



**Magodo v Magodo (Commercial Case E334 of 2022)
[2023] KEHC 2448 (KLR) (Commercial and Tax) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2448 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E334 OF 2022
DAS MAJANJA, J
MARCH 10, 2023**

BETWEEN

KNIGHT MUHONJA MAGODO PLAINTIFF

AND

ALICE INGAIZA MAGODO DEFENDANT

RULING

Introduction and Background

1. The Plaintiff and the Defendant are members and/or officials of a church and registered society, Magodo International Ministries ('the Church') founded by the late Musa Magodo Keya ('the Deceased'). The Plaintiff states that she is the daughter of the Deceased while the Defendant is his wife.
2. A leadership row arose in the Church which led the Plaintiff to file this suit against the Defendant by the Plaintiff dated November 12, 2022. She seeks a raft of reliefs including a declaration that she is a life member and the legitimate secretary of the Church and an order restraining the Church from removing her as its Secretary, a declaration that only family members of the Deceased can be officials of the Church in accordance with its constitution, an order compelling the Church to pay her Kshs 3,800,000.00 on account of unpaid salary from September 2019 to date, an order directing Defendant to provide financial statements from the Church, access to the Church's books of account, documents and membership lists, assets and an order directing the Defendant to pay from the Church the needs of all family members of the Deceased as envisaged by the Constitution.
3. In the application dated November 14, 2022 filed together with the Plaintiff, the Plaintiff seeks orders to freeze various accounts of the Church and its related entities held in the Interested Parties' Banks. On November 30, 2022, the court partly allowed the application by granting the freezing orders pending



hearing and determination of the application and/or further orders of the court. The court is now being called upon to determine the remaining prayers in the application which are as follows:

- 3.
4. THAT the honourable court be pleased order the respondent to provide the applicant and all the life members (family members of the late Magodo) of the society with all the bank accounts, properties and financial position of the society as at today.
 5. THAT pending the hearing and determination of this suit, this Honourable Court be pleased to order the Respondent to pay the applicant from the funds of the society her monthly salary of Kenya Shillings One hundred thousand (Kshs 100,000) for every month.
 6. THAT pending the hearing and determination of this suit this Honourable court be pleased to order the Defendant to direct parents of Magodo complex school limited and tenants of Nairobi block 97/1736, Nairobi Block 94/76, Nairobi Block 72/2881, Nairobi Block 118/245, Nairobi Block 118/246, Nairobi Block 118/247, Nairobi Block 118/249, Nairobi Block 118/252, Nairobi Block 118/631, Nairobi Block 118/818, Nairobi Block 96/315, Kitale Municipality Block 3/974, Kitale Municipality block 3/975, Kitale Municipality block 6/455, Kitale Municipality block 6/457 and Kangundo/Katitu/ 1488 to pay school fees and rents in a joint account to be opened by the applicant and respondent.
 7. THAT Honourable court be pleased to order the OCS Buruburu Police station to ensure compliance with the orders of this court as shall be issue.
 8. THAT the costs of the application be provided for from the funds of the society.
4. The Plaintiff's application is opposed by the Defendant through her replying affidavit sworn on December 5, 2022. The Defendant has also filed an application dated January 17, 2023 seeking to vacate the court's orders of November 30, 2022 and unfreeze the subject accounts pending hearing and determination of the suit. She further seeks to join the Registrar of Societies as the 2nd Defendant and that an order to issue barring the Registrar from deregistering the Church pending hearing and determination of this suit. The Plaintiff had opposed a similar application by the Defendant through her replying affidavit sworn on December 13, 2022. I will deem the Defendant's application as a response to the Plaintiff's application. The parties have supplemented their arguments to the applications by filing written submissions.

