



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1220 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 1st September 2016)

PAUL NDUNGU NDICHUCLAIMANT

VERSUS

AMOS MATHENGE KABUTHU 1ST RESPONDENT

REGISTERED TRUSTEES OF AFRICA

INDEPENDENT PENTECOSTAL

CHURCH OF AFRICA 2ND RESPONDENT

THE CENTRAL BOARD OF THE AFRICA

INDEPENDENT PENTECOSTAL

CHURCH OF AFRICA INTERESTED PARTY

(Suing through the Executive Officials namely the

Assistant Secretary General and Secretary General)

RULING

1. The Application before Court is an Amended Notice of Motion dated 19.8.2016 where the Applicant seeks the following orders:

1. That the Honourable Court be pleased to stay on interim basis the orders issued by the Honourable Justice Nduma Nderi on 5/8/2016 pending any further directions of the Court.

2. That a temporary injunction do issue barring the Administrative Secretary either by himself, servants, agents, employees or any persons acting under his directions, mandate, suspension, instruction, command and/or authority from convening, deliberating, discussing, considering, accepting, receiving or in any way performing any act or adopting any resolution with a view of filling the position of the Archbishop of the AIPCA church arising from fulfillment of the notice issued on 1/8/2016 and carried through the National dailies pending the hearing and determination of this application or further orders of the Court.

3. That the Honourable Court sets aside, vacates, discharge and or varies the orders dated 4/8/2016 and issued on 5/8/2016 by the Honourable Justice Nduma Nderi on the composition of the National Central Board of the AIPCA.

4. That the Court finds that the names of the Bishops, Chairmen and Chairladies as they appear on the interested Party's annexure marked exhibit 1 to be the eligible persons and or members of the National Central Board of the AIPCA consequently being the eligible persons for electing the Archbishop.

5. That the Honourable Court issues such orders and/or directions as it may deem just and applicable.

6. That costs of this application be provided for.

2. Which Application is supported by the Affidavit of one Stanley Mburu Mwangi and on the grounds that:

1. The Central Board is created under Article V of the Constitution and its office bearers are as namely: the 1st Respondent, the National Chairman, the National Vice-Chairman, the Applicant as the Secretary General, the Assistant Secretary General, the National Treasurer, Assistant National, and the National Organizing Secretary.

2. The Claimant has no knowledge of the church structure in that he equates a branch to a Diocese whereas these are distinct organs recognized under the Constitution.

3. The Applicant is aware that on 22/1/2015 the Chief Magistrates Court at Nairobi CMCC 211 of 2015 issued orders barring the Registrar of Societies from registering or effecting changes in regard to the officials of the AIPCA Church. Further the orders did not bar or restrain election of new officials as and when they fall due.

4. The election of Central Board Members at the Diocese level is an annual event and so is the receipt of returns from the respective dioceses about the outcome of such elections. Further it is untrue and rather strange to assert that elections were last held in 2012 whereas they are annual legally required events.

5. The church has a wide following with the Archbishop viewed as senior most clergy and the face of church locally and abroad. Filling this position requires caution, restriction and full compliance with the law to avoid embarrassment or even challenging about its legality and findings.

3. In the Affidavit of Stanley Mburu Mwangi, the Secretary General of AIPCA he states that a vacancy in the office of a member of the Board can arise upon death, resignation or expulsion as envisaged under Article VII and (XI) of the Constitution. That the said Constitution recognizes 28 Dioceses under the church.

4. He states that he is in charge of all church records including minutes of meetings convened by the Board since 2012 as well as any changes forwarded for registration with the Registrar of Societies.

5. He states that according to the Constitution an AGM is held annually beginning at the local church level all the way to the Diocesan level where the representatives to the Central Board are elected. The role of every office bearer to the Central Board is also spelt out in the Constitution.

6. The Applicant contends that the Claimant in persuading the Court to grant orders of 5/8/2016 made material non-disclosure and misrepresented factual issues about the Board and its composition. The Applicant questions the authenticity of the bundle of documents marked as PNN 3A -3DD and PNN 4 and the said list are unknown to the Applicants.

