



**Prophetic Church Ministries of East Africa (Suing through its registered Chairman - Peter Lemmo Amugune) v Africa Kenya Sabcrynsk of Soi (Being sued through its registered Chairman - Abraham Shikuku) & 3 others (Civil Case 189 of 2017) [2024] KEHC 11685 (KLR) (Civ) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11685 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE 189 OF 2017**

**AN ONGERI, J**

**SEPTEMBER 19, 2024**

**BETWEEN**

**PROPHETIC CHURCH MINISTRIES OF EAST AFRICA (SUING THROUGH ITS REGISTERED CHAIRMAN - PETER LEMMO AMUGUNE) ..... PLAINTIFF**

**AND**

**AFRICA KENYA SABCRYNISK OF SOI (BEING SUED THROUGH ITS REGISTERED CHAIRMAN - ABRAHAM SHIKUKU) ..... 1<sup>ST</sup> DEFENDANT**

**RONALD AMBULWA ..... 2<sup>ND</sup> DEFENDANT**

**GREEN YELLOW CROSS CHURCH (BEING SUED THROUGH ITS REGISTERED CHAIRMAN - JARED AMUSAVA) ..... 3<sup>RD</sup> DEFENDANT**

**AFRICA KENYA WHITE STAR SABCRYNNSK OF SOI ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff in this case, Prophetic Church Ministries of East Africa sued the four defendants Africa Kenya Sabcrynsk of Soi, Africa Sabcrynsk of Soi Praying And Healing Church, Green Yellow Cross Church and African Kenya White Star Sabdcry of Soi seeking the following orders;
  - i. A permanent Injunction against the defendants jointly and severally either by themselves, their agents servant or followers not to use the word or letters “SABCRYNNSK” which constitutes the Plaintiff’s Trade Mark.
  - ii. A declaration that the word or letters “SABCRYNNSK” has been registered under Trade Mark No. 70205 in favour of the plaintiff absolutely.



- iii. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants be compelled by this honourable court to abandon the use of the word or letters SABCRYNNSK.
  - iv. Costs of this suit.
  - v. Any other relief that this honourable court may deem fit to grant.
2. The defendants filed their respective defences denying the plaintiff's claim.
  3. The matter was resolved at mediation and the only outstanding issue for determination in this case is who is entitled to the exclusive use of the green colour of the praying rod.
  4. A brief history of this case is that the parties in this case are all the sons of one Isaac Maikura Shiyonga (deceased) who was the founder of the church called African Kenya SABCRYNNSK of Soi.
  5. The 1<sup>st</sup> defendant maintained that the green colour of the praying rod belongs to them since the other churches broke away from the founder church.
  6. The hearing proceeded by viva voce evidence.
  7. The parties filed written submissions as follows;
    - 1) The plaintiff's submissions
      - i. The plaintiff submitted that the parties agreed at mediation that each party to wilfully choose the colours that would go on the different rods.
      - ii. That the plaintiff's witness said during the hearing that the problem of sharing the green rod with the 1st and 2nd defendants is that they were committing crimes while carrying and dressed in church gear.
      - iii. The plaintiff submitted that according to the evidence, there was a main church by the late Elijah who had his sons worshipping in the church together.
      - iv. After the death of the founder of the church, the church split but all the churches continued using green rod.
      - v. The current suit was referred to mediation. None of the churches had registered the rod with the Kenya Industrial property Institute (KIPI). They have all presented their applications to KIPI but none has a certificate.
    - 2) The 1st defendant's submissions
      1. The 1st defendant submitted that all the parties in this suit are the spiritual sons of prophet Isaac Maikuva Shiyonga who was the founder of African Saberynnysk Church of Soi which as founded in 1966.
      2. The 1st defendant submitted that after the demise of their father on 11/10/1991, Abraham Shikuku was appointed as the prophet of the church.
      3. The suit filed by the plaintiff was resolved and the the remaining issue is the colour of the rod.
      4. The 1st defendant further submitted that it was agreed that the plaintiff covenant rod shall be green at the bottom and dark red or maroon on the top.



