

REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1535 OF 2002**

JAMES CHABUGA PLAINTIFF

VERSUS

NATHAN POPO1ST DEFENDANT

GABRIEL IMBALI 2ND DEFENDANT

BENJAMIN NJIRI 3RD DEFENDANT

RULING

It is agreed on all sides, that the archbishop has sued a section of the members of his church, and in doing so, he is purporting to act on behalf of the church.

The church is an unincorporated association with a certain membership, governed by its constitution.

The constitution of the church does not deal with matters to do with legal proceedings by or against the church or its members.

But it is said on his behalf that under Section 6.1.1 of that constitution his administrative, financial, spiritual and social and general development duties, include taking legal proceedings and defending legal proceedings, by or against the church or its members. This view is overstressing the duties of the archbishop. Legal proceedings is a major function and cannot be camouflaged under “administration” or “social and general development”.

In the absence of a provision in the church constitution regarding legal proceedings, such proceedings can only be undertaken or defended on behalf of the members or some of them, with their leave under a church resolution, or with the leave of the court.

You see, once it is conceded that these proceedings are between some members of the same church or the one side, and against another set of members on the other, it is inaccurate to say that the archbishop in suing, he is acting on behalf of the church, because the church is, in fact split over the issue of being litigated. So, different interests are involved; and the one group with similar or same interests requires to be identified on one side and be authorized to move as representing those with the same or similar interests, against the other group with interests divergent from those of the others but similar in their own camp.

It is for these reasons that this suit is within Order 1 rule 8 of the Civil Procedure Rules, and it must be properly intituled as a representative suit within that provision, and leave of the court sought and obtained (if merited). In the absence of this leave, as it is the case here, the suit is a non-starter.

Accordingly, the preliminary objection is sustained, and the suit is struck out with costs. It is so ordered, *ex tempore*.

R. KULOBA

JUDGE

24.6.2003