



IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 445 OF 2017

(Before Hon. Lady Justice Hellen S. Wasilwa on 1st February 2018)

THE CENTRAL BOARD OF THE AFRICAN

INDEPENDENT PENTECOSTAL CHURCH

OF AFRICA (SUING THROUGH THE NATIONAL

ADMINISTRATIVE SECRETARY

MR. STANLEY MUTHOMI).....CLAIMANT/APPLICANT

VERSUS

AMOS MATHENGE KABUTHU1ST RESPONDENT

FREDRICK WANG'OMBE2ND RESPONDENT

SAMUEL WANJOHI MUCHIRI3RD RESPONDENT

RESIGISTERED TRUSTEES OF AFRICAN INDEPENDENT

PENTECOSTAL CHURCH OF AFRICA.....1ST INTERESTED PARTY

REGISTRAR OF SOCIETIES2ND INTERESTED PARTY

RULING

1. The Application before Court is the one dated 26th April 2017. The Application was filed through a Notice of Motion filed under Section 5(1) of the Judicature Act Cap 8 of Laws of Kenya, Section 12(3) of the Industrial Court Act, Article 162 (2) and Article 159 of the Constitution of Kenya and all other enabling provisions of the law.

2. The Applicant sought orders as follows:-

1. That this application be certified urgent.

2. That the Honourable Court do find that the 2nd Respondent, FREDRICK WANG'OMBE is in contempt of Court for disobedience of the orders of this Court issued on 7th March 2017.

3. That upon grant of prayers 1 and 2 above, the Honourable Court do impose a fine and or a penalty of kshs.10,000,000.00 (Kenya Shillings Ten Million) against the 2nd Respondent and in default of payment of such find all movable and immovable assets of the 2nd Respondent including land and buildings be attached and sol don execution of this order to satisfy the penalty for contempt.

4. That upon grant of prayers 1 and 2 above, the Court do issue an order that the above mentioned FREDRICK WANG'OMBE, the purported illegally enthroned Archbishop of Africa Independent Pentecostal Church of Africa, be committed to civil jail. For a period of 6 months.

5. That pending interpartes hearing of this application, Officer Commanding Station Jogoo Road Police Station or such officer as may be designated in the Kenya Police of Kenya Police Administration be ordered to ensure the compliance with the orders issued by Honourable Justice Abuodha on 7th March 2017.

6. Any other or further relief that this Honourable Court may deem fit to grant.

7. Costs of this application.

3. The application was premised on the following grounds that:-

1. On 7th March 2017, the Learned Honourable Justice Abuodha granted an order of temporary injunction, restraining the 2nd Respondent from performing functions and/or duties attributable to the office of the Archbishop of the Africa Independent Pentecostal Church of Africa until 21st March 2017, which order was subsequently been extended.

2. In an irregular letter dated 7th April 2017 from retired Bishop Suleiman Kimani purporting to be the Chairman of the Bishop Synod whereas the Court ruling by Hon. Lady Justice Hellen Wasilwa on 1st September, 2016, in Nairobi Employment and Labour Relations Cause No. 1220 of 2016 was clear that the National Chairman of the Bishop Synod is Bishop Philip Kubai, the said retired Bishop Suleiman Kimani purported to invite all the dioceses for a Holy Oil Ceremony which was to be presided over by the 2nd Respondent in the capacity of the Archbishop on 10th April 2017 for Bishops, 12th April 2017 for Clergy/Central Board and 13th April 2017 for church members.

3. On the said varied dates, the 2nd Respondent presided over the said Holy Oil Ceremonies in the capacity of the Archbishop of the Africa Independent Pentecostal Church of Africa (the church).

4. On 9th April 2017, the 2nd Respondent president over the palm Sunday cerebrations as the Archbishop of the church despite a clear order restraining him from performing any functions attributable to the office of the Archbishop.

5. In a letter dated 11th April 2017 from the 2nd Respondent, purporting to be the Archbishop of the church, printed on the church letter head, bearing the church logo to the Nakuru East diocese purporting to schedule a meeting as the Archbishop of the church in total violation of the said order.

6. On 16th April 2017 during Easter Sunday, the 2nd Respondent again presided over a church function at Kayole as the Archbishop of the church in blatant violation of the said lawful Court order.

7. The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the Courts be upheld. This is crucial, as the capacity of the Courts to carry out their

functions depends upon it. It follows from this that disobedience towards Court orders or decisions risks rendering our Courts impotent and judicial authority a mere mockery. The effectiveness of Court orders or decisions is substantially determined by the assurance that they will be enforced.

8. The disobedience of the lawful Court order as granted by this Court on 7th March 2017 is highlighted herein above by the several acts of contempt is regrettable and thus calls for the sanction of the Court.

