

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF SUMBAWANGA

AT SUMBAWANGA

Civil revision no. 02 of 2022

(Originated from Misc. Civil Application No. 12 of 2022 of Sumbawanga District Court)

THE REGISTERED TRUSTEES OF ANGLICAN

CHURCH OF TANZANIA 1ST APPLICANT
REV. MAIMBO WILLIAM NDOLWA 2ND APPLICANT
REV. JOSEPHAT HAMBIJE 3RD APPLICANT
REV. JACOB MLIGO 4TH APPLICANT
REV LEONARD KASWAGA 5TH APPLICANT
REV EVANGELIST ANOLD HOSEA 6TH APPLICANT

VERSUS

BEVIN SAMMY MTENDO 1ST RESPONDENT
SENGIYUMVA HASSAN DOWSON 2ND RESPONDENT

RULING

***Date of last order:* 26/05/2022**

***Date of Ruling:* 26/05/2022**

NDUNGURU, J.

This is a ruling in respect of the a Revision that was initiated by the Court suo – moto following the complaint lodged by the Anglican Church of Tanzania by the letter date on 24 May, 2022 authored by the

archbishop of Anglican Church of Tanzania by the name of “ The most Rev. Maimbo William Mndorwa”. The complaint is on the interim Order issued by the District Court of Sumbawanga (by L.M Ndelwa RM) dated 23rd day of May, 2022 in Misc. Civil Application No 12 of 2022.

Following the Complaint this court invoked its powers of revision in terms of Section 44(1)(b) of the Magistrate Courts Act, Cap 11 R.E 2019. In order to satisfy itself as to the appropriate, legality and correctness of the proceedings and order which is complained against. Section 44(1)(b) of the Act provides

44(1) In addition to any other power in that behalf conferred by the High Court, the High Court.

(a) –

(b) May, in any proceedings of a Civil nature determined in a district court or court of resident magistrate on application being made in that behalf by any party or on its own motion, if it appears that there has been an error to the merits of the case involving injustice, revise the proceedings and make such decision or orders therein as it sees fit:

The back ground of this revision is at that the District Court, the applicants by Chamber summons with certificate of urgency filed under section 68 (e) and 95 of the Civil Procedure Code (Cap 33 R.E 2019)

prayed (ex-part and Interparties). The application was supported by the joint affidavit sworn by applicants were seeking are reproduced herein below: The ex-parte Orders were seeking are reproduced herein below:

- (1) That this honorable court be pleased to issue an interim Order restraining the 3rd respondent, his agents and any of his followers from entering into and conducting any church services in the premises of St. Andrew Kantalamba Anglican Church situated at Plot No. 135 and 164 Block Y(MD) Kantalamba area, Sumbawanga Municipality pending hearing and determination of this application for temporary injunction interparty.
- (2) That this honorable court be pleased to issue an intern order restraining the 4th, 5th and 6th respondents, their agents and any of their followers from interring into conducting any church service in the premises Anglican Churches of St, Mathias Majumbasita Sumbawanga Parish, Anglican Church of Kabwe Parish and Anglican Church of Matai Parish District within Kalambo respectively pending hearing and determination of this application for temporary injunction interparty.

From the record, the gist of applicants' application is contained basically at paragraph 5, 7, 8 and 10 of their joint affidavit what is contained in

para five is that on 28th day of Nov, 2021, the 3rd respondent unlawful and without justification forced to enter into and invaded the premises of St. Andrew Kantalamba Church on allegation that he was instructed by the Rev. Mathayo Kasagara which is contrary to the worshippers including the applicants who are taking care of the said premises. While the contents of para 7 is that is that on 19th day of May 2022, the 2nd respondent, forcefully removed from the service Pastor Rev. Esau Chirwa and appointed the 3rd respondent to serve Kantalamba Church without any justification, the act which is against the wishes of worshippers.

Further the complaint contained in para 8 is that the 2nd respondent appointed the 4th, 5th and 6th to offer services in the parishes mentioned at para 4 which are under the management of Anglican Church Sumbawanga zone while knowing the existing conflict between Rev. Bishop Kasagara and the Anglican believers of Sumbawanga zone. At para 10 the applicants state that the acts of the 2nd, 3rd, 4th, 5th and 6th respondents are likely to accelerate breach of peace interference to the applicants and other Anglican believers' constitutional rights of worship, cause misunderstanding between the Anglican believers, surrounding society at large and injustices to the applicants.

When the application was called for hearing, the applicants enjoyed the services of Ms. Neema Charles and Mr. Deogratius Sanga learned advocates. Upon hearing the said application ex parte the trial Magistrate granted the two orders prayed for, while insisting "failure to obey by anyway shall amount to contempt of court".

