



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CIVIL APPEAL NO. 60 OF 2019

REV. ENOCK NYAANGA.....APPELLANT

VERSUS

1. REV. DR. JAMES OGENDI.....1ST RESPONDENT

2. REV. ROSE NYAUMA.....2ND RESPONDENT

3. REV. DANIEL MAKE.....3RD RESPONDENT

4. REV. PETER KARAYA.....4TH RESPONDENT

5. REV. WILLIAM OMAIYO.....5TH RESPONDENT

6. REV. JACKSON MIRERI.....6TH RESPONDENT

7. REV. BATHSHEBA BITOYO.....7TH RESPONDENT

8. RICHARD GECHIKO.....8TH RESPONDENT

{Being an appeal against the Ruling of Hon. C. W. Waswa – RM – Nyamira

dated and delivered on the 18th day of November 2019 in the original Nyamira

Chief Magistrate’s Court Civil Case No. 130 of 2019}

RULING

On 25th October, 2019 the respondents filed a suit (Nyamira CMCC No. 130/2019) against the appellant in the lower court seeking the following prayers: -

“(a) That the defendant (now appellant) his agents, servants, employees, attorneys or any other person whatsoever acting on his behalf be and hereby permanently restrained from interfering with the affairs of NYARAMBA PAG KENYA CHURCH DISTRICT any way and/or manner or at all (sic).

(b) That the defendant herein be made to account for the money he has collected from the church and the same be returned to the church.

(c) Costs be provided for in favour of the plaintiffs herein.”

Simultaneously with that suit they filed a Notice of Motion dated 25th October 2019 and sought inter alia: -

“3. That an interim order of injunction do issue restraining the respondent herein by himself, his agents, servants, employees or any other person whatsoever acting on his behalf from dealing or conducting any church functions, presiding over

meetings, receiving funds from churches within Nyaramba PAG Kenya Church District and or such act under the title of District Overseer pending the hearing and determination of this suit.”

The trial Magistrate heard counsel for the parties and by a ruling delivered on 18th November 2019 granted the orders sought and further ordered the OCS Ekerenyo Police Station to ensure that the order was implemented and complied with. He also awarded costs of the application to the applicants/respondents.

Being aggrieved by the whole of that ruling, the appellant preferred this appeal simultaneously with the present application in which he prays that: -

“1. Spent.

2. Spent.

3. Pending the hearing and final determination of the appeal herein, there be issued an order of stay, staying the orders issued on the 18th November 2019 and the entire proceedings in Nyamira CMCC No. 130 of 2019; Rev. Dr. James Ogendi & 7 Others –Vs- Rev. Enock Nyaanga.

4. Costs of this Application be awarded to the Appellants.”

The gist of the application is that the ruling was premised on an order in Kisii CMCC No. 156 of 2019 which was set aside by the High Court in Kisii HCCA No. 48 of 2019; that the trial magistrate based his ruling on documents filed against the clear directions of the court hence denying the appellant a right to respond and that the ruling and orders of the court have caused confusion in the administration of the church and have a potential of causing chaos in the proper administration of church affairs and it would be in the interest of justice that the orders be granted.

In opposition the respondents filed a replying affidavit sworn by Dr. Rev. James Ogendi on 24th December, 2019 in which he deposes inter alia: -

“4. THAT Paragraph 6 of the affidavit of the applicant refers to a ruling of the Court at Nyamira CMCC No. 130 of 2019. The Hon. Magistrate arrived at the ruling after perusing documents provided by both parties and after hearing averments by the Advocates for the applicants and the advocate for the Respondent in that case.

5. THAT the applicant has concealed the outcome of the case No. Kisii CMCC No. 156 of 2019 to the effect that;

a. On 21st March 2019, Rev. Bernard Mogusu and two others filed suit at Kisii lower Court No. Kisii CMCC No. 156 of 2019. See a copy of the application and the supporting affidavit marked J01.

b. The court by an ex parte orders (herewith annexed and marked J02) granted them an injunction against Rev. Ogendi and another barring the Respondent herein (Rev. Ogendi) from interfering with the election to be held on 23rd March 2019. The purported election was carried out and the applicant allegedly elected.

c. During interparte hearing the court vacated the interim orders issued on 21st March 2019 See a copy marked J03.

d. Aggrieved by the inter parte ruling suspending the applicants election the applicant moved to the High Court on appeal and with an application which the High Court Judge His Lordship Justice Majanja ruled that: -

(i) The orders of the Subordinate Court be set aside and the court file be placed before another magistrate for consideration; whether it should be referred to the mediation or to join other files at Kakamega High Court.

