



Ajiba v Manya (Civil Case E001 of 2024) [2024] KEHC 10557 (KLR) (5 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10557 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL CASE E001 OF 2024
WM MUSYOKA, J
SEPTEMBER 5, 2024**

BETWEEN

PAUL CALEB AJIBA PLAINTIFF

AND

DR STEPHEN WANDEFU MANYA DEFENDANT

RULING

1. The plaintiff is a communicant or parishioner, or, in the Kenyan parlance, member, of the ACK St. Barnabas Esikura Lugulu Parish, while the defendant is the Vicar in charge of St. Stephen ACK Parish in Nambale Diocese. In his suit, the plaintiff avers that the defendant was not properly appointed to his office, given that he previously served with the Mumias Diocese, and the Bishop for that Diocese did not release him, for transfer to the Nambale Diocese, to take charge of St. Stephen ACK Parish. He invites the court, in his plaint, for a declaration that the due process was not followed for the said transfer, and the appointment of the defendant, to his current position, was, therefore, not procedural, and that he was illegally in office.
2. The plaint was filed simultaneously with a Motion, dated 22nd January 2024, seeking that an order issues to restrain the defendant, or his agents, from conducting the affairs of St. Stephen's ACK Parish, Nambale Diocese, on grounds that the Bishop of the Mumias Diocese had not released him for appointment as Vicar for the St Stephen's Parish in Nambale. He argues that the defendant transferred himself to the said Parish, without the knowledge of the Mumias Bishop.
3. The defendant reacted to that application, by an affidavit he swore on 5th February 2024. He asserts that he is the Vicar-General for the Diocese of Nambale, serving at the St. Stephen's Church, on appointment by the Bishop of Nambale. He further states that, following the appointment, he was duly installed as such, in a ceremony that was conducted by the Bishop of Nambale Diocese, on 21st February 2024. He avers that he did serve at the Mumias Diocese, up to 2005, after which he left for further studies, in Nairobi, at Daystar University. He explains that, while studying at Daystar University, he was appointed, by the Bishop of the All Saints Cathedral Diocese, Nairobi, to serve at the



St. Joseph Parish at Kabete. He also taught at Daystar University and Alupe University, and it was from the latter that he was appointed the Vicar-General. He complains that the suit herein is an attempt to scuttle his intention to vie for the position of Bishop of the Nambale Diocese.

4. In a further affidavit, sworn on 14th February 2024, the defendant avers that the Church has a constitution, which regulates the matters in dispute, and which provides for an internal dispute resolution mechanism, which the plaintiff has not exhausted. A copy of that constitution is attached.
5. I gave directions, on 24th April 2024, for canvassing of the said application, by way of written submissions. The only written submissions that I see in the record before me are by the defendant. He argues around the principles for grant of injunctive relief, and asserts that the threshold has not been met. He cites *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358 (Sir William Duffus P, Spry VP & Law JA), *Mrao Ltd vs. First American Bank of Kenya Ltd* [2003] eKLR (Kwach, Bosire & O’Kubasu, JJA), *Kitur & another vs. Standard Chartered Bank & 2 others* [2002] eKLR (Tunya, J), *Pius Kipchirchir Kogo vs. Frank Kimeli Tenai* [2018] eKLR (Ombwayo, J) and *Showind Industries vs. Guardian Bank Limited & another* [2002] eKLR (Ringera, J).
6. The above decisions state the law, with respect to what should be established, for the purpose of persuading a court to grant the relief sought in the instant application. Has the threshold been met? I do not think so. There are several reasons.
7. In the first place, I doubt that the plaintiff has any locus to bring a civil suit of this nature against the defendant. It turns on Church affairs. The plaintiff is not in a position of leadership within the Church, and he appears to have brought the suit in his personal capacity. The wrong, that he complains of, does not affect him as a person. He does not come from the same Parish with the defendant, according to his papers, and he has not attempted to explain why he would be aggrieved. The defendant was allegedly appointed the Vicar of the St. Stephen’s Parish, the plaintiff is from St. Barnabas Parish. What business does he have complaining about what goes on at St Stephen’s? How does it affect him? What loss would he personally suffer should the appointment remain in place? With profound respect to the plaintiff, the space or position from which he is prosecuting this suit projects him as a busy-body.
8. In the second place, the plaint, as framed, as I understand it, is presenting a case in public interest, and, therefore, the plaintiff is suing the defendant in public interest. However, suits of that nature only work best in the realm of public law, against State entities, where Judicial Review, constitutional petitions and fair administration action suits are permissible. The Church is not in that space. It is not a State organ or entity, and public interest litigation is not suitable to agitate claims against it, or its officials.
9. In the third place, the plaintiff is asserting that the defendant was serving under the Bishop of the Mumias Diocese, and could not transfer his services from the Mumias Diocese to another diocese, or accept appointment by another diocese, without being released or permitted to do so by the Bishop of Mumias. The plaintiff has not provided material to demonstrate that he is the official mouthpiece of the Bishop of the Mumias Diocese, or that he has the authority of that Bishop to pursue the case on his behalf. There is no proof that the said Bishop is aggrieved about the defendant, and even if he was, there is nothing to show that he has authorised the plaintiff to bring the suit, to articulate his grievance.
10. In the fourth place, the Church is not personal property, where the plaintiff would have proprietary rights, neither is it a firm, where members or adherents would have shares, which would provide basis for litigation in the manner of the instant suit. The Church is a society, where the plaintiff would have interests, as opposed to rights. Courts are generally shy about entertaining suits over societal interests, given that such societies would have rules under which they play by, and it would be expected that any disputes would be resolved within those rules. The plaintiff would like the court to declare that due process was not followed in the appointment and transfer of the defendant, and that would presuppose