4. The application is further supported by the supporting affidavit of Stanley Muthomi the Claimant's Administrator who has reiterated the averments made in the grounds above.

5. The Applicants aver that the Respondents are guilty of disobeying this Court's order dated 7th March 2017 which order was as follows:-

1. "That this application be and is hereby certified as urgent and service be dispensed within the first instance.

2. That a temporary order of injunction, restraining the 2nd Respondent from performing functions and/or duties attributable to the office of the Archbishop of the Africa Independent Pentecostal Church of Africa be and is hereby granted until 21st March, 2017.

3. That the application be served on the Respondent and Interested Parties and thereafter be mentioned before any Judge on 21st March, 2017 for directions on hearing and disposal".

6. They contend that this order was made pursuant to this Court's Ruling (Appendix SM2) dated 1st September 2016 in Cause No. 1220/2016 which found that the National Chairman of Bishop Synod is Bishop Philip Kubai and not Retired Bishop Suleiman Kimani.

7. The Applicants aver that the order dated 7th March 2017 by Justice Abuodha forbade the 2nd Respondent Fredrick Wang'ombe from performing functions of the Archbishop of Africa Independent Pentecostal Church of Africa.

8. The Applicants contend that the order was breached as envisaged under Appendix 3 – the letter dated 7th April 2017 from Bishop Suleiman Kimani.

9. They contend that on various dates, the 2nd Respondent presided over various ceremonies in the capacity of Archbishop of African Independent Pentecostal Church of Africa as per the photos attached (SM 4). That on 9th April 2017 he also presided over Palm Sunday celebrations (SM 5) and on 11th April 2017 he wrote a letter on the church letter head to the Nakuru East diocese purporting to schedule a meeting as the Archbishop of the church in total violation of the said order (Appendix SM 6).

10. That on 16th April 2017 during Easter Sunday, he also presided over a church function at Kayole as the Archbishop of the Church (SM 7).

11. The Applicant avers that all the above activities were done in blatant violation of the law and is tantamount to rendering Court orders impotent and judicial authority a mere mockery. The Applicants thus want that the application be allowed and the prayers sought be granted.

12. The Respondents herein opposed the application vide replying affidavits filed by Bernard Maina Mwangi, Samuel Wanjohi and Fredrick Wang'ombe the Respondents herein.

13. In the affidavit of Bernard Maina Mwangi, he has deponed that on 3rd April 2017 an agreement and reconciliation accord was made by the African Independent Pentecostal Church of Africa (AIPCA) and

all the warring factions of the church. The agreement included the following:-

- ***Reconciliation of the different factions,***
- ***Relooking at the constitution of the church to address the disagreements and reconcile the African Independent Pentecostal Church of Africa (AIPCA) congregation,***
- ***Creation of the offices in order to accommodate those outside the current leadership and expanding those already existing,***
- ***Creation of 4 Arch Diocese to accommodate the ordained and consecrated clergy,***
- ***Registration of additional officials and***
- ***Alternative Dispute Resolution mechanisms.***

14. He also states there had been a disagreement and misunderstanding between 2nd Respondent herein and Julius Njoroge and a series of meetings were held in the presence of emissaries to end the stalemate and the Applicant was present in the said meeting.

15. The 2nd Respondent reiterates the averments of 1st Respondent and adds that the Applicant is guilty of material non-disclosure as the conduct alleged to be contemptuous was settled by the warring factions of the church which considered the order made on 21st March 2017. The 2nd Respondent therefore avers that he took over after the agreement and reconciliation accord came into force.

16. The 3rd Respondent in his affidavit reiterated what 1st and 2nd Respondent averred.

17. The Respondents contend that the application is misconceived, incompetent and without merit and abuse of the Court process and the same should be dismissed.

18. They contend that all the actions of the 2nd Respondent were done within the agreement and reconciliation accord. They aver that the accord is valid and enforceable and continues to be performed by all the parties to the accord. That one of the terms and conditions was to register officials which was done vide a letter from the Claimant to the Registrar of Societies. They cite **Eldo City Limited vs Corn Products Kenya Limited and Another (2013) eKLR** which cited **Masters v Cameroon (1954) 91 CLR 353; (1954) 28 ALJR 438** which deals with enforceability of negotiations reached in an agreement between 2 parties as a contract.

19. The Respondent further aver that this accord has never been revoked and is registered at the Ministry of Lands under serial number 2080/D1 116/2080 MMXVII. They submit that this document having been registered is valid. That though the Registrar of Societies has refused to implement it, it is still valid.

20. The Applicant filed a supplementary affidavit on 30th November 2017 sworn by the Applicant herein and he contends that after this claim was filed, few members of the Central Board without the sanctions and/or authority of the entire Board purported to enter in some form of consent on 3rd April 2017 to compromise these proceedings (Appendix SM 1).

