molo and Eldama Ravine was with the Plaintiff's approval and not a sign of autonomy. He further stated that his ministry was not conducted fraudulently but rather transparently with the National Overseer well in the picture of the happenings.

The first Defendant further deposed that the Plaintiff's church had an elaborate disciplinary procedure in case of defiance which had not been followed and so he disputed that he had been excommunicated, saying that he continued to be a member of the Plaintiff's church and would continue to carry on with his ministries under the umbrella of the Plaintiff.

The first Defendant also deposed that under the country's constitution he had a right to assemble and associate with any persons that he desired and that right could only be curtailed if there was an actual breakdown of peace and the plaintiff was using the court process to curtail his right. I have considered all the pleadings filed by the parties herein including the affidavits. I have also considered all the submissions made by counsel as well as all the authorities cited herein.

It is not in dispute that the first Defendant was ordained as a minister of the Gospel by the Plaintiff on 5th January, 1994 although he had, a few years prior thereto been serving as a pastor/minister with the Plaintiff and was based at Molo.

By his ordination, the first Defendant was authorised to do all the work that devolved upon him as a minister of the Gospel and that included preaching and establishment of churches and such other duties but within the rules of the General Assembly and of the country in which he was performing his duties, in this case, Kenya.

Regarding the Plaintiff's Molo Church, it is also not disputed that the land on which it stands, L.R. No. Mau Summit/Molo Block 1/181 (Mutirithia) and Mau Summit/Molo Block 1/182 (Mutirithia) was initially owned by the first Defendant but sometimes in 1994 he willingly transferred the same to the Plaintiff as a gift at no consideration. The church building was thereafter put up using donations from well wishers and sister churches as well as donations from the Plaintiff's headquarters. That was acknowledged by the first Defendant vide his letter dated 29th March, 1996 addressed to Rev. Roland Vaughan, General Director, church of God World Missions at Cleveland. However, that donation was not contractual and did not entitle the first Defendant any share or of proprietary interest in the said parcels of land or the building thereon or claim to Plaintiff's church business or any moveable property therein. It matters not whether the land had initially been purchased by the first defendant, upon its voluntary transfer to the plaintiff it became the plaintiff's property exclusively.

The first Defendant's contention that the church building was put up by his own efforts and the assistance of donors may be correct and in any event that was expected of him as a minister ordained by the Plaintiff and assigned that church among others but that did not give him any proprietary rights thereto. The first

Defendant equally did not have any right to remove Reverend Simon Ngiire Ben therefrom as he was the duly appointed pastor of Molo Worship Centre.

Regarding MUSA NJUGUNA MINISTRIES INCORPORATED, the same was registered in Texas, U.S.A. on 27th January, 1997 and it is apparent that this was done without the Plaintiff's approval and/or knowledge. The first Defendant is the President and Chairman of the Board. The first defendant informed the Plaintiff of the fact of its registration vide a letter dated 8/12/97, almost a year from the time when it was registered. In his aforesaid letter he stated in part as follows:-

"We feel honoured to be partners with you in the MUSA NJUGUNA MINISTRIES INCORPORATED to the glory of God".

The first Defendant was not seeking any permission from the Plaintiff regarding the intended or assumed partnership or affiliation between his aforesaid organization and the plaintiff but was merely informing them of his unilateral decision. The Plaintiff was not pleased by the first defendant's action and queries were raised and the first Defendant appeased the Plaintiff by his letter dated September 30th 1997 pledging his commitment and loyalty to the Plaintiff. The first Defendant had been warned by the Plaintiff vide a letter dated September 24, 1997 that he could not operate as an independent organization and also retain credentials with the Plaintiff and was reminded that he could not make ministry decisions of that nature without the approval of the church leaders above him. I am satisfied that this was a clear breach of the General Assembly Ministries which the first Defendant was well aware of.

From various letters annexed to the Plaintiff's and the first Defendant's affidavits, it is clear that the first Defendant had been using the words "Charismata Revival Network", "Charismata International Ministries" on the Plaintiff's letterheads and the Plaintiff's churches were eventually baptised as "Charismata Ministries Network". No permission was sought from the Plaintiff to do so. An organization's name is important and cannot be changed, altered or added to in any manner without the approval of the leadership of the organization. Although the Plaintiff seemed to have acquiesced to the use of the above names over the years in that it never forbid the first Defendant from using them, it had every right to raise an objection when it became clear that the first Defendant was out to create his own autonomous entity within the Plaintiff's premises.