7. He further states that according to his records the documents and list of Bishops, chairmen and Chairladies who are in office is distinct from the documents presented to Court by the Claimant and that the documents reflecting change of officials was obtained when orders of 22/1/2015 were in place and as such they are void.
8. He also states that the Notice published in the Daily Nation on 11/8/2016 by one Paul Watoro Gichu the National Chairman calling for applications for the office of Archbishop which notice he states is misleading and irregular since the mandate for receiving such application does not rest in the Administrative Secretary as no such position exists and that the post of Archbishop is only available to serving Bishops and not every other person.
9. The Applicant goes on to state that as at 28/11/2014 there was a full Central Board meeting which was prior to the orders issued on 22/1/2015 and the full list of members did not include some of the persons the Claimant claims to be members of the Board.
10. He states that from his records Paul Watoro Gichu has never chaired, presided over or even attended any Central Board meeting since March 2014 and todate he does not participate in the affairs of the Board. Further any documents made by the said Mr. Watoro are unknown to the Applicant.
11. That the list marked PNN 4 is inaccurate as some of the members are long dead, resigned or replaced through elective process and the list of Bishops is inaccurate and does not represent the true position of the 2nd Respondent as some have been transferred or replaced due to misconduct.
12. It is the Applicant's contention that the Claimant never disclosed the existence of a parallel Central Board membership and as such it was erroneous to have made the Court believe that there was a dispute about the Board.
13. The Applicant states that the orders issued at the ex-parte stage are final in nature and have far reaching implications on the process leading to deliberation about 1st Respondent's tenure as the Archbishop.
14. It is the Applicant's contention that it is important to determine who the Board comprises of before inviting applications to fill the post of Archbishops. The Applicant is of the opinion that should the orders of 5/8/2016 remain in force there would be irreparable damage as a non-member may take part in spiritual and high ranking tasks.
15. The Applicant contends that a stay of the orders of 5/8/2016 is necessary so as to stop acts of persons referring themselves as Central Board Members.
16. The Claimant filed a Replying Affidavit where he states that the Application is fatally defective, bad in law, an abuse of the Court process and ought to be struck out and/or dismissed.
17. He states that the orders of 5/8/2016 are not positive orders and are not capable of being stayed and thus the subsequent order of stay of 12/8/2016 is erroneous owing to misrepresentation by the Interested Party.
18. He goes on to state that the last general meeting of the Interested Party was held in 2012 and was constituted in terms of Chapter V(vii) (i) (A) (ix) of AIPCA Constitution. Terms of all Board Members are clearly spelt out in the said Constitution.
19. The Claimant also states that the procedure for removal is also provided for in the Constitution and there has never been any disciplinary proceeding against the Chairman or any other member of the National Committee suspending or expelling a member and as such the allegations that the Chairman and Bishop were expelled are false.
20. That there has never been a national Delegates Conference where one Samuel Mburu Kimani was

elected as Chairman and therefore the current Chairman Paul W. Gichu is still serving his five year term which ends in November 2017.

21. The 2nd Respondent has also filed a Replying Affidavit sworn by one Simon Peter Mwangi wherein he states that AIPCA is governed by its Constitution and all members, officials, representatives and agents are bound by it.

22. He states that since 2014 the 1st Respondent started wrangles in the church and as a result there has not been a proper Central Board meeting and none can be said to have taken place.

23. That the only persons who have the mandate to elect the new Archbishop are members who are still alive and sat in the last proper meeting. According to the 2nd Respondent, the only legitimate National Chairman of the Respondent is Paul Gichu who is also a registered trustee as confirmed by records at the Registrar of Societies.

24. The 2nd Respondent avers that on 8/8/2016 the Central Board held its meeting and made the press release, the 1st Respondent was invited but failed to attend.

25. The Interested Party also filed a Supplementary Affidavit in which he states that the list the Claimant provided consisting of the Central Board Members is not a true reflection of the status quo and exhibit 1 is a true reflection of the records held by the Board.