The Plaintiff's application

5. The Plaintiff's case is that she is the secretary and a life member of the Church. That when the Deceased passed away on September 2, 2019, the Defendant chased her away and stopped her from participating in Church activities.
6. The Plaintiff contends that the Defendant and persons acting on her instructions have disabled her from discharging her duties as secretary by barring her from accessing the Church offices and other branches. She accuses the Defendant of denying her access to Church records, documents, and information thus rendering her a mere spectator in the activities and affairs of the Church. The Plaintiff states that she is entitled to this information not only as the secretary of the Church, but also as a family and a life member of the Church and that further, under Article 35(1) of the Constitution, she is entitled to this information as a matter of right.



7. The Plaintiff accuses the Defendant of unjustly enriching herself by forging documents, swearing a false affidavit and violating several provisions of the Societies Act (Chapter 108 of the Laws of Kenya) in an attempt to remove and replace her as the secretary of the Church with the intention of withdrawing all the Church's funds held in the Interested parties' banks in the name of various projects of the Church. The Plaintiff relies on the letter dated September 30, 2022 by the Registrar to the Defendant highlighting to her the laws she had contravened. She avers that the Defendant has opened another bank account in the name of the Church as a sole signatory wherein school fees is paid. That this is confirmed by the fact that there is no any income that has been deposited in the said bank account, yet the school is running and the school fees is paid by the students.
8. The Plaintiff further accuses the Defendant of deriving profits and taking rents from various properties belonging to the Church fraudulently and that she has failed to involve the Plaintiff and other family members of the Deceased in running the Church. The Plaintiff states that prior to the demise of the Deceased, the Plaintiff was entitled to and was being paid a monthly salary of Kshs 100,000.00 as the secretary of the Church.
9. The Plaintiff contends that salaries are paid from the Church offerings, income from the rental properties owned by the Church and school fees from Magodo International School. That this is confirmed by the bank statements issued to the Plaintiff by the 1st Interested Party which show that no transactions took place in the period between April 10, 2019 to December 2, 2022 yet salaries and bills are paid from that account demonstrating that there are other sources of income for the Church which the Defendant has failed to disclose to the Plaintiff and the entire Magodo family.

10.

For the aforesaid reasons, the Plaintiff urges the court to allow her application and grant the reliefs sought.

The Defendant's Reply

11. The Defendant opposes the application and denies the Plaintiff's allegations. She states that she has been the Treasurer of the Church having been appointed to the position by the Deceased in 2006. In that position, she states that she has served the Church diligently and has overseen the funding of several Church projects.
12. The Defendant avers that since the Plaintiff was inactive in Church activities and projects, the Church decided to hold elections and change its office bearers. That the Church held an Annual General Meeting (AGM) on July 2, 2022 where office bearers were elected and the list presented to the Registrar of Societies. She avers that contrary to the Plaintiff's allegations, the AGM was called and conducted legally and in line with the Church constitution.
13. The Defendant states that at the AGM, Church members passed a resolution to amend the Constitution which was submitted to the Registrar of Societies as required by law. In addition, the following members were elected as the Chairperson, Secretary and Treasurer respectively; Alice Ingaiza Magodo, Rose Bosibori Abiero and Neema Alice Massite. The Defendant avers that this suit is an attempt by the Plaintiff to frustrate the activities of the Church and the Defendant's leadership at the organization.
14. As regards the freezing orders, the Defendant states as result of the orders, the operation of the Church and its related entities have been brought to a halt. She states that she has been unable to access the account for Magodo Children's Home to purchase food for the children, pay the salaries for its employees. The other entities; Magodo Children's Centre, Christian Broadcasting Network,



Shiloh Woman Group, Magodo Complex School Ltd, African Charitable Organization and Magodo International Ministries have also been affected negatively. The Defendant avers that this could result in the employees terminating their employment contracts and also expose the employer to multiple suits.