There is also evidence that the Defendant had changed the names of some of the plaintiff's churches, for example, the Molo Church had the names: CHARISMATA MINISTRIES NETWORK, MOLO WORSHIP CENTRE. The Plaintiff's name, "New Testament Church of God" was no longer shown on the signboard. Although the first Defendant denied that in his further affidavit and annexed three copies of photographs, the photograph annexed to the affidavit of Reverend Simon Ngiire Ben clearly shows the true state of affairs.

The Plaintiff's church in Nakuru was started officially on Sunday 4th 1998 as per the first Defendant's letter dated 24th November, 1997 addressed to his friends and prayer partners seeking for donations to purchase the land on which it was to stand. There is evidence that the Plaintiff's sister churches and other donors contributed towards purchase of the land for the Nakuru Church. A tent was also imported duty free for use by the new church at Nakuru. The first Defendant's act of registering the parcel of land in his own name was fraudulent even if he had raised a portion of the purchase price from his own resources. He did not seek the Plaintiff's permission to do so and in my view that was an act which amounted to breach of trust and abuse of his position as the Plaintiff's duly ordained Minister of the Gospel. The Plaintiff's constitution requires every local congregation to send monthly 5% of all tithes to the District Overseer along with the monthly report and an additional 5% to be sent monthly to the National Office.

The first Defendant did not deny in his affidavit that he had failed to do so in the local churches which he was overseeing. That is a clear breach of Article 8(a) and (b) of the Plaintiff's Constitution and Rules.

Regarding the church motor vehicles, there was an allegation that the first Defendant had received funds to purchase the same for the churches but instead he purchased and registered them in his name and that he had unlawfully sold some. This was not proved by any documentary evidence but the first Defendant

in his replying affidavit stated that the vehicles that were registered in his name were his private property and there was no evidence that he had ever received any money for purchase of motor vehicles. The Plaintiff should have availed the necessary evidence regarding its allegations as would have shown that some money was raised or sent for purchase of the motor vehicles, the registration number of the vehicles, copies of the log books, etc. In the absence of that it would be improper for the court to make any order regarding unknown motor vehicles.

Regarding the first Defendant's excommunication, the administrative Bishop wrote to the first Defendant on 24th June, 2004 regarding his various actions which were contrary to the Church Constitution but the latter did not respond.

The Bishop wrote to him again on 5th July, 2004 and asked him to avail himself on 9th July, 2004 at 11.00 a.m. so that they could reason together but the first Defendant did not honour the appointment nor respond in any way. The Administrative Bishop of the plaintiff in Kenya then wrote the excommunication letter to the first defendant on 14th July, 2004.

The first Defendant stated that the said excommunication offended the National Constitution as well as the Plaintiff's constitution which spelt out the Ministerial Discipline and the procedure required to be followed. As clearly stated in the letter of 14th July, 2004, at the time of writing the said letter, the first Defendant was no longer under the Plaintiff's authority, having defected to his own church or ministry, save for the fact that he had adamantly refused, failed and/or neglected to leave the physical premises of the Plaintiff. In that regard, the church constitution was not binding upon him any longer and the Bishop's letter was merely declaring the legal position as created by the first Defendant.

The Plaintiff has established a prima facie case with a likelihood of success as against the first Defendant. However, as against the second Defendant, I have already stated that it is an unlawful society and it lacks capacity to sue or be sued. The Plaintiff's loss cannot also be compensated by an award of damages. If an interlocutory injunction is not granted, chaos and/or bloodshed may occur and that should be avoided at all costs. As I am not in any doubts that the Plaintiff has satisfied the first two tests for grant of interlocutory injunctions as per the celebrated decision of *GIELLA VS CASSMAN BROWN & CO. LTD* [1973] E.A. 358 I need not consider the issue of balance of convenience. In *GATHUNA VS AFRICAN ORTHODOX CHURCH OF KENYA* [1982] KLR 356 the Court of Appeal held that in matters of mixed spiritual and temporal character with temporal consequences affecting legal rights, the High Court had jurisdiction to deal with them unlike the case in matters dealing with Ecclesiastical Law.

Having come to the above conclusion and for reasons stated herein, I grant the orders sought in prayers No. 3, 4 and 6 of the Plaintiff's Chamber Summons dated 1st September, 2004.

The costs of this application are awarded to the Plaintiff.

DATED, SIGNED & DELIVERED at Nakuru this 15th day of October, 2004.

DANIEL MUSINGA

AG. JUDGE

15/10/2004