



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 631 OF 2016

GODFREY SIMIYU.....1ST PLAINTIFF/RESPONDENT

MATTEW KABURU.....2ND PLAINTIFF/RESPONDENT

KOBIA MICHUBU.....3RD PLAINTIFF/RESPONDENT

CHARLES KINOTI 4TH PLAINTIFF/RESPONDENT

- V E R S U S -

REV. JOSEPH NTOMBURADEFENDANT

METHODIST CHURCH IN KENYA

TRUSTEES REGISTERED ... PROPOSED 2ND DEFENDANT/APPLICANT

RULING

1) The subject matter of this ruling is the motion dated 28.11.2016 taken out by the Methodist Church In Kenya Trustees Registered, the proposed 2nd defendant. The motion is supported by the affidavit of Solomon Mukaba and by a further affidavit sworn by Rev. Dr. Zablon Ntombura. In the aforesaid motion, the applicant seeks for *inter alia* to be enjoined as the 2nd defendant in this suit. It also seeks for a stay of execution of this court's orders issued on 22nd July 2016. When served, the plaintiffs/respondents opposed the motion by filing grounds of opposition and the replying affidavit of Godfrey Simiyu.

2) When the motion came up for interpartes hearing, this court gave directions to have the application disposed of by written submissions. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have further considered the grounds of opposition plus the rival submission.

3) It is the submission of the applicant that on 27th July 2016, this court issued an order of injunction to restrain the defendant from holding office as the presiding Bishop of the Methodist Church in Kenya, the proposed 2nd defendant /applicant,t pending the hearing and determination of this suit. The court also restrained the defendant from further transferring the clergy or any employees of the church.

4) The applicant pointed out that on 23rd November 2016, the plaintiffs/respondents demanded through their advocates on record that the proposed 2nd defendant/applicant do comply with the orders issued on 22nd July 2016 despite the fact that the applicant is not a party to this suit and had not participated in the

proceedings which gave rise to the issuance of the aforesaid orders. The applicant also argued that the orders restraining the defendant from carrying out his duties as the presiding Bishop of the proposed 2nd defendant/applicant will greatly affect the operations and management of the applicant more than a vacancy or the suspension of the presiding Bishop. It is said that the suspension of the defendant will cause a paralysis because there is no provision for a deputy or assistant presiding bishop in the church's standing orders therefore it is only fair and just that the applicant is enjoined to this suit to allow it to be heard as the issues which form the subject matter of this suit directly affect the operations of the applicant. For this reason, the applicant argued that it is a worthy and necessary party to these proceedings. The applicant further argued that now that it is important to enjoin it, unless the prayer for stay of the orders of 22.7.2016 is granted, the hearing and determination of this suit will take place without affording the applicant an opportunity to be heard.

5) The plaintiffs/respondents vehemently opposed the motion.

They are of the submission that to enjoin the proposed 2nd defendant would usher in the defendant in contempt proceedings as he exercises oversight role over the whole church under church standing Order 19(2) (a). The respondent also argued that the application is made in bad faith. It is argued that under Church's Standing Order 18 the procedure for filling a vacancy left by a Bishop is provided therefore no vacuum would be created as alleged by the applicant. The plaintiffs further submitted that if the applicant's motion is allowed the defendant would remain in office in breach of the orders issued by this court on 22.7.2016 thus plunging this court's reputation into disrepute and ridicule. It is also argued that the defendant/applicant intends to deny the plaintiffs/respondents the fruits of the ruling to have the proper management and running of the affairs of the church. The plaintiffs/respondents further submitted that the proposed 2nd defendant was aware of the suit and could have applied to be joined before the orders complained of were made. It is stated that the proposed 2nd defendant will not be affected by the orders of this court whether being a party to the suit or not hence there is no need to enjoin the applicant to this suit.

6) After considering the material placed before this court, I have come to the following conclusions in this dispute. **First**, that there is no dispute that the defendant herein has been sued in his capacity as the presiding Bishop of the Methodist Church in Kenya. **Secondly**, that the church Standing Orders provides that Trustees are the custodians of the entire Methodist Church in Kenya and that the presiding Bishop executes the mandate of the trustees. In my humble view, I think it is imperative to bring on board, the trustees to this suit to take care of the interests of the church.

7) **Thirdly**, that it is not in dispute that there are correspondence annexed to the affidavit filed in support of the motion dated 28.11.2016 that the plaintiffs through their advocates have demanded that the proposed 2nd defendant to comply with the order of this court issued on 22.7.2016. This confirms that even the plaintiffs acknowledge the fact that the proposed 2nd defendant is a necessary party to this suit. For the above reasons I am convinced that the application to enjoin the proposed 2nd defendant as a party to this suit has merit. It is allowed.

8) The second limb of the motion is for an order for stay of execution of orders issued on 27.7.2016. It is apparent that prayer 4 of the aforesaid motion is worded as follows:

“That pending the hearing and determination of this application, this honourable court be pleased to stay the orders made herein on 27.7.2016.”

9) It is obvious from the aforesaid prayer that the order for stay was meant to last upto the determination of this motion, that is to say upon the delivery of this ruling. This court cannot grant orders gratuitously. It would appear the orders were meant to have been sought *ex parte* which is not the case here. Since no order for stay was asked to last beyond the date of delivery, I decline to grant any.

10) In the end, I grant prayer 3 of the motion dated 28.11.2016.

Each party to bear its own costs of the motion.

Dated, Signed and Delivered in open court this 10th day of April, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

.....for the Respondent