(ii) The Judge further ordered that; For avoidance of doubt there are no interim or other orders in force. See a copy of the ruling and the order marked J04.

6. THAT by the order of His Lordship Justice Majanja issued in Kisii in regard to file No. Kisii CMCC No. 156 of 2019 the interim order issued which purported to elect the applicant is not in force.

7. THAT the document referred to by the applicant in paragraph 8 are court documents from Kisii Court, Kisumu and Kakamega Courts. These are materials originating from courts and hence they become public for use by any court either as an authority or reference so as to allow the court to reach at a just decision without contradicting orders issued by other courts.

8. THAT I wish to bring this court to knowledge of the position of the PAG Church as at now explained by the Rev. Zedekiah Orera by an affidavit herewith enclosed and marked J05”.

Thereafter counsel for the parties appeared before me on 20th January, 2020 to canvass the application. It transpired during the hearing that there are suits in several courts touching on elections in the **PAG Kenya** the mother church of Nyaramba PAG District whose operations is

the subject of this appeal. First is a petition in the High court at **Kakamega Constitution Petition No. 6 of 2018** in which the court suspended the elections of the Pentecostal Assemblies of God Church (*which I refer to as the mother church*) and referred the matter to mediation and which further stayed elections held pursuant to a settlement that was yet to be adopted by that court (*See annexure Z04 on page 50 of the replying affidavit of Dr. James Ogendi*); then there is **Kisumu CMCC No. 543 of 2018** which again issued orders injuncting and barring one Patrick Lihanda & Others from carrying out any duties in or pertaining to the church and directing that those duties be undertaken by trustees of the church (*See annexure Z07 at page 63 of the replying affidavit*). In **Kisii CMCC 156 of 2019** an order issued on 21st March 2019 restrained the 1st respondent in this case from interfering with planned elections of the PAG Kenya Church that had been scheduled on 23rd March 2019 and from making any official communication on behalf of the **PAG Kenya Church** pending hearing of the application before that court interpartes (*annexture J02 on page 12 of the replying affidavit*). However, another order dated 8th May 2019 set aside the orders granted on 21st March 2019 and nullified any elections conducted under the orders of 21st March 2019 (*annexture J03 on page 16 of the affidavit*).

There is also a ruling issued by Majanja J in **HCCC Kisii No. 48 of 2019** setting aside the orders issued by the subordinate court on 8th May 2019 and directing that the parties be heard by any Magistrate other than the one who issued the orders. By that same order Majanja J made it very clear that there were no interim or other orders in force in the matter filed before the subordinate court. This court was informed that the suit before the Chief Magistrate's court in Kisii is still pending.

One of the issues raised by the applicant in the present application is that the trial Magistrate erred by relying on the orders issued in Kisii CMCC 156 of 2019 on 8th May 2019 whereas the same had been set aside by the High Court at Kisii. In his ruling dated 18th day of November 2019 the trial Magistrate stated: -

“In light of the orders of the court issued on 8th May 2019, the 1st applicant herein remains the validly elected overseer of Nyaramba PAG Kenya Church District until the elections are held or a court orders otherwise. I do not have the powers to set aside the court orders of 8th May 2019. They shall therefore remain in force.”

That said he restrained the respondent from dealing and or conducting any church functions, presiding over meetings, receiving funds from churches within Nyaramba PAG Kenya Church District pending hearing and determination of the suit. This was evidently oblivious of Majanja J order dated 15th May 2019 which set aside the order of 8th May, 2019 in its entirety. I do therefore agree with counsel for the appellant that in so far as the ruling was premised on an order that had been set aside by the Judge in Kisii, it was erroneous. Be that as it may, given that the election of the appellant was pursuant to elections held in contempt of the orders of the Kakamega High Court Constitutional Petition No. 6 of 2018, the order that commends itself to me is to disallow the present application and to allow the order issued by the trial court to remain in place pending the hearing and determination of this appeal and/or the suit in the court below or better still the final determination of the Kakamega High Court Constitutional Petition No. 6 of 2018. It is further ordered that given the circumstances and the nature of this application each party shall bear their own costs.

Signed, dated and delivered at Nyamira this 6th day of February 2020.

E. N. MAINA

JUDGE