



**Mwangangi & 4 others (Suing on their own behalf and on behalf of other
pastors and/or members of Eaglerise Christian Church) v Wambua (Civil
Suit 13 of 2020) [2024] KEHC 6551 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6551 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL SUIT 13 OF 2020
MW MUIGAI, J
MAY 21, 2024**

BETWEEN

**REV NAHASHON WAMBUA MWANGANGI 1ST PLAINTIFF
REV TOM NTHENGE MWANGANGI 2ND PLAINTIFF
REV LUCAS MUTISYA WAWERU 3RD PLAINTIFF
REV CHRISTOPHER MATHEKA NDAMBUKI 4TH PLAINTIFF
REV TITUS MWENDWA KATINGU 5TH PLAINTIFF
SUING ON THEIR OWN BEHALF AND ON BEHALF OF OTHER PASTORS
AND/OR MEMBERS OF EAGLERISE CHRISTIAN CHURCH**

AND

REV LEONARD MUNYAO WAMBUA DEFENDANT

RULING

Background

Pleadings

1. On 30/6/2020 the Plaintiffs filed suit against the Defendant on the basis that the Eagle Rise Christian Church is registered under the *Societies Act* and has branch churches all over the country and runs various projects among them; Eagle Rise Girls Centre at Makindu.
2. It is deposed and alleged that contrary to the *Constitution* of the Church in December 2019, the Defendant unilaterally committed acts and/or omissions without involving the Executive Board as outlined at Paragraph 5 of the Plaint.



3. It was alleged that despite efforts to amicably resolve the disputes through the Church organs or other legal forum such efforts failed.
4. The Plaintiff sought declaration that the Defendant's alleged actions were/are null and void and Injunction restraining the Defendant's team being from holding themselves out as bona fide Officials of the Church.
5. By Replying Affidavit filed by the Defendant of 20/7/2020 denied commission and/or omissions alleged in the said Plaintiff. The Defendant deposed that he did not remove any of the Plaintiffs from office. He alleged that on 14/12/2019 the Operations Church Committee which Committee includes the Plaintiffs and the Defendant met and in consultation agreed on the Church's organizational changes. The Defendant deposed the said Committee was/is an adhoc Committee formed to assist the Bishop in the day to day running of the Church but not make binding and far reaching decisions of the Church.
6. The Defendant deposed that he is Founder and Bishop of Eagle Rise Christian Church and has oversight and mandate to implement resolutions of any Church Committee.
7. The Defendant deposed the Church Structure has no elected Board of Trustees and operates on appointment interim basis by the Defendant serving at his pleasure.
8. The Defendant listed Legal Officials of the Church at paragraph 11 of the Replying Affidavit.
9. The defendant deposed that the Plaintiffs sowed seeds of discord, division and confusion in the Church Ministry.

Hearing

10. The matter after hearing by various colleague Judges on various Applications and now this Court took over the matter on 21/10/2021. After Interlocutory matters the hearing commenced on 13/6/2023 and on various dates heard both Plaintiff's case and Defendant's case and proceedings concluded on 14/5/2024.
11. Parties/Counsel agreed to file written Submissions. Just then the following application and response was made as follows;

Application

12. Mr. Muithya: I am applying there is an allegation by one of the parties namely Mr. Ramson Mwashigadi that he did not sign the document of 23/5/2014 and the resultant resolutions of 23/5/2014. What is contested is whether the signature belongs to or not to Ramson Mwashigadi. In the interest of justice, the document ought to be submitted to the Document Examiner for expert analysis and report thereof to be presented as to whether or not if the purported signature is for Ramson Mwashigadi or not It is not for the Plaintiff or Defendant to confirm the same but to aid the Court to reach a just decision.
13. Ms. Akoth: We vehemently object to the objection by the Plaintiffs' counsel and it is a delaying tactic so that the matter is not completed and if the parties/counsel went for pre-trial and we did disclose what we would rely on and this is an ambush and afterthought to patch up the case after the evidence on record.
14. They are trying to reopen the matter and the matter has to be concluded. This is a 2020 matter instituted by the Plaintiffs. The case is against the Bishop of the Eagle Rise Christian Church with 40 branches.



