



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 82 OF 2019

BISHOP DR. DANIEL MUTUNGA NZOKA

(Chairman, GOD'S VOICE TO HIS PEOPLE MINISTRIES)....PLAINTIFF/APPLICANT

-VERSUS-

PASTOR NICHOLAS MWAMBU.....1ST DEFENDANT/RESPONDENT

PASTOR THEOPHILUS MAITHYA.....2ND DEFENDANT/RESPONDENT

PASTOR TITUS KYEMBENI.....3RD DEFENDANT/RESPONDENT

PASTOR JULIUS MENDE.....4TH DEFENDANT/RESPONDENT

PASTOR THOMAS KIEMA.....5TH DEFENDANT/RESPONDENT

PASTOR CHARLES NZIOKI.....6TH DEFENDANT/RESPONDENT

PASTOR JOHN MUTUA.....7TH DEFENDANT/RESPONDENT

PASTOR JULIUS MULUNDI.....8TH DEFENDANT/RESPONDENT

PASTOR NICHOLAS MAKAU.....9TH DEFENDANT/RESPONDENT

PASTOR GIDEON MUNYAO.....10TH DEFENDANT/RESPONDENT

PASTOR SYLVESTER MUTUA.....11TH DEFENDANT/RESPONDENT

PASTOR PAUL MUSEMBI.....12TH DEFENDANT/RESPONDENT

PASTOR JOSHUA MUTHEMBWA.....13TH DEFENDANT/RESPONDENT

PASTOR PETER KIIO.....14TH DEFENDANT/RESPONDENT

PASTOR JOSPHAT MWANGANGI.....15TH DEFENDANT/RESPONDENT

PASTOR STEPHEN SYENGO.....16TH DEFENDANT/RESPONDENT

RULING

1. The present ruling is precipitated by the Notice of Preliminary Objection dated 20th May, 2019 and filed by the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 12th and 15th defendants/respondents herein whereof they seek to have the suit struck out for want of jurisdiction pursuant to Sections 12 and 15 of the Civil Procedure Act and Article 165(5) (b) of the Constitution, 2010.

2. A brief background of this matter is that the plaintiff/applicant filed a Notice of Motion on 23rd April, 2019 seeking for inter alia, a

declaratory and injunctive orders against the defendants/ respondents herein pending the hearing and determination of the main suit. The plaint dated 18th March, 2019 was contemporaneously filed with the aforesaid motion.

3. In his plaint, the plaintiff/applicant has pleaded that the defendants/respondents have threatened to alter their respective church names from ‘**GOD’S VOICE TO HIS PEOPLE ASSEMBLIES**’ to other names in addition to inciting the various church members to disobey the Constitution of the church and purchasing church land using the church’s resources and subsequently registering the same under their personal names.

4. The parties agreed that the Preliminary Objection would be dispensed with first. Save for the 13th 14th and 16th defendants, the remaining parties have offered submissions.

5. The 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 12th and 15th defendants/respondents have argued that this court lacks geographical jurisdiction to entertain the suit by virtue of Section 15 of the Civil Procedure Act, in the sense that all the parties herein reside and carry on their businesses in Kitui County.

6. The defendants/respondents further submit that the appropriate court to entertain this suit is the Environment and Land Court (ELC) given that the subject matter entails various church properties/parcels of land. The case of *Joel Kipkosgei v Thomas Kiprof [2018] eKLR* was cited in this respect.

7. The 11th defendant/respondent associated himself with the submissions made by his counterparts, save to add that going by the provisions of Section 12 of the Civil Procedure Act, this court lacks jurisdiction to entertain the suit. Reference was made to *Sustainable Management Services v New Mitaboni F.C. S. [2017] eKLR*.

8. In their oral submissions on behalf of the plaintiff/applicant, learned counsels *Kyalo* and *Onyango* maintained that this court has jurisdiction to entertain the suit as the dispute purely concerns the leadership of the abovementioned church.

9. In his opposing arguments, *Mwalimu* advocate for the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 12th and 15th defendants/respondents restated the position that all the parties operate in Kitui County and that the respective churches are equally based therein. The counsel in turn challenged the argument that the dispute relates to leadership of the church. *Mutungu* learned advocate for the 11th defendant/respondent associated himself with the above arguments.

10. I have considered the ground pertaining to the Preliminary Objection as well as the rival submissions and cited authorities. It is evident that the jurisdiction of this court is being challenged on two (2) grounds, which I will now address.

11. The first ground concerns the geographical jurisdiction of this court. It has been argued that a court’s jurisdiction stands for everything for in its absence, a court cannot carry out any valid functions. The provisions of *Section 15* of the *Civil Procedure Act* stipulates as follows:

“Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction;

(a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or ...

(c) the cause of action, wholly or in part, arises.

12. I have perused the documents annexed to the plaintiff/s/ applicant’s Motion and it is apparent that from various correspondences the church in question is indeed based in Kitui County. Furthermore, the plaintiff/applicant has not disputed the argument that all parties herein are based in Kitui or that the subject church is based in Kitui. I therefore find merit on this ground.

13. This court takes note of the fact that *Article 165 (3) (a)* of the *Constitution* the High Court enjoys unlimited jurisdiction over civil and criminal matters with exception of cases that fall within the purview of *Article 162(2)*, that is: **employment** and **land** matters, whose jurisdiction is bestowed upon the respective specialized courts.

14. Having considered the facts stated in affidavits filed in this matter, I note that the fundamental issues to be addressed is the purported change of name of the subject church as well as its operations. Moreover, the orders being sought are essentially declaratory and injunctive in nature.

15. In the premises, I am satisfied that the High Court has jurisdiction to entertain this suit.

16. The upshot is that the Preliminary Objection on the geographical/territorial jurisdiction has merit but it is not fatal. In exercise of my discretion and inherent power, I hereby order this suit transferred to Kitui High Court for hearing and determination. Each party to bear its own costs.

Dated, signed and delivered at NAIROBI this 12th day of July, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the 1st-10th, 12th and 15th Defendants/Respondents

..... for the 11th Defendant/Respondent