5. The 1st defendant maintained that their colour of the rod will be green and for that reason they did not sign the mediation agreement.
  6. That the 2nd defendant rod was to be green on the upper part and white in the middle and dark red or maroon on the bottom.
  7. That the 3rd defendant agreed that their praying rod/covenant shall be green on the bottom and yellow at the top.
  8. That the 1st defendant's colour was to remain green as set down in the societies constitution.
  9. The 1st defendant submitted that the 2nd and 3rd defendants did not avail their certificates of registration and therefore they are unregistered societies contrary to the register on industrial design.
  10. That Concilia Were, the witness from KIPI confirmed that the examination of industrial design is holistic in nature, which incorporates and protects colour, configuration, shape and design and therefore an identical or substantially similar design cannot be registered.
- 3) The 2nd defendant's submissions
1. The 2nd defendant submitted that this matter took a new turn when it was referred to mediation.
  2. That while in the process of mediation, it was agreed that none of the parties had registered the green rod with KIPI.
  3. The parties began the process of registration and the 2nd defendant paid the requisite fee on 14/9/2023 and received a certificate dated 30/5/2024.
  4. On the issue as to has the exclusive right to use the green rod, the 2nd defendant submitted that under article 32 of *the Constitution*, every person has the right either individually or in community with others in public or in private to manifest any religion or belief through worship, practice, teaching or observance involving observance of a day of worship.
  5. The 2nd defendant submitted that the green rod was the invention and handcraft of the founder who was their father.
  6. The 2nd defendant said from the evidence, it was clear that at the time the parties lodged the registration for the design, the green rod was not original and was in common use not only by the parties but also by the members.
  7. Further the 2nd defendant submitted that the rights conferred by the registration of an industrial design extend only to acts done for industrial or commercial purposes but the rod is only for use for religious purposes.
  8. The 2nd defendant submitted that there was no creativity or ingenuity involved because the 1st defendant simply copied the design from the original green covenant rod, and "reverse engineered" it to produce the design submitted for registration and the 1st defendant cannot therefore acquire exclusive rights to use it.



8. The sole issue for determination is whether the green praying rod exclusively belongs to the 1<sup>st</sup> defendant or it can be used by the other churches.
9. I have considered the evidence on record and I find that it is not in dispute that the green praying rod originally belonged to the founder of the 1<sup>st</sup> defendant church who was the father of all the parties.
10. There is evidence that all the parties in this suit are the sons of one Isaac Maikuva Shiyonga (deceased) who was the founder of African Sabcrynnysk Church of Soi which as founded in 1966.
11. The green rod was the invention and handcraft of the founder who was their father.
12. It is the founder who invented and designed the green praying rod and none of the parties is entitled to exclusive use of the same.
13. The founder did not register the design. The *Industrial Property Act* No 3 of 2001 sets out a codified statutory framework in relation to patents, utility models and industrial designs.
14. Section 92(1) states as follows;  

“Registration of an industrial design shall confer upon its registered owner the right to preclude third parties from performing any of the following acts in Kenya:-

  - (a) reproducing the industrial design in the manufacture of a product,
  - (b) importing, offering for sale and selling a product reproducing the protected industrial design, or
  - (c) stocking of such a product for the purposes of offering it for sale or selling it.”
15. I find that the rod was in common use by all the parties after the church had split upon the demise of the founder. The green covenant rod was utilized by all the parties for prayer purposes.
16. The definition of an Industrial Design is provided by Section 84 (1) of the Act which states:  

“84. for the purposes of this part, “an industrial design” means any composition of

  - (1) lines or colours or any three dimensional form, whether or not associated with lines or colours:  

Provided that such composition or form gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry handicraft.
  - (3) The protection under this Act shall not extend to anything in an industrial design which serves solely to obtain a technical result.”
17. The rights of the owners of an industrial design are set out in Section 85. It states that;  

“85. subject to the provisions of any other written law, the creator of an industrial

  - (1) design or his successors in title shall have the exclusive right to sell or cause to be sold for commercial or industrial purposes the goods in which the design is incorporated, subject to the conditions of this Act.”
18. According to the expert witness from KIPI, if a design is common, a party cannot be given exclusive rights.



- 19. In the current case I find that the Green rod was a common design which was used by all the parties.
- 20. Article 32 of *the Constitution* provides that every person has the right either individually or in community with others in public or in private to manifest any religion or belief through worship, practice, teaching or observance involving observance of a day of worship.
- 21. All the parties belonged to one church before they broke up and the Green rod is a common heritage and none of them has the exclusive right to use it.
- 22. All the parties in this case have a right to use the Green praying rod since it is their common heritage having originated from their father.
- 23. I find that all the parties in this have a right and they are at liberty to use the green covenant rod for purposes of prayer in accordance with Article 32 of *the constitution*.
- 24. Each party to bear its own costs of this suit.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

.....

**A. N. ONGERI**

**JUDGE**

**In the presence of:**

- .....for the Plaintiff
- .....for the 1<sup>st</sup> Defendant
- .....for the 2<sup>nd</sup> Defendant
- .....for the 3<sup>rd</sup> Defendant
- .....for the 4<sup>th</sup> Defendant

