



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

CIVIL APPEAL NO. E007 OF 2021

A.I.P.C.A. NYANDARUA NORTH DIOCESA N COMMITTEE.....APPELLANTS/APPLICANTS

Though its officials namely;

RT. REV. DAVID KIBOI MUNDIA (BISHOP)

JOSEPH KIMANI WAKAHU (CHAIRMAN)

ALFRED WACHIRA MUGO (SECRETARY)

JOSEPH MAINA NGATIA (TREASURER)

-VERSUS-

A.I.P.C.A KANGUI LOCATION CHURCH COMMITTEE.....RESPONDENTS

Through its officials namely;

JOHN MAINA NYAMBURA (CHAIRMAN)

TERESIA WANJIRU KINUTHIA (SECRETARY)

MONICA NYAWIRA (TREASURER)

RULING

1. The Appellants lodged Civil Suit 215/2018 vide plaint dated 17/08/2018 seeking to restrain Respondents/Defendants from essentially running AIPCA Kangui church. Defence and appearance were filed and served. Meanwhile there was an application filed and heard by Hon Momanyi. Then as there were many cases consensus was reached by parties to the disputes to dispose them via arbitration and thus the defence case went to arbitration.

2. After two sessions for arbitration proceedings two (2) interlocutory applications were filed by Plaintiffs and Respondents respectively. Thereafter a ruling was made in the first one application and before the second one could proceed the Plaintiffs on 29/01/2021 withdrew the suit and defendants applied for the costs. After submissions on costs the court awarded same to the Defendants.

3. Meanwhile the court in what was said to be stating the position as the suit was being withdrawn and in reaction to defendants' application where they claimed via election of 08/11/2020 they disrupted them from operating the church by interfering with management of the church; the court opined that;

“once Plaintiff withdrew the suit/case the situation automatically reverted back to the position before suit was filed meaning the Defendant who were running the church”

4. The aforesaid opinion of 01/04/2021 by Oblutsa CM precipitated the instant appeal.

5. The core issue in the appeal vide 4 grounds in the memorandum of appeal turns on the aforesaid opinion by the Magistrate Obulutsa CM.

6. By application dated 30/04/2021 the Applicant in the instant matter sought to injunct Respondents from interfering with running of the church in issue.
7. On 03/05/2021 before me were Ndegwa M/s and Kaburu Advocate where Ndegwa sought prayer 2 of the application on interim basis. Mr. Kaburu opposed and court ordered status quo which Mr Kaburu advocate was supporting.
8. On 06/05/2021 Mr. Kaburu appeared for respondents' and the applicant was unrepresented and thus the matter was fixed for mention on 20/05/2021. That 20/05/2021 Ms. Mugai held brief for Mr Chege Advocate and Mr. Kaburu appeared for the respondents.
9. Mr. Kaburu, applied for the status quo to be maintained and the local OCS to enforce same. Ms. Mugai said nothing.
10. The court gave directions replies be filed and submissions be exchanged and highlighted on 28/06/2021.
11. The court ordered the situation prevailing on 03/05/2021 be maintained and local OCS to ensure compliance.
12. Thereafter the orders extracted by respondents especially limbs no (ii), which is apparently overreaching as it states that; ***“Respondent to continue running the church without disruption and OCS to enforce compliance.”***
13. The Respondent who had not lodged any application or lodged replying affidavit to date did ride on Applicant application to get an injunction technically. Thus prompted filing of application dated 31/05/2021 to vary the orders of 20/05/2021.
14. The court notes that the election of 08/11/2020 which were noted by Obulutsa CM to have enabled Applicant to disrupt management of church seem to date unchallenged. The Respondents are holding on the opinion of Obulutsa CM that the withdrawal of suit enabled them to hold on leadership of the church.
15. But on what legal basis? They ought to file a case to challenge elections of 08/11/2021 and meanwhile seek to be in leadership. This court finds totally no justification to hold that status quo means that, the Defendants continue to manage the church regardless of elections of 08/11/2020 being unchallenged.
16. Thus the court finds that the application of 31/05/2021 is superfluous and thus struck out as is a replica of the one of 30/4/021. The court makes the following orders/directions.

I. Thus the orders of status quo are that the Applicants are to continue to manage A.I.P.C.A KANGUI LOCATION CHURCH pending hearing and determination of application dated 30/04/2021 in which parties are to file replies and submissions for hearing on 28/06/2021.

II. The local OCS to ensure compliance of court orders.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 4TH DAY OF JUNE, 2021.

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CHARLES KARIUKI

JUDGE

PRESENT:

M/s Ndegwa for Applicant

M/s Kaburu for Respondent

Court Assistant – Eric

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DEPUTY REGISTRAR