26. He states that the meeting purportedly held on 8/8/2016 is illegal since the said Paul Watoro Gichu is no longer a Chairman of the Board and a member by the name Mrs. Bertha N. Mwangi had resigned vide a public notice dated 23/5/2014 annexed as exhibit 1 to the Supplementary Affidavit.

27. The Applicant further contends that there are no orders in place stopping ordinations as any order to that effect lapsed in February 2016 and an application seeking extension of the said orders is slated for Ruling on 21.9.2016.

28. The Applicant contends that the orders of 12/8/2016 stopped the Registrar from registering the members of the AIPCA Church Tribunal and do not in any way inhibit change of officials of the Executive Board on a need basis.

29. They also state that the current Chairman appointed on 23/4/2014 has held office in the absence of Paul Watoro Gichu who to date has never attended meetings or presided over any of the Board's functions. The current Chairman has allegedly been performing his duties unchallenged and is therefore competent to hold that position.

30. Having considered the submissions of both parties, the issue before this Court is who the legitimate members of the Church Central Board are. When the Applicant Claimant appeared before Hon. Justice Nduma on 5/8/2016, they presented a list before the Court which the Court approved as the legitimate list of the Central Board duly qualified to elect the Archbishop of AIPCA.

31. The Applicants are opposed to the list tabled by the Claimants and their contention is that the list is not authentic since some of the members listed are dead or have resigned or are double listed.

32. The Applicants list Appendix 1 show that Bertha Mwangi had resigned from her position as Vice Treasurer.

33. That also one Bishop Julius Kamwaro was suspended from the church as per Appendix No. 9 (page 42) which they say has not been listed. They also aver that the Chairman Paul Watoro Gichu has also been suspended as per Appendix 5 page 35 and so he cannot issue any notices.

34. Another contention is that one Timothy Gitonga Gachoya cannot also participate and that the only

person who has documents of the AIPCA is the Applicant.

35. The Respondent Claimant on reliance to the church Constitution points out that the people eligible to vote is the Central Board as per Article (1) (a) (1) of the AIPCA Constitution.

36. They submitted that under Article 7(1) (a) (2) page 27 the Central Board has a term of office of 5 years and every board member is eligible until the next general meeting. The last elections were held in 2012 and so the current members are eligible.

37. They submitted that a member can only be removed under Clause 3A, 4(b) and (c) (page 20 to 21).

38. On the National Chairman Paul Watoro, they contend that there has never been any National Delegates meeting to elect another Chairman so Paul Watoro is still the Chairman. They also urge Court to invoke Clause 4 Article 7(h) (i) the transition Clause pending the elections.

39. The Interested Party argued that the Applicant has no Locus to file this Application as they are not a legal entity. They aver that the list submitted by the Claimant Respondent is authentic as it is signed by the Chairman, Archbishop and Secretary General and it is also the same as provided for by the Registrar of Societies.

40. The Applicants insist the list as submitted by them is the authentic list.

41. In unraveling the correct list to carry out the elections of this church, I will refer to AIPCA Constitution which provides who is eligible to vote/elect the Archbishop.

42. Chapter V (VII) (1) (A) (i) of the AIPCA Constitution provide as follows:

“The National Committee of the Church shall be referred to as the Central Board. This shall consist of the Diocese Chairman, Layman, the Bishop and Diocese Chairlady. The National Chairperson of the Youth/Brigade and Councils are co-opted members of the Board”.

43. Clause 8 of the AIPCA Constitution also provides as follows:

“...(B) The Archbishop shall be elected by a national delegates congress consisting of a Bishop, a Layman and a Laywoman from every Diocese and the Central Board Executive officials. No member shall have two roles”.

44. The Central Board Executive constituted under Chapter V (VII) (1) (A) (ix) provide that:

“The Executive Central Board officials will have 8 members; three men from the clergy, three men from the laity, one of them being the National Chairman and two women”.