15. The plaintiff cannot keep us hostage of the whole Church. We take directions on filing of written submissions.
16. Mr Muithya: I will start by allegation of delay. We desire the matter to be expedited. The Plaintiffs came to Court having been aggrieved and it cannot be true they are causing delay to this matter by making various applications. It is true we filed pleadings and the issue for the Court to determine is whether the signatures of the contested notice will aid the Court on whether the signature is the one and we are not patching anyone's case. It is a contested issue. We need Expert Opinion by Document Examiner. We are not reopening the matter a Ruling and Submissions are not filed.

Opinions of Experts

17. When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity or genuineness of handwriting or finger or other impressions, opinions upon that point are admissible if made by persons specially skilled in such foreign law, science or art, or in questions as to identity, or genuineness of handwriting or fingerprint or other impressions.
18. From the chronology of events that culminated to the dispute the subject of the hearing and determination the issue(s) in question oscillate around the notice and meeting that is alleged to have ousted the Plaintiffs from office within the Church and replaced them with a new team.
19. The Notice that called AGM meeting are subject of the Certificate of Urgency application filed on 3/3/2023 in this matter, challenging the AGM held contrary to Court orders of Hon D.K.Kemei J of 8/7/2020 restraining the Defendant from interfering with the work of Plaintiffs pending hearing and determination of the matter in Court.
20. The Notice and AGM are also subject of CMCC-Milimani Court E052 of 2023 a matter between the former and current Secretary, during the hearing each Secretary denied issuing the contested Notice for contested AGM and therefore the crux of the matter is who then called the Meeting.
21. On the other hand, The Defendant took the view that the hearing has been prolonged since 2020 to date with various applications by the Plaintiffs yet parties through Counsel went for Pre Trial Processes and at no time was the issue of Expert evidence or opinion sought. The same the Defendant stated was an ambush calculated to patch the case after evidence on record.
22. From the rival submissions this Court must do what is not only expedient but also in favor of the justice of the case.

Therefore, Court shall employ the Overriding Objective Section 1A CPA of the Court;

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
23. Kagina v Kagina & 2 others (Civil Appeal 21 of 2017) [2021] KECA 242 (KLR) Court of Appeal Nyeri referred to the case of;

Shah and Another vs. Shah and Others [2003] 1 EA 290 wherein Ombija, J (as he then was) expressed himself on this issue, *inter alia*, as follows on the question of expert evidence;

“One of the special circumstances when witnesses may be called to give evidence of opinion is where the situation involves evidence of expert witness and this is an exception to the general rule that oral evidence must be direct... The expert opinion is however limited to foreign law science or art; including all subjects on which a course of study or experience is necessary to the formation of an opinion and handwriting



is one such field...However as a rule of practice, a witness should always be qualified in court before giving his evidence and this is done by asking questions to determine and failure to properly qualify an expert may result in exclusion of his testimony... The opinion of the expert witness is not binding on the court, but is considered together with other relevant facts in reaching a final decision in the case and the court is not bound to accept the evidence of an expert if it finds good reasons for not doing so...If there is a conflict of expert opinion, with experts appearing for both parties, resolution of conflicting evidence or the acceptance of the evidence of one expert in preference to the opinion of the other, is the responsibility of the court...Properly grounded expert evidence of scientific conclusion will be extremely persuasive in assisting the court to reach its own opinion.”

24. From the above provisions of law and case-law on the import of expert opinion, this Court is persuaded that the expert evidence/opinion is relevant in the instant case and the justice of the case depended on proof of authorship of the Notice and legality of the Meeting even at the expense of the delay in determination & finalization of the same.

Disposition

25. The impugned Notice and/or Resolutions of the Meeting of 14/12/2019 be presented to the DCI- Document Examiner with known handwritings and signatures of PW2 Tom Nthenge.
26. DW1 Ramson Mwashigadi by the Deputy Registrar Machakos High Court for handwriting and signature examination and Official Report to be relied to the Deputy Registrar to be presented to the Court.
- 1, The matter is adjourned to facilitate the Document Examination process for 90 days.
 2. In default, parties through Counsel file and exchange Written submissions through Deputy Registrar Machakos High Court.
 3. Further Mention for Direction -FMD on 19/9/2024.

**RULING DELIVERED DATED & SIGNED IN OPEN COURT IN MACHAKOS ON 21/5/2024
(VIRTUAL/PHYSICAL CONFERENCE)**

M.W. MUIGAI

JUDGE

