Munyoki & another v Nzoka (Civil Case E004 of 2025)
[2025] KEHC 4621 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4621 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KITUI

CIVIL CASE E004 OF 2025

LW GITARI, J

MARCH 20, 2025

BETWEEN

JULIUS MUNYOKI ..... 1ST PLAINTIFF

CANON SAMUEL MUTEGI MBIRI ..... 2ND PLAINTIFF

AND

BISHOP GEDION MUNENI NZOKA ..... RESPONDENT

RULING

1. The applicants have filed the Notice of Motion dated 11/3/2025 under a Certificate of Urgency seeking orders that a temporary injunction be issued restraining the respondents from covering, holding and/ or proceedings with the Anglican Church of Kenya (ACK) Diocese of Kitui church synod meeting scheduled for 21st and 22nd March 2025 pending the hearing and determination of this application and the main suit.

2. The applicant further seeks an order of a temporary injunction be issued to restrain the respondent from inviting illegally unauthorized and pinpointed person to attend the Anglican Church of Kenya (ACK) Diocese of Kitui Church synod meeting scheduled for 21st and 22nd March 2025 pending the hearing and determination of this application.

3. The application is based on the grounds that the applicants are church leaders of parishes within the Anglican Church of Kenya (ACK) Diocese of Kitui representing some church parishes who are proposing the establishment of a new diocese called Anglican Church of Kenya Diocese of Kitui Rural which is to be hived from larger ACK Diocese of Kitui.

4. The applicants contend that the respondent is opposed to the idea and has started discriminating, intimidating and subjugating the applicants and other proposers of the new diocese. The applicants contend that the respondent has called a church synod meeting on 21st and 22nd March 2025 without inclusion or consultation with the applicants.

5. It is the contention by the applicants that their right to fair administrative action under Article 47 of the *Constitution* of Kenya has been violated as the respondents have refused to adhere to the provisions of the Church Constitution by including the applicants in the planning, scheduling and attendance of the church diocesan synod meeting.

6. It is the contention by the applicants that the respondent has been restrained by a Court Order from discriminating and/or intimidating the applicants and other Anglican Church members of Anglican Church of Kenya Diocese of Kitui Rural. That the respondent has failed to rectify the situation so as to bring on board the omitted members of church parishes and the applicants herein.

7. The applicants aver that they are likely to suffer irreparable loss that cannot be compensated by an award of damages and will have no chance for further reprieve since the synod meeting shall have taken place. That the balance of convenience tilts in their favour.

8. The motion is supported by the affidavit of Canon Samuel Mutegi Mbiri sworn on 11/3/2025 where he has reiterated the above grounds and annexed a copy of the invite sent to some members of the church, a copy of the Church Constitution and a copy of the Court Order. He avers that the application is urgent as the meeting will proceed if the respondent is not restrained.

9. The respondent has opposed the application and filed a replying affidavit sworn by Gedion Muneni Nzoka. The respondent contends that application is an abuse of court process and is strenuously opposed. That the 1st applicant is a member of ACK Mukurani Church while the 2nd applicant is the vicar of ACK St Barnabas Nthilani Church, albeit illegally as he was transferred to a different parish in 2023 but declined without cause, reason or explanation. That the Parish Church Councils of ACK Mukurani Church and St. Barnabas Nthilani Church wrote letters declaring that they were no longer answerable to him as the Bishop of ACK Kitui Diocese. The letters are annexed as GM1. That in the said letters the parishes explicitly stated that they would not be answerable to the Diocese financially, administratively or otherwise. The resolution is annexed marked GM2. That the applicants have not distanced themselves from the actions by their respective parishes but have openly aligned themselves with the defiance stance taken by their parishes.