21. That the said accord was an illegal arrangement and purported to unprocedurally include no-delegates into the managing board without first calling the special general meeting on the annual general meeting where such decisions could be made.

22. That the same was revoked through the Central Boards meeting held on 12th April 2017 (Appendix SM. 2 and SM. 3). They also aver that this accord is subject to Nairobi Judicial Review Misc. Application No. 394 of 2017 filed by the 2nd Respondent and 2 others seeking to quash the revocation of the said accord by the Registrar of Societies currently pending before Hon. Justice G. V. Odunga (Appendix SM.4).

23. The Applicants therefore submit that the Court's order of 7th March 2017 was never vacated, discharged or set aside and there is no justification for the Respondents to disregard and/or disobey it.

24. I have considered the averments of the parties through their various pleadings filed herein plus the submissions filed. The issues to determine are:-

- 1. Whether the Respondents are aware of the alleged impugned Court order of 7th March 2017.**
- 2. Whether the Accord of 3rd April 2017 is valid.**
- 3. Whether the Respondents have done any act in contempt of the Court order of 7th March 2017.**
- 4. What orders to grant in the circumstances.**

25. On the 1st issue, the Respondents have admitted having knowledge of the Court order dated 7th March 2017. This can be descended from the supporting affidavits filed by the Respondents who indicated that the Court order in question enjoined the 2nd Respondent from performing functions and/or duties attributable to the office of the Archbishop of the African Independent Pentecostal Church of Africa (AIPCA).

26. The Respondents have indicated in their submissions that the actions the 2nd Respondent undertook were well within the Agreement and Reconciliation Accord they entered into.

27. On the 2nd issue, the Respondents have referred Court to an Agreement they aver was entered into on 3rd April 2017 allowing the 2nd Respondent to take over as the Archbishop of the African Independent Pentecostal Church of Africa Church (AIPCA). The Agreement was made by the following who were in attendance:-

- 1. Steve Gichohi Gichuhi MSB – Chairman**
- 2. Archbishop Julius Njoroge Gitau**
- 3. Archbishop Samson Muthuri**
- 4. Archbishop Fredrick Wang'ombe**
- 5. Paul Watoro Gichu – AIPCA National Chairman**
- 6. Isaac Maina Wandere – OGW**
- 7. Advocate Wahome Gikonyo**
- 8. Chancellor Moses Kirima – Secretary**

28. Contrary to the averments of the Respondents, the Claimant Stanley Muthomi did not attend this meeting.

29. This meeting decided inter alia that the 2nd Respondent shall be in charge of Finance Department of the who AIPCA Church. It was also agreed that the spiritual head shall be the Chairman of the Bishops Synod. Article No. 29, it was agreed that all Court matters involving the AIPCA members and clergy shall be withdrawn the moment the agreement and accord is registered.

30. It is worth noting that this Accord was signed on 14th March 2017. The impugned orders herein were issued on 7th March 2017 and extended on 21st March 2017. There is no indication that this claim was ever withdrawn as per this agreement.

31. The contents of this Agreement were also never brought to the attention of the Court nor did the Court review its own orders of 7th March 2017.

32. Can an Agreement made outside the Courts' direction and not brought to the attention of the Court vitiate a Court order- my position is NO.

33. The 'Agreement' of the Parties did not in any way affect the order given on 7th March 2017 and if the parties so wished that it would affect the Court's directions then the same should have been brought to the Court's attention in order to be adopted as a Court order. In this Court's view, therefore, the Court order was in force and the agreement of 3rd April 2017 was of no consequence in relation to the Court order of 7th March 2017 unless adopted as a Court order.

34. The 2nd Respondent has averred that he acted in accordance with the agreement. The acts complained of were committed when the Court order was valid. From the Court record, the orders granted by Court were extended on 17th March 2017, 21st March 2017, 28th March 2017, 30th March 2017 and 27th April 2017.

35. The acts/omissions complained of were committed by the 2nd Respondent between 9th April 2017 and 16th April 2017 and this was when the Court orders were valid and therefore it is my finding that the acts of the 2nd Respondent were in blatant violation of the Court orders dated 7th March 2017 and is therefore punishable.

36. The Courts have held over and over again that Courts punish for contempt not because the individual Judge is offended by the action/omission of the contemnor but because the integrity of the Court and the rule of law which is fundamental in the administration of justice is at stake (see **TSC vs KNUT** (2013) eKLR, **Council of Governors vs Pharmacists and Dentists Union 2017 eKLR**).

37. I therefore find that the 2nd Respondent is guilty of disobeying this Court's orders of 3rd July 2017 and is liable to be punished.

Read in open Court this 1st day of February, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Makokha for Applicant – Present

Ojienda for Respondent – Present