that a certain process had been provided for such transfer and appointment, yet the plaintiff has not pointed at any rule or regulation that ought to have governed such transfer and appointment.

11. In the fifth place, and related to the fourth, the Church, being a society, ought to be governed by certain rules, often referred to as a constitution, which regulates conduct of its affairs, and sets out how any differences and disputes, between members of the society, or between the members and the leadership, ought to be resolved. These are what are commonly known as internal dispute resolution mechanisms. The defendant has stated that the Church does have a constitution, and he has availed a copy, which provides for an internal dispute resolution mechanism, and has argued that the plaintiff did not exploit that mechanism before rushing to court. I have perused that constitution, and I have noted those mechanisms. The business or affairs of the Church should be run by the Church itself, and not the State, whether through the Executive or the courts. State intervention would be only in extreme cases, where there would be violation of the law, or breakdown of law and order, or a serious threat to those. The State trusts that the Church is capable of taking care of its own affairs, and intervenes only where it is established that the Church has failed in that regard. A member of a Church, who is aggrieved by anything that happens within the Church, is expected to raise the matter internally, and to seek to have it resolved within the internal Church structures, and should only approach the court where he has exhausted those mechanisms, or where the processes are carried out in violation of the law. The plaintiff has not demonstrated that he exploited the internal mechanisms established by the Church, without success, or the Church mechanisms operated in breach of the law relating to due process and fair hearing, or that he did not expect to get justice in that process.
12. In the sixth and final place, the issue raised appears to touch on employment and labour relations. It is about an employee of the Church being appointed, and transferred. The High Court has no jurisdiction to address employment and labour relations issues. Whether a person is properly appointed to a position within an organisation, or society, such as a Church, and whether he is properly transferred from one station of work to another, within the organisation, is a matter of employment. Under Article 162(2) of *the Constitution* of Kenya, promulgated in 2010, that jurisdiction lies with a court envisaged by that Article, which court was established by Parliament, in 2011, and designated the Employment and Labour Relations Court. *The Constitution* emphatically states, at Article 165(5) of *the Constitution*, that the High Court shall not exercise jurisdiction over any of the matters reserved for the courts contemplated under Article 162(2). The High Court can only exercise jurisdiction, to a very limited extent, where the constitutional issue raised is framed under Article 165(3) of *the Constitution*, and the same is not exclusively an employment issue.
13. I do not think I should belabour the issue. I am not persuaded that a prima facie case, with probability of success, exists. As indicated above, there is nothing to show that the plaintiff would stand to suffer damage of any kind, should the orders not be granted, for he has no personal interest in the matter, and the instant suit does not fall within the rubric of public litigation. There is no merit in the application, dated January 22, 2024, therefore, and I hereby dismiss it, with costs to the defendant. It is so ordered.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 5th DAY OF SEPTEMBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Amani, instructed by SK Amani & Associates, Advocates for the plaintiff.



Mr. Bogonko, instructed by Bogonko Otanga & Company, Advocates for the defendant.