10. The respondent further avers that he has made genuine efforts to restore unity and order with the applicants with a meeting called on 21/11/2024 which did not materialize as it was marred by chaos instigated by the applicants with tables being overturned making any meaningful discussions impossible. That thereafter chaos erupted at ACK St Peter's Mamole parish where the applicants and their associates resulted to violence barring him from accessing the church, an act that not only disrupted church activities but also jeopardized the safety of the congregants.

11. He contends that it is improper for the applicants to reject the authority of the diocese and yet seek to dictate the affairs of the very same diocese they claim to have disassociated from. That the applicant cannot claim exclusion from the upcoming Diocesan synod meeting and yet they have demonstrated a clear and intentional departure from the governance of the diocese.

12. The respondent submits that the applicant have not demonstrated a prima facie case with chances of success or that they are likely to suffer irreparable loss or harm. He further contends that any grievances regarding the synod's decisions, if legally justifiable can be addressed thro' internal church mechanisms or legal recourse available under ecclesiastical law. That the balance of convenience does not tilt in applicant's favour. The respondent avers that the application lacks merits an ought to be dismissed. The application was canvassed by way of oral submissions in open court due to the urgency of the matter.

Analysis and Determination

13. I have considered the application, the averments in the parties' affidavits and the submissions. The issue which arises for determination is whether the applicant has made out a case for the granting of a temporary injunction pending the hearing and determination of the suit and the application. The threshold for the granting of a temporary injunction is Order 40 Rule 1 & 4 of the Civil Procedure Rules which provides as follows:

> " 1. Where in any suit it is proved by affidavit or otherwise—(a)that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or(b)that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
>
> 4(1) Where the court is satisfied for reasons to be recorded that the object of granting the injunction would be defeated by the delay, it may hear the application ex parte.
>
> (2) An ex parte injunction may be granted only once for not more than fourteen days and shall not be extended thereafter except once by consent of parties or by the order of the court for a period not exceeding fourteen days.
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> (3) In any case where the court grants an ex parte injunction the applicant shall within three days from the date of issue of the order serve the order, the application and pleading on the party sought to be restrained. In default of service of any of the documents specified under this rule, the injunction shall automatically lapse.
>
> (4) All applications under this order shall be heard expeditiously and in any event within sixty days from the date of filing unless the court for good reason extends the time."

14. The guiding principles for the granting of orders of temporary injunction have been long settled in the case of Giella -vs- Cassman Brown (1973) E.A 358 where the court held that a party seeking an order of temporary injunction has to demonstrate that:

i. That he has a prima facie case with chances of success.

ii. That he is likely to suffer irreparable loss that cannot be compensated by an award of damages.

iii. That if he court is in doubt the court has to determine whether the balance of convenience tilts in favour of the applicant.

15. This position has been reiterated in numerous decisions of this court, Court of Appeal and Supreme Court. The Court of Appeal in the case of Ngurumani Limited -vs- Jan Bonde Nielsen & 2 Others 2014 eKLR held that:

> "In an interlocutory injunction application, the applicant has to satisfy the triple requirements to,
>
> a. Establishes his case only at a prima facie level,
>
> b. Demonstrate irreparable injury if a temporary injunction is not granted and,
>
> c. Ally any doubts as to (b) by showing that the balance of convenience is in his favour."
>
> These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical handles which the applicant is expected to surmount sequentially."

16. Thus, for a party seeking an order of injunction to succeed, he first of all has to establish a prima facie case. The test of a prima facie case is whether the plaintiff has demonstrated a legal right which is infringed or is likely to be infringed by the adverse party as to call on that party to explain or to rebut the issue.

17. In Mrao Ltd -vs- First American Bank of Kenya Ltd (2003) eKLR the court of Appeal while discussing as to what amounts to prima facie case, stated as follows;

> "...in Civil cases, it is a case in which, on the material presented to the court a tribunal properly addressing and directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."

