



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

CIVIL APPEAL CASE NO. E007 OF 2021

A.I.P.C.A NYANDARUA NORTH DIOCESAN COMMITTEE.....APPELLANTS

Through 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 LOCAL CHURCH COMMITTEE.....RESPONDENTS

Through its officials namely:-

JOHN MAINA NYAMBURA (Chairman)

TERESIA WANJIRU KINUTHIA (Secretary)

MONICA NYAWIRA (Treasurer)

RULING

INTRODUCTION:

1. The matter before Court is an application by the Appellants herein brought through Notice of Motion dated 30/4/2021 seeking the following orders;

a) Spent

b) Spent

c) That pending the hearing and determination of the instant appeal, there be a temporary injunction restraining the Respondent committee members by themselves and their supporters from in any way interfering with the running and management of A.I.P.C.A Kangui Local Church by the Local Church Committee elected on 8th November 2020

d) The costs of the application abide the outcome of the appeal.

2. The application is supported by the affidavit of Simon Muigai Mwangi and the grounds set out on the face thereof.

APPELLANTS' SUBMISSIONS:

3. The Appellants submitted that unless the orders sought herein are granted, there is a real danger that chaos will continue reigning in the

said church unabated with the possibility of loss of human life and limb. That the conduct of the Respondents is an anathema to Christian beliefs, rule of law and good order in society and ought to be nipped in the bud. Further, that the continued interruption of church programs by the Respondents shall occasion a denial of spiritual nourishment to many Christians in the said church.

4. Reliance was placed on **Order 42 Rule 6(6) of the Civil Procedure Rules**.

5. The Appellants averred that it is not in dispute that there is a pending appeal before the honorable court which seeks to overturn the ruling of the subordinate court on the issue of leadership of A.I.P.C.A Kangui Local Church which purported to reinstate the Respondents despite the elections held on 8/11/2020 whose outcome led to withdrawal of the substantive suit before the said court.

6. According to the Appellants, the Respondents have not challenged the said elections in any forum and the subordinate court was clearly in error when it held without jurisdiction that upon withdrawal of the said suit, the situation which obtained at the institution of the suit remained. That that was not an issue that was before the trial magistrate for determination as he had only been called upon to rule on costs.

7. It was the Appellants' case that the Respondents had not filed any replying affidavit to controvert depositions made on oath by the Appellants choosing to conveniently file grounds of opposition.

8. In conclusion, the Appellants averred that in view of the ruling in this matter made on 4th June 2021 and in order to preserve the substratum of the appeal, the orders sought herein ought to be granted in the interest of justice.

RESPONDENTS SUBMISSIONS:

9. The Respondents submitted that the crux of the appeal involves only the issue of the award of costs. That the Appellants having withdrawn their suit of injunctions and declarations, this court has no jurisdiction to entertain the same issue on appeal. That the same having being withdrawn simply ceased to exist and thus cannot logically be an appeal on the same issue.

10. The Respondents asserted that the application herein introducing issues of temporary injunction and election is scandalous, frivolous, vexatious and an abuse of court process and must be dismissed. That the only issue this honorable court may entertain is the issue of costs which is properly before the court.

11. It was the Respondents' averment that to allow the Appellants application would be tantamount to allowing the Appellant to reincarnate their already dead case on appeal instead of them originating such case before trial court.

12. The Respondents averred that if the Appellants wanted to take over the running of the church activities ostensibly because they had been elected, they should have filed a fresh case in court or amended the original suit CMCC No 215/2018 rather than withdrawing it and that they would have tried to get an interlocutory injunction based on the allegations of election results allegedly held but clearly such matters cannot lawfully be introduced in the appellate court where issues of validity of the elections are not being dealt with.

13. In conclusion, the Respondents averred that the Appellants had not met the basic legal requirements for grant of a temporary injunction.

ANALYSIS AND DETERMINATION:

14. From the foregoing, I note that the Appellants appeal is not only on the issue of costs but also a further order which court added to effect that ***"the situation prevailing on 3/5/021 be maintained and local OCS to ensure compliance"***. The withdrawal of their suit lodged as Civil Suit 215/2018 seeking to restrain the Respondents from running AIPCA Kangui Church did not warrant a further order which was not sought by the defendant respondent. The said further order sparked a management wrangle as it is apparent the status quo on the ground was being disrupted.

15. The conditions for consideration in granting an injunction were settled in the celebrated case of ***Giella v Cassman Brown & Company Limited (1973) E A 358***, where the court expressed itself on the condition's that a party must satisfy for the court to grant an interlocutory injunction as follows: ***-Firstly, an Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."***

16. Accordingly, I find that the Appellants have established a prima facie case and their application is merited given that the appeal is on the primarily on the additional order aforesaid. The Applicants have equally demonstrated the likelihood of them incurring irreparable damage should the orders they seek are not granted, as such, it is evident that the application has met the threshold for grant of the orders sought. **I find this application not an abuse of court process and thus make the orders that;**

i. That pending the hearing and determination of the instant appeal, there be a temporary injunction restraining the Respondent committee members by themselves and their supporters from in any way interfering with the running and management of A.I.P.C.A Kangui Local Church by the Local Church Committee elected n 8th November 2020

ii. Costs in the appeal.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 7TH DAY OF OCTOBER, 2021.

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CHARLES KARIUKI

JUDGE