

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

CASE NO. HCT-00-CV-CS-0282-2003

ZIRAGUMA EMMANUEL & ANOTHER APPLICANTS

-VERSUS-

THE MOST REV. L.M. NKOYOYO RESPONDENT

BEFORE:- THE HONOURABLE MR JUSTICE AWERI OPIO

R U L I N G:-

This is a ruling on an application for a temporary injunction. The application was brought by Chamber summons under order 37 rules 1, 2 and 9 of the Civil Procedure Rules seeking for orders that an interlocutory injunction be issued restricting the respondent/defendant personally or through agents and/or commissaries from administering and/or interfering in the affairs of the Diocese of Muhabura as caretaker Bishop pending the determination of the main suit. The applicants also sought for costs of this application to be provided for. The application was supported by affidavit sworn by the first applicant where the grounds and background of the application were clearly highlighted as follows:-

“Sometime back a vacancy fell in the “see” of the Diocese of Muhabura following the retirement of the Right Rev. Bishop Shalita after reaching retirement age. On 11th August 2001 the Synod of Muhabura Diocese as required by the Constitution of the Province of Church of Uganda, nominated Rev. Wilson Baganizi and Rev. Canon David Sebuhinja to the House of Bishops in order for it to elect a new Bishop to replace the retired Bishop. On 5th September, 2001 the House of Bishops in consultation with the arch Bishop elected Rev. Canon David Sebuhinja as

Bishop Elect of the Diocese of Muhabura for the arch Bishop to appoint and set 28th April 2001 as the date for his consecration and enthronement in the Diocese of Muhabura.

Following the announcement of the decision of the House of Bishops, there were representations by members of the Laity both in favour of and against the decision of the House of Bishops in electing Rev. Canon David Sebuhinja as the new Bishop Elect. On 24th January 2002, the Arch Bishop sought and obtained advice from the Provincial Chancellor who replied on 13th February 2002 to the effect that there was no error or wrong made by either the Synod which nominated the two candidates or the House of Bishops which elected Rev. Canon David Sebuhinja as Bishop Elect of the Diocese of Muhabura. Following the receipt of that advice, the Arch Bishop issued a press release in which he stated inter alia that there had been no irregularity in the process of the election of Rev. Canon David Sebuhinja. In the meantime the Diocese was still being care taken by the Retired Bishop Shalita. On 12th April, 2002 the Arch Bishop sent a message to the Diocese declaring that he was to take over the Diocese and in that message he also postponed the consecration and enthronement of Rev. Canon Sebuhinja. On the same day the Arch Bishop sent another message to Bishop Shalita asking him to hand over the Diocese to him. On 13th November, 2002, the House of Bishops held a meeting to discuss the saga surrounding the election of Rev. Canon Sebuhinja. In that meeting the House of Bishops reaffirmed the election of the Bishop Elect and fixed the 19th January, 2003 as a date for his consecration and enthronement. However on 28th November, 2002, the Arch Bishop convened and chaired a Diocesan Synod meeting in which he requested the members to show by lining up those who were pro and against the consecration and enthronement of the Bishop Elect upon

which over 60 members allegedly walked out in protest to the Arch Bishop, the Dean of the Province and the Diocese Bishop.

On 14th January the Arch Bishop announced yet another postponement of the consecration and enthronement of the Bishop Elect which had been duly set for 19th January, 2003. To entrench his authority on 7th April 2003 the Arch Bishop convened a Diocesan Council meeting and appointed Commissaries headed by one Canon Muruta who later wrote a letter to the parishes in the diocese ordering them to stop taking the quotas to the Diocesan Treasurer.