18. On the issue of prima facie case the applicant has averred that the respondent has called a meeting of he synod and has omitted them and several church leaders and their members from organizing and participating in the church synod meeting. This is not denied. However, the respondent has annexed letters showing that the applicants have declared that their parishes were no longer answerable to the Bishop of ACK Kitui Diocese and would not be answerable to the diocese financially, administratively or otherwise. See annexure GM 1 & 2. The letters are not denied. They are written by the applicants who are among the parishes that are proposing to establish a new Anglican Diocese called Anglican Church of Kenya Diocese of Kitui Rural. The applicant having expressed themselves in writing that they are no longer answerable to the Bishop (respondent) have not made out a prima facie case with chances of success.

19. The respondents has deponed that his attempts to reconcile the parties have been futile due to disruptions of meetings which he has called and the applicants resulting to violence. The applicants by the said letters have rejected the authority of he very person they now say has failed to include them. In the light of the letters, the respondent has not infringed on the rights of the applicants, he has offered an explanation. The applicant has not made out a prima facie case.

20. How about irreparable loss. This must be a loss or injury that cannot be adequately compensated by an award of damages. It must follow that if there is a prima facie case, the applicant's other duty is to show that he will suffer such loss. That irreparable, that is to say that the loss cannot be quantified as

to be compensated by an award of damages. The applicants have not demonstrated that they are likely to suffer irreparable loss as they have stated that they have withdrawn from he diocese of Kitui which is headed by the respondent.

21. In the circumstances, decisions reached by the respondent do not affect them. As such balance of convenience does not tilt in their favour. The balance of convenience is that if an injunction is not granted and the suit is ultimately decided in their favour, the inconvenience caused to the applicant would be greater than that which would be caused to the respondent. The balance tilts is favour of the respondents who would fail to have their synod meeting and the applicants have said they will not be bound by the respondents authority. The consideration is the convenience to the parties and the nature of the injury to the applicant.

22. In determining the question of the balance of convenience the court has to determine which is likely to suffer greater harm. If the applicant has a strong case on the merits or there are high chances of irreparable harm it may influence the balance in favour of granting an injunction. The applicant has relied on the order dated 31/7/2024 issued by Employment and Labour Relations Court at Machakos to show there is a dispute.

23. The applicant has alleged violation of the said order. The matter is sub-judice and this court cannot engage in determining whether it has been violated or not. It is my view that the applicants have not came to court in clean hands due to material none disclosure of the fact that they had written to denounce the authority of the respondent over the parishes and stopped forwarding the finances to the Bishop contrary to the resolution of the synod held in 2023.The consequences of none disclosure are that a party is deprived of any advantage as against the adverse party.

24. In the case of Bahadurali Ebrahim Shamji -vs- Al Noor Jamal & 2 Others Civil Appeal No. 210/1997 the Court of Appeal stated as follows;

> " It is perfectly well settled that a person who makes an ex-parte application to the court, that is to say, in the absence of the person who will be affected by that which the court is asked to do is under an obligation to the court to make to the fullest possible disclosure of all material facts within his knowledge and if he does not make the fullest possible disclosure, then he cannot obtain any advantage from the proceedings and he will be deprived of any advantage he may have already obtained."

25. Thus, in this matter, the applicant was under an obligation to disclose all material facts which were relevant to the case. Such facts must be stated fully and fairly before the court. The duty to disclose applies to material facts known to the applicant.

26. The applicant failed to disclose material facts which were within their knowledge. I also note that the verifying affidavit contains falsehoods in view of ELRC Case No. E023/2024 at Machakos involving the same parties. The applicant avers that:

> " there is no other suit pending and there have been no previous proceedings in any court between the parties over the same."

The none disclosures and he falsehoods must deny the applicant any advantage in this application. The end result is that the balance of convivence does not tilt in the favour of the applicants.

Conclusion

27. The application is devoid of merits and is dismissed with costs.

DATED, SIGNED AND DELIVERED AT KITUI THIS 20TH DAY OF MARCH 2025

HON. LADY JUSTICE L. GITARI

JUDGE