15. The Defendant submits that the Plaintiff has not produced any evidence to support the allegation of misappropriation of funds by the Defendant. She states that she has managed the accounts diligently and is willing to produce the statements of account or bank statements to show the transactions of the Church and all its entities. The Defendant avers that the Plaintiff has been a signatory of the accounts hence could have easily detected any illegal transactions done through the accounts therefore her action to freeze the accounts has no justification. The Defendant further avers that the Plaintiff has not produced any evidence to show that any Church projects have stalled or delayed due to misappropriation of funds.
16. The Defendant argues that disputes between the leaders should not bring all the charitable activities of the Church to a halt. The Defendant states that she does not have the power to solely remove the Plaintiff from the leadership of the Church nor its membership. That the Plaintiff was removed from leadership of the Church at the AGM by all the members and for reasons that she did not perform her functions as a secretary.
17. Based on the material before the court, the Defendant contends that it is in the interest of justice and fairness that the orders for freezing of accounts be lifted in order to enable the Church and its entities run their activities. The Defendant contends that the Plaintiff will not suffer any prejudice if the freezing orders are lifted but on the other hand, persons (including minors) who are not a party to this suit will be greatly prejudiced if they remain in force.

Analysis and Determination

18. Although there are several issues raised by Plaintiff arising from prayers in the application, the court is obliged to address some preliminary issues which the parties did not address.
19. The Plaintiff's grievance arises from her position in the Church and its associated entities. The orders, if granted, would directly affect third parties who are not parties to this suit. In Prayers No 3 and 4, the Plaintiff seeks an order compelling the Defendant to allow her access to the Church premises, its branches and to all documents, books of account, list of Church members and other records. In Prayer No 5, she seeks to be paid her monthly salary of Kshs 100,000.00 from the Church and in Prayer No 6 seeks orders in respect of a separate entity Magodo Complex School Limited and in respect of other properties whose ownership is not disclosed. The Church as a necessary and proper party ought to have been sued as a defendant. The Defendant is but one of the Church officials who cannot make decision on her own or bind the Church which is a registered society.
20. It is trite law that a society under the *Societies Act* is not a legal person with capacity to sue or be sued. It can only sue or be sued through its officers. The position at common law is that a suit by or against unincorporated bodies of persons must be brought in the names of, or against all the members of the body or bodies. Where there are numerous members the suit may be instituted by or against one or more such persons in a representative capacity pursuant to the provisions of Order 1 rule 8 of the *Civil Procedure Rules* (see *Trustees Kenya Redeemed Church & Anor v Samuel M'Obiya & 5 others [2011] eKLR*, *Free Pentecostal Fellowship in Kenya vs Kenya Commercial Bank Nairobi HCCC No 4116 of 1992* and *Islamia Madrassa Society v Zafar Niaz & 8 others [2021] eKLR*).
21. Ultimately, the court cannot entertain an application or grant relief against a third party who is not party to the suit as this would amount to a breach of the rules of natural justice (see *Pashito Holdings*



and Another v Ndung'u and 2 Others KLR [E &L] 1, 295). The Church ought to have been sued as a defendant in order to give effect to the reliefs which the Plaintiff seeks.

22. For the reasons I have set out above I now make the following orders:
- (a) The Plaintiff's application dated November 14, 2022 is dismissed.
 - (b) The Defendant's application dated January 17, 2023 is allowed to the extent the freezing orders in force are discharged forthwith.
 - (c) The Defendant shall show cause on a date fixed why the suit should not be struck for failing to disclose a cause of action against the Defendant and for being incompetent.
23. For the reasons I have set out above, I am constrained to dismiss the Plaintiff's application dated November 14, 2022. As a result, and by default, the Defendant's application dated January 17, 2023 is allowed to the extent the freezing orders are discharged forthwith. In addition, the Defendant shall show cause on a date fixed why the suit should not be struck for failing to disclose a cause of action against the Defendant and for being incompetent.

DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF MARCH 2023.

D. S. MAJANJA

JUDGE

Court of Assistant: Mr M. Onyango

Mr Nyegenye instructed by Calistus and Company Advocates for the Plaintiff.

Mr Wesonga instructed by Chesikaw and Kiprop Advocates for the Defendant.

