



**Mwugusi & 2 others (Suing as officials of Jerusalem Christian Church) v
Kwendo & 3 others (Being sued as officials of Jerusalem Christian Mission)
(Civil Suit 3 of 2023) [2024] KEHC 5338 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 5338 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL SUIT 3 OF 2023
JN KAMAU, J
APRIL 30, 2024**

BETWEEN

**JANE MAKUNGU MWUGUSI 1ST PLAINTIFF
NASHON CHIMOTO 2ND PLAINTIFF
JAPHETH KETI 3RD PLAINTIFF
SUING AS OFFICIALS OF JERUSALEM CHRISTIAN CHURCH**

AND

**AGGREY KWENDO 1ST DEFENDANT
ERASTUS ESIPILA 2ND DEFENDANT
SIMON ISALAMBO 3RD DEFENDANT
EGLEN NYALESO 4TH DEFENDANT
BEING SUED AS OFFICIALS OF JERUSALEM CHRISTIAN MISSION**

RULING

1. In their Notice of Motion dated 12th October 2023 and filed on 17th October 2023, the Plaintiffs herein sought an order for temporary injunction restraining the Defendants whether acting by themselves or through their followers, agents, servants or assigns from interfering with the Plaintiffs' church property including land and church buildings erected thereon, church meetings or any other functions being constructed by them and a further order restraining them from using the Plaintiffs' symbols, regalia or any document bearing their logo or letterhead of the Plaintiffs' religious, across the Republic of Kenya pending the hearing and determination of this suit herein.



2. The 1st Plaintiff swore an Affidavit on 12th October 2023 in support of the said application on her own behalf and that of the 2nd and 3rd Plaintiffs.
3. It was the Plaintiffs' case that sometimes towards the end of 2022, the Defendants together with other rebellious members of Jerusalem Christian Church formed and registered another religious organisation known as Jerusalem Christian Mission and had resorted to using similar symbols, regalia and documents resembling theirs.
4. They averred that the Defendants also took over their organisation's immovable property including land and church buildings and had vowed not to vacate the same despite having chosen to form and register a different religious organisation. They were categorical that the Defendants were at liberty to acquire their own property where they could conduct their functions and that unless restrained by the court they were bound to persist with their unlawful deeds.
5. They asserted that they had issued numerous demand notices and notices of intention to sue to the Defendants but in vain and that the Defendants' action had led to a breach of peace since they could not conduct peaceful church functions which had led to disorganization within the organization.
6. They contended that the Defendants' actions had caused disorganisation, confusion and unnecessary confrontations amongst the adherents whenever the two (2) factions met.
7. They were emphatic that no prejudice would be suffered by the Defendants since they belonged to a different religious organisation and it was in the interest of justice that the orders they had sought be granted.
8. In opposition to the Plaintiffs' application, the 1st Defendant swore a Replying Affidavit on 24th January 2024 on his own behalf and that of the 2nd, 3rd and 4th Defendant. The same was filed on 25th January 2024.
9. They averred that they were members of the Jerusalem Christian Church under the late Daniel Omito, the founding father who had passed on in 2019. They pointed out that his Deputy one Aggrey Amunavi was made the acting Bishop and was later conferred and ordained but that the Plaintiffs did not like that arrangement. They stated that the said acting Bishop also died in 2021 whereupon the 1st Defendant took over, a position that was again opposed by the Plaintiffs.
10. It was their contention that the 1st Defendant convened a meeting to discuss the aforesaid issues as they awaited elections in November 2022 but that the 1st Plaintiff used the collected signatures from the said meeting and declared herself as the Bishop in collusion with the Church Secretary. They further averred that the 1st Defendant encouraged church members not to flee from the church due to the disputes and that that was when the Defendants among others not sued, were notified by the Plaintiffs to vacate the church.
11. They were emphatic that they decided to step aside and were affiliated to a different church which gave them a home. They pointed out that they did not leave with anything belonging to the previous church. They stated that their symbols, regalia and documents comprised of four (4) colours and were completely different from those of the Plaintiffs.
12. They asserted that the church (sic) stood to suffer immense loss and damage if the orders herein were granted as there was nothing in common between them. They contended that the Plaintiffs' application was in bad faith as they wanted to hoodwink the court to grant them an order of interim injunction as all the allegations that had been heaped against them were when they were part of the church.