The above acts were said to have created confusion and anxiety among the Laity especially those who were pro-Sebuhinja. They viewed the Arch Bishop as conspiring with the Anti-Sebuhinja group against the consecration and enthronement of Canon Sebuhinja as their new Diocesan Bishop. Three of their vigilant members filed Civil Suit No. 282 of 2003 against the Arch Bishop seeking declaratory orders from Court that Rev. Cano Sebuhinja was duly nominated and elected Bishop of Muhabura Diocese; that the Arch Bishop had failed in his duties conferred on him by the Constitution of the Church of Uganda to consecrate and enthrone Rev. Canon David Sebuhinja as the Bishop of the Diocese of Muhabura; The Arch Bishop had unlawfully taken over as caretaker Bishop of Muhabura Diocese; that the defendant wrongfully convened the Synod of the Diocese of Muhabura, which meeting resulted in the appointment of Commissaries, one of whom, canon Esau Muruta was now illegally running the affairs of the Diocese of Muhabura; that the Arch Bishop be compelled to consecrate and enthrone Rev. Canon David Sebuhinja as Bishop of the Diocese of Muhabura; and that a temporary injunction restraining the

Arch Bishop personally or through agents and/or Commissaries from administering the Diocese of Muhabura as caretaker Bishop.

The applicants thereafter filed this application requesting Court to issue a temporary injunction restraining the respondent personally through agents from administering and or interfering in the affairs of Muhabura Diocese as caretaker Bishop pending the determination of the above suit.

The application was opposed by affidavit and supplementary affidavit deponed to by Rev. Canon Stanley Ntagali deponed on 22/5/2003 and 4th June, 2003 respectively. It was followed by affidavit in rejoinder by Ziraguma Emmanuel.

Rev. Canon Stanley Ntagali who was the Provincial Secretary deponed among other things that following the election of Rev. Canon David Sebuhinja as Bishop Elect and setting the date of 28th April, 2002 as the date of consecration and enthronement, conflicts, disputes and insecurity cropped up in the Diocese. A section of Christian in the Muhabura Diocese were supporting the election and the intended Consecration of the Bishop Elect, while another section of the said Christian were against the said election and enthronement. As a result of the said two opposing sections within the Christian body there developed anarchy in the said diocese resulting into insecurity. Notwithstanding the said insecurity the respondent in a bid to reconcile the warring Christians, convened a meeting of the Synod on 28th November, 2002 to reconcile the opposing Christian sections with a view to consecrate the Bishop Elect. In the Course of the said meeting a big section of the said synod meeting reiterated that they had nothing to do with the consecration. To-date the said Christian sections have not been reconciled as yet and insecurity

has continued to reign in the Diocese rendering it impossible to consecrate and enthrone the Bishop Elect. He denied that the respondent had failed or refused to consecrate and enthrone the Bishop Elect. In paragraph 8 and 9 he deponed that the respondent took over Muhabura Diocese legally in accordance with Article 9(a) of the Constitution of the Province of Church of Uganda and Canon 1:3:8 which empowers the respondent to takeover the Diocese until the Bishop Elect is consecrated and enthroned.

Lastly he denied creating any vacancy in the see of the Diocese but that the care taking was lawful and no damage had been or could be suffered by the applicants as alleged.

In the supplementary affidavit Rev. Cano Stanley Ntagali denied that there was a secret move to revisit the election of Rev. Canon David Sebuhinja as Bishop Elect of Muhabura Diocese.

At the hearing of the application the application the applicants were being represented by Mr Babigumira while the respondent was represented by none other than Mr Kagumire.

Mr Babigumira contended in his submissions that the appointment of Commissaries headed by Rev. Esau Muruta which took over the management of Muhabura Diocese was in breach of the Constitution of Muhabura Diocese and the Province of the Church of Uganda which the Respondent was bound to follow. The Learned Counsel submitted further that the taking over of the Diocese by the Arch Bishop had caused irreparable loss and damaged to the interests and concerns of the applicants as concerned laity. Therefore they had a right to seek for an injunction under Order 37 rule 2 and 9 of the Civil Procedure Rules to prevent the continued violation of the Constitution. The Learned Counsel clarified that the applicants/plaintiffs in the main suit

were seeking among other things an order preventing the respondent from breaching and violating the Constitution aforesaid, the Learned Counsel cited the case of Uganda Muslim Supreme Council Vs Sheik L . Kasimu Mulumba & Others [1980] HCB 110. The Learned Counsel concluded that the respondent had breached the Constitution of the Church of Uganda and that the Diocese of Muhabura by taking over the Diocese of Muhabura and refusing or neglecting to consecrate and enthrone Rev. Canon David Sebuhinja who had been lawfully elected as the new Bishop of Muhabura Diocese. He accordingly prayed that this was a proper matter where an injunction could issue to protect the rights and concerns of the applicants regarding the appointment of their Bishop and the running and management of the diocese until the main suit is disposed of.

After the closure of his submissions Mr Babigumira was granted leave to cross-examine Rev. Canon Stanley Ntagali on the affidavit he had deposed whereupon he stated.

That the duty of the electoral college was to nominate two candidates for one to be appointed Bishop by the House of Bishops. After nomination the electoral college does not dictate on which choice to elect among the two candidates. That Rev. Canon Sebuhinja was properly elected by the House of Bishops and that no one can overrule the decision of the House of Bishops. He stated further that if the Arch Bishop has confirmed and appointed a Bishop he cannot fail to consecrate and enthrone him. He concluded that consecration and enthronement could not take place because of the insecurity which had come about because of the conflict in the diocese, and that it would be done after the parties have been reconciled.

Mr Kagumire who appeared for the respondent opposed the application and contended that the conditions and purpose of granting temporary injunction did not exist in this particular case. The Learned counsel relied on Kiyimba Kaggwa Vs Katende and outlined purpose and conditions to be satisfied before Court could grant a temporary injunction namely;

- 1) The purpose of a temporary injunction is to maintain a status quo until the finalization of the main suit.
- 2) The applicant must show a prima facie case with probability of success.
- 3) There must be irreparable damage or injuries which cannot be adequately compensated in damages.
- 4) If Court is in doubt then it shall decide on the balance of circumstance.

The above principles were followed by Karokora J (as he then was) in Nitco Ltd Vs Nyakairu [1992-93] HCB 135. The same principles were fortified by the Supreme Court in Robert Kavuma Vs Hotel International Ltd Civil Appeal No. 8/1990. See especially the decision of justice A.H.O. Oder.

In the instant case the subject matter in dispute is the taking over the diocese of Muhabura Diocese by the respondent and the fact that the respondent had refused and or failed to consecrate and enthrone the Bishop Elect of Muhabura Diocese. As a result of the above dispute the applicants have filed a Civil Suit challenging the above acts and omissions of the respondent. In the same application the applicants are challenging the same acts and omissions of the respondent. It is therefore clear that the relief which are sought in the application for a

temporary injunction are the same as those prayed for in the main suit. This is a fact which was conceded to by Counsel for the applicants. The granting of this application would accordingly dispose of the main suit, rendering it nugatory. Our Courts have been slow in granting temporary injunction where the granting of the same would dispose of the main suit: See Uganda Muslim Supreme Council Vs Sheik L . Kasimu Mulumba & Others [1980] HCB 110.

For the reasons I have stated above the granting of temporary injunction in this matter would not maintain the status quo until the question to be investigated in the main suit finally disposed of I would have granted this application only if there was a threat to reverse the election of the Bishop Elect. According to the Provincial Secretary this Bishop Elect was properly and lawfully elected by the House of Bishops whose decision was not subject to any challenges.

Having found that the granting of a temporary injunction would not maintain the status quo there is no need to consider those other conditions as the purpose and conditions for granting temporary injunction go hand in glove and to discuss them would touch on the merit of the suit. This application is therefore rejected. Costs if the application shall abide by the main suit. It is ordered that the main suit be fixed before the end of this month between 23 – 30 June, 2003 due to its urgency.

RUBBY AWERI OPIO

J U D G E

16/6/2003.

16/6/2003:-

Kagumire for respondent.

Richard Mwebembezi for the applicant.

1st applicant present.

Respondent represented by Provincial Secretary.

Ruling read in chambers as in open Court.

RUBBY AWERI OPIO

J U D G E

16/6/2003.