The complaints contained in the letter which prompted this revision are basically three. They are contained at para 1, 2, and 3 of letter. First the order issued by the trial court intends to prohibit worship services and activities by prohibiting the pastors and worshippers/believers to enter into the Anglican Churches, diocese of Rukwa at Sumbawanga, Second that the court heard ex-parte without Church leaders and without satisfying itself as to whether the applicants are Anglican worshippers/believers as per Anglican Church of Tanzania Constitution of 1970. Further that according to the constitution the most Rev. (Archbishop) of Anglican Church of Tanzania has power and mandate to allocate pastors to the parishes and not the worshippers (wakristo) as alleged by the applicants. Thirdly that the act of the 2nd respondent of reallocating the pastors intended to resolve a long existed conflict for the best and wide interest and prosperity of the Anglican Church Lake Rukwa Diocese.

Now, my mind is settled that section 44(1)(b) of Cap 11 R.E 2019 as cited above, this court has power suo moto to call and examine proceedings and orders of the District Court to satisfy as to the appropriateness and legality as it sees fit. Therefore, the presence of the complaint before me justifies the intervention by opening of Revision suo-moto.

Coming now to the merit of the revision, I have had time to go through the available court records in the entire court file. The important question which needs to be addressed is whether it was proper for the court in the circumstances to order for temporary injunctions. In other words was the court properly moved to grant an order for temporary injunction.

It is a settled principle of law that one of the criteria for granting a prayer for an injunction is that, **there must be a serious question to be tried on the alleged facts and a probability that the plaintiff will be entitled to the relief prayed.** In other words, there must be a triable issue which arises in the main case. **See Atilio V. Mbowe (1969) HCD 284. Gazele Trackers Ltd Vs. Tanzania Petroleum Development Corporation.** Civil Application No. 15 of 2006 CAT (Unreported) and **Antony Haji V. Yasmire Haji and Another**, Misc. Civil Application No 187 of 2021 HC at Dar es salaam (unreported). All

the three cases cited insist on the presence of triable issue before temporary injunction is granted.

Without blinking the eyes, the record at hand reveals that the application before the District Court was necked. Aim of the so view because the record does not show where the application was arising from. It means that there was no main suit or application in which triable issues could have depicted from. Being the position I find the application was incompetent in the eyes of the law, and if the Trial Magistrate would have exercised due diligence wouldn't have granted the order as she did.

Regarding ex parte hearing of the application. Of course, I fail to understand why the application was filed and heard ex-parte. I am saying so because upon my microscopic perusal of the record at my disposal there is no intimation or indication anywhere that the respondents could not possibly be readily found or traced for "inter parties hearing. See **Anastasia Lucian Kibela Makoye & two others V. Veronica Luciana Kibela Makoye & 4 others**, Civil Appeal No. 46 of 2011 CAT at Zanzibar (Unreported). From the above finding the complaint contained at para 4 of the complainant letter has merit.

In the case of Ahilio V. Mbowe (Supra), the court formulated three conditions which the court must be satisfied before injunction can be issued:

- (i) There must be serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed.
- (ii) That the court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established, and
- (iii) That in the balance there will be greater hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendants from the granting of it.

Going to the Second and Third principles/conditions above on irreparability. It is my respectful view that, the applicants have not demonstrated any injury which they be irreparable suffer before their legal right is established. The fact that there is no pending suit the applicants have failed to establish legal right which court interference was necessary to protect. The counsel for the applicants in submitting for the application have rather paraphrased the contents of joint affidavit of the applicant. To me it is a self- defeating. Thus the

applicants did not satisfy the requirements of the second principle in

Attilio V. Mbowe's case.

Since all the principles in Attilio V. Mbowe's case have to be fulfilled in order for injunction to issue, I perhaps could have stopped here. But I think it is important to discuss the third principle as well.

The third principle requires an answer to the question as to which among the two sides to the dispute is likely to suffer greater harm if injunction is granted. Looking at the affidavit, the applicants have filed the application on their individual names and capacity, but in all paragraph they seem like whistleblower to the worshipers who are not known. To my view, the grant of injunction is likely to cause greater harm to the respondents than the applicants who are hiding under the umbrella of the Anglican believers. I am saying so because at para I of the joint affidavit, the applicants admit that the 1st respondent is the owner of the Anglican Church in Tanzania and the said Church is under supervision of the 2nd respondent, how then can the applicants sue the owner of the Church who has mandated the 2nd respondent to allocate and re-allocate the pastors in various places on that regard. That is very fanny.

As courts of law, we have constitutional duty, in applying the law to insure the rights are preserved should avoid falling into a trap of deciding the rights of the people mechanically:

In granting injunction, the trial Magistrate acted mechanically and has been used as an instrument or tool to cause injury to respondents and the Anglican worshippers for failure to get spiritual services as the pastors were banned to enter the church buildings and conduct any church services during the existence of the order. This is a misuse of judicial power which cannot be entertained.

The above being the reasons, I am constrained to invoke revisional jurisdiction under section 44(1) (b) of Cap 11 R.E 2019 and quash and set aside the orders issued by L.M Ndelwa RM dated 23 May, 2022, in Misc. Civil Application No. 12 of 2022. Status quo-ante be maintained.

It is so ordered.



A handwritten signature in blue ink, appearing to read "D. Ndunguru".

D.B. NDUNGURU

JUDGE

26.05.2022