13. They were emphatic that they had not been occupying the Plaintiffs' church premises since they left in 2023 and as they had proved that they had nothing in common with the Plaintiffs' church, the two (2) impugned churches being separate entities that operated separately with different symbols, regalia and documents, the balance of convenience in not granting the temporary injunction tilted in their favour.
14. They averred that the Plaintiffs' application was incompetent, bad in law for want of form and should be dismissed with costs.
15. On 7th November 2023, this court enquired about its pecuniary jurisdiction and directed the Plaintiffs to file a further affidavit annexing all documents justifying why this matter should be heard at the High Court and not by the lower court. A perusal of an Agreement for Sale that the Plaintiffs had attached showed that in 2013, a parcel of land was purchased for the sum of Kshs 135,700/= . A balance of Kshs 24,300/= was shown to have been outstanding. However, the Plaintiffs did not file the said further affidavit to justify why the matter should be heard in the High Court.
16. Both the Plaintiffs and the Defendants did not file their respective Written Submissions despite the court having given them directions on 7th November 2023 for them to file the same. The Ruling herein was therefore based on the parties' affidavit evidence only.
17. This court heard this matter notwithstanding the fact that the Plaintiffs did not justify why this matter should be heard by the High Court for expediency purposes.

Legal Analysis

18. This court had due regard to the case of *Giella v Cassman Brown* (1973) EA 360 that set out the conditions that must be met before an applicant could be granted an interlocutory injunction. An applicant had to show:-
 - a. That he had demonstrated a prima facie case with a probability of success.
 - b. That he would suffer irreparable injury, which could not adequately be compensated by an award of damages if the interlocutory injunction is not granted.
 - c. That if the court was in doubt, it would decide an application on the balance of convenience.”
19. This court noted that the Plaintiffs did not attach any annexures to their application, a fact that it pointed out to their counsel when he first appeared in court on 7th November 2023. The Defendants' counsel did not object to the Plaintiffs filing a further affidavit annexing copies of the uniforms and symbols that they purported to have been the same as those of the Defendants so that they could respond to the same. This court granted the Plaintiffs leave to file the said Further Affidavit. However, as at the time this court was reserving a date for its Ruling, the Plaintiffs had not filed the said further affidavit.
20. On the other hand, in their Replying Affidavit, the Defendants annexed their Certificate of Affiliation dated 10th March 2023 and copies of photographs showing their church uniforms, which uniforms from a cursory look appeared different from the images of uniforms that the Plaintiffs had attached in their List and Bundle of Documents that was dated 12th October 2023.
21. The Plaintiffs failed to rebut the Defendants' evidence that their uniforms, regalia and symbols were different when they failed to file a further affidavit. Indeed, the Defendants were categorical that they were in a totally different affiliation and/or religion which was a different entity from the Plaintiffs' church and which had different uniforms, symbols, regalia and documentation.



22. The Plaintiffs did not also adduce any evidence to support their averment that the Defendants were interfering with their church buildings and/or property and meetings thus causing them irreparable loss which could not be compensated by way of damages if the interlocutory injunction was granted.
23. Notably, it is trite law that he who alleges must prove. It was clear that the Plaintiffs had not presented any evidence to support the averments in their present application. They did not also provide any evidence that any of the items they were claiming to have been infringed upon had been patented in accordance with the law.
24. In the absence of such documentary evidence, this court therefore found and held that the Plaintiffs had therefore not demonstrated that they had established a prima facie case with probability of success.
25. The balance of convenience in fact lay in this court not granting them an interlocutory injunction as the Defendants had demonstrated that they were a different entity from the Plaintiffs and that their uniform, regalia and symbols were different from those of the Plaintiffs.
26. Turning to the issue of jurisdiction, this court took the view that as the Plaintiffs did not furnish it with any documentary evidence to justify why this matter should be heard by the High Court, the only conclusion it could arrive at was that this matter was within the pecuniary jurisdiction of the magistrate's court and therefore ought to be transferred there for determination.
27. Notably, the jurisdiction and power to transfer any matter before the High Court is donated by Section 18(1)(a) of the *Civil Procedure Code* Cap 21 (Laws of Kenya) which provides as follows:-

“On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage (emphasis court) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same.”

Disposition

28. For the foregoing reasons, the upshot of this court's decision was that the Plaintiffs' Notice of Motion application dated 12th October 2023 and filed on 17th October 2023 was not merited and the same be and is hereby dismissed with costs to the Defendants.
29. It is hereby directed that this matter be and is hereby transferred to the Vihiga Principal Magistrates Court and that the same be mentioned before the Head of Station on 15th May 2024 for further orders and/or directions on progression of hearing and determination of the same.
30. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 30TH DAY OF APRIL 2024

J. KAMAU

JUDGE

