

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: AKIWUMI, TUNOI & LAKHA, J.J.A.)

CIVIL APPEAL NO. 258 OF 1996

BETWEEN

1. THE CHURCH COMMISSIONER OF MOUNT KENYA

2. C.P.K. DIOCESE OF MOUNT KENYA APPELLANTS

AND

1. VICAR IN CHARGE & PARISH COMMITTEE C.P.K. KANUNGA PARISH

2. LOISE WARINGA NJUGUNA RESPONDENTS

**(Appeal from the Ruling of the High Court of Kenya at Nairobi
(Justice Hayanga) dated 22nd February, 1996**

in

H.C.C.C. NO. 2281 OF 1995)

RULING OF THE COURT

These are appeals against the Order of the superior court (Hayanga, J.) delivered on 22nd February, 1996. The main ground of appeal is that the learned judge made a final order of injunction which was neither pleaded nor urged. In the circumstances the order of the learned judge was in error. Mr. Nyangau for the respondent very properly concedes that the appeal must succeed but he prays that each party shall bear its own costs. We are, however, satisfied that the costs of the appeals must follow the event as there is no reason why the normal rule should be departed from.

Accordingly, both the appeals are allowed with costs and the order of the superior court is set aside. The application for injunction in the court below stands dismissed with costs.

Dated and delivered at Nairobi this 20th day of January, 1997.

A.M. AKIWUMI

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR