



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

CIVIL SUIT NO. 247“A” 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

RULING

On 4th November, 2004 the first Defendant applied for stay of execution of this court's orders granted on 15th October, 2004 pending the hearing and determination of an intended appeal. Then on 10th November, 2004 the Plaintiff filed an application urging the court to find the defendants in breach of the court orders granted as above and proceed to punish them accordingly.

When the parties' advocates appeared before the court on 17th November, it was agreed by consent that the two applications aforesaid be heard on the 26th of November, 2004. However, on that day a further consent was recorded to the effect that the defendants' aforesaid application be heard and determined first then the Plaintiff's application be heard thereafter.

Mr. Karanja for the defendants prayed that the status quo obtaining prior to the issuance of the said orders be maintained. The defendants had already filed a Notice of Appeal dated 19th October, 2004. The first Defendant in his affidavit sworn on 4th November, 2004 deposed that he stood to suffer irreparably if the orders of stay were not granted because he would be prevented from entering his own compound on which one of the churches in dispute stood. He also deposed that he would be deprived of his constitutional right of freedom of worship and association in addition to denying the congregation leadership appertaining to spiritual growth and nourishment and such loses could not be compensated by damages. He further argued that the appeal would be rendered nugatory if the application was not granted. He also stated that the Plaintiff was not going to suffer any prejudice if the orders sought were granted, saying that he had no intention of transferring any of the properties in issue which he was ready and willing to deposit in court for safe custody until the appeal was heard and determined.

The Plaintiff/Respondent filed a replying affidavit sworn on 12th November, 2004. In the said affidavit,

the Plaintiff dwelt at length on the issue of alleged contempt of the court orders earlier issued but I cannot consider those arguments now since it was agreed that the issue of the alleged contempt of court be dealt with after the determination of the Defendant's application.

The first Defendant has already been excommunicated from the Plaintiff's church and he is no longer in any fellowship with the New Testament Church of God. He is running his own ministry known as "**Musa Njuguna Ministries incorporated**" which was registered in Texas, U.S.A. on 27/1/97. And since the said ministry is not officially registered in Kenya, when he was a minister serving under the Plaintiff church he began to use the names "Charismata Ministries Network" or "**Charismata Revival Network**" / "**Charismata International Ministries**". His intention now is to run and operate his personal entity from the Plaintiff's premises using the plaintiff's properties and/or assets. That cannot be sanctioned by the law.

In the ruling of 15th October, 2004, it was established that the church in Molo was put up through donations from well wishers and also through donations from the Plaintiff's sister churches as well as donations from the Plaintiff's headquarters in the United States of America. The first Defendant, having ceased to be a minister of the Gospel serving under the Plaintiff but rather choosing to operate his own church or ministry, should have absolutely nothing to do with the plaintiff's church premises, properties and/or assets. In my view, granting an order of stay of execution of the said court orders as sought by the first Defendant is quite prejudicial to the Plaintiff's interests and is tantamount to allowing the first defendant to continue enriching himself and/or his personal ministry at the expense of the Plaintiff.

With regard to the first defendants' contention that observance of the court orders of 15th October, 2004 would deny him access to his house which is next to the Plaintiff's church, the two properties have separate titles, the house standing on a plot in the first Defendant's name and ideally each should be having its own separate entrance. There was a dispute as to whether that was the case or not. If the first Defendant cannot access his house except thorough the entrance to the plaintiff's church compound, I direct that the Plaintiff, at its expense, to create a separate entrance to the first Defendant's residential house.

Regarding the first Defendant's constitutional right and freedom of worship and association, the same has not been curtailed in any way, he can continue to preach and worship provided he does not do it in the Plaintiff's church premises either in Molo or Nakuru or any other place. The first Defendant's right and freedom of worship and assembly as guaranteed by Section 70 of the Constitution of Kenya is subject to respect for the rights and freedoms of others and for the public interest. The first Defendant must respect the Plaintiff's proprietary rights to its properties.

The Defendant's appeal cannot be rendered nugatory by denial of the orders of stay of execution as sought. In the event that the court of appeal overturns the orders earlier made by this court, the first Defendant would be at liberty to go back to the Plaintiff's church and continue with his ministry therein but it is doubtful if the law can compel the Plaintiff to continue to be in fellowship with the first Defendant, having been excommunicated lawfully.

In my view the applicant has not shown that he stands to suffer substantial loss if the orders sought are not granted.

In conclusion, I decline to grant the orders as sought by the defendants and dismiss with costs their application dated 4th November, 2004.

DATED, SIGNED & DELIVERED at Nakuru this 16th day of December, 2004.

DANIEL MUSINGA

JUDGE

16/12/2004