45. From the above provision in the AIPCA Constitution, the Court’s duty is to find out if the list submitted by Claimant is composed of the members eligible to elect the Archbishop as per the law. The Application made before Justice Nderi on 5/8/2016 by the Claimants listed names of eligible members. The list of the said members was attached as Appendix 3a to 3y and 3aa to 3dd. Appendix 4 and 5 listed other eligible members out of this list. The Applicants have submitted that some members are deceased or have resigned or removed.

46. The list of members as submitted by the Claimant from 3a to 5 is an extract from the office of the Attorney General - the Registrar General Office which indicates those are the officials as at 16.2.2015 and others with effect from 3.3.2015 and 26.2.2015 respectively.

47. The Applicant avers that one Bertha Mwangi had resigned from her position as Vice Treasure. This is as per Appendix 1 of Applicant’s Supplementary Affidavit.

48. The Claimants have argued that it is not known who paid for and posted the advert stating that Bertha Mwangi had resigned. No evidence was adduced before Court to show who actually posted the advert which indicated Bertha Mwangi had resigned and since the resignation is denied, the onus of proving it was done by Bertha rests on the Applicants which has not been done. I will therefore treat the said advert as contested and not valid.

49. On the issue of one Bishop Julius Kamwaro, the Applicants have submitted that he was suspended as per Appendix 9 of Applicants application and therefore he is not eligible to vote. The Claimants argued that the suspension of Bishop Kamwaro is of no effect given that the law governing removal of a Bishop was not followed.

50. Chapter 3 Article 4 (B) and (C) of the AIPCA Constitution provide for disciplinary action and procedures to be followed before removal of a member or official.

51. Under "Article IV (C):

ii. If the member is an ordinary member, he/she should be struck off from the membership register.

iii. The immediate authority, e.g. Church, Parish, Archdeaconry or Diocese Committee should immediately investigate the truth of the matter.

iv. After the investigations and the victim is found guilty, the authority should inform the Central Board via the relevant authorities.

v. The decision of the Central Board shall be final with a written approval signed by the Archbishop Spiritual Head of the Church, National Chairman and Secretary General".

52. The procedure therefore involves some investigations and forwarding of investigation report to Central Board for determination. It is clear that in case of Bishop Julius Kamwaro no investigation report is attached and there is no evidence that the Central Board of the Church sanctioned it. The suspension then done without due process does not affect the position of Julius Kamwaro as a member of the Bishops list.

53. In relation to the Chairman, the Applicants have submitted that the Chairman Paul Watoro Gichu was removed and replaced with Samuel Kimani by Central Board meeting on 2nd July 2014 under Minute No. 3/04/2014. The date was originally 1-4-2014 but changed to July 2014. The letter is dated 13th June 2014 which seems to be contradiction in dates. This letter was received by Registrar office on 16.9.2014 but the Applicants were cited for contempt in Civil 124/2014 by the Hon. Judge Waweru for putting in a new list of Bishops. This was on 20th May 2014 with these contradictions the removal of Paul Watoro is suspect and I therefore treat him as still being in office. I do not find the position of Paul Watoro Gichu's removal as per the law herein.

54. Chapter V (VII) (1) (A) (ii) of AIPCA Constitution provides that:

"Every Board member shall hold office for a period of five (5) years until the next general meeting".

55. The last election was held in 2012 and 5 years have not elapsed. To purport then to change the list of elected members midstream is an illegality which this Court cannot sanction.

56. I therefore find that the list of members eligible to vote are those provided for from the records of the Registrar of Societies as found in Appendix 3a to 4 of the Claimants as submitted before Hon. Judge Nderi with the exception of any deceased member who in any case will not be present to vote.

57. I therefore find the application by the Applicants has no merit and dismiss it accordingly. I order that

this Court's orders of 29.7.2016 be enforced following the list submitted in Appendix 3a to 3dd and PNN 4 of the Claimants application dated 4/8/2016. Those are the orders of this Court.

Read in open Court this 1st day of September, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Makokha for Claimant

Mathenge for Interested Party and holding brief T.M. Kuria for 1st Respondent

Oswera holding brief for Kirimi for 2nd Respondent