



**Owasi & 3 others v Registrar of Societies & 4 others; Masiza & 14 others (Interested Parties)
(Constitutional Petition E008 of 2024) [2024] KEHC 11376 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11376 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CONSTITUTIONAL PETITION E008 OF 2024**

JN KAMAU, J

SEPTEMBER 30, 2024

**IN THE MATTER OF: ARTICLES 2, 10, 19(1), 20, 22, 23, 24, 27, 38(3) (C), 47, 81(A),
165(3), 171(1) (D), 250(4) 258(1) AND 259 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: ALLEGED AND/OR THREATENED
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER ARTICLES 10, 27, 38 AND 47 OF THE CONSTITUTION**

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT

BETWEEN

**DR PHILLIP AMUKOA OWASI 1ST PETITIONER
REV TOM OLENDO 2ND PETITIONER
REV HUMPHREY GOREN 3RD PETITIONER
SARA SAGASI TUNEN 4TH PETITIONER**

AND

**THE REGISTRAR OF SOCIETIES 1ST RESPONDENT
REV. PATRICK LIHANDA, GENERAL SUPERINTENDENT PENTECOSTAL
ASSEMBLIES OF GOD CHURCH 2ND RESPONDENT
BISHOP CALISTUS ODEDE, BISHO CITAM & CHAIR 3RD RESPONDENT
ELECROTAL COMMITTEE 4TH RESPONDENT
ASSEMBLIES OF GOD CHURCH 5TH RESPONDENT**

AND



REV CHRISTOPHER KILASI MASIZA	INTERESTED PARTY
REV KENNETH ADIARA MBALANYA	INTERESTED PARTY
REV INUANI PETER	INTERESTED PARTY
NGUSARE JOHN	INTERESTED PARTY
REV ATSIAYA PHILEMON	INTERESTED PARTY
REV PETER MONDI	INTERESTED PARTY
REV MEDEMBEI REUBEN	INTERESTED PARTY
DR AGUSIOMA MILTON	INTERESTED PARTY
REV NYANDENGA WYCLIFFE	INTERESTED PARTY
REV NYAKUNDI ISAAC	INTERESTED PARTY
REV R OBWOGI RICHARD	INTERESTED PARTY
REV ISAISH KIPSANG	INTERESTED PARTY
REV SIMIYU CORNELIUS	INTERESTED PARTY
REV RONO JULIUS	INTERESTED PARTY
REV STEPHEN GANIRA NGILIMANI	INTERESTED PARTY

RULING

1. In their Notice of Motion application dated 24th September 2024 and filed on 25th September 2024, the Petitioners herein had sought injunctive orders seeking to restrain the Respondents from conducting the elections of the General members based on the nomination exercise that was done on 30th August 2024 pending the hearing and determination of the Petition herein. Prayer no (2) which had sought an injunction pending the hearing and determination of the present application was spent. The said application was supported by the Affidavit of Tom Olendo that was sworn on 24th September 2024
2. They were seeking that the elections that were scheduled for 1st October 2024 be stopped and on the ground that the elections were not conducted by a duly constituted electoral committee as was provided in *the Constitution* of PAG- Church (hereinafter referred to as the “Church”) and that in fact, that there was no duly constituted Electoral Committee, the Chair and two (2) members having resigned, that the Register was not amended to remove those who should not have voted and/or to include those who should have voted and that the election was conducted outside the Business Conference as was envisaged in *the Constitution* of the Church.
3. They filed a Further Affidavit that was sworn On 30th September 2024 indicating that two (2) other Committee members, namely, T.K. Rutto and Caroline Afande had also resigned from the Electoral Committee.
4. They rejected the submissions by the 11th -15th Interested Parties that the affidavit evidence that was filed averring that the said Chair had rescinded the decision to withdraw from the elections was filed by a stranger. They alluded to the correspondence that they had sent to the Respondents to see how the issue could be resolved forcing them to seek redress of this court. They explained that the discussions are what led them to file the present application late.



5. It was their further assertion that one Rev Patrick Lihanda who was nominated to contest the elections was missing and would therefore be disenfranchised, a position that was also held by the 2nd and 4th Respondents who were the only parties who supported the present application.
6. The 2nd and 4th Respondents further alluded to the election having been flawed as the numbers of the voters did not tally with the total registered voters. They submitted that there was a possibility of one (1) voter having had more votes during the elections. They also cast aspersions on the Registers that the 1st Registrar was using. The 11th – 15th Interested Parties sought that the affidavit of the counsel of the 2nd and 4th Respondents be expunged from the court record for contravening Rule 9 of the Advocates Practise Rules as he had deponed of matters of fact.
7. The 3rd, 4th and 5th Respondents submitted that the Petitioners had not established a prima facie case with probability of success. This argument was supported by counsel for the 1st, 2nd and 6th Interested Parties, counsel for the 7th Interested Parties, counsel for the 8th, 9th, 10th Interested Parties and counsel for the 11th -15th Interested Parties. They all took the view that the interests of the Petitioners and the said Rev Patrick Lihanda could not override the interests of the entire Church.

Legal Analysis

8. The parameters within which a party could be granted an interlocutory injunction were well set out in the case of *Giella vs Cassman Brown Company Limited* (1973) E A 358. The court therein held that for an applicant to be granted an interlocutory injunction, he was required to demonstrate the following:-
 1. That he had a prima facie case with probability of success;
 2. That in the event the interlocutory injunction was not granted, he would suffer irreparable loss;
 3. That if the court was in doubt then it would grant an order of interlocutory injunction on a balance of convenience.
9. This court noted that the 1st Respondent had involved the parties in the electoral process which culminated in the nomination on 30th August 2024. It is from that stage that the Petitioners herein were aggrieved. It was not clear if they were candidates. However, it was evident from the 3rd, 4th and 5th Interested Parties' submissions that they were not candidates for the position of the General Superintendent were not the Petitioners herein. They referred to them as busy bodies.
10. The 3rd, 4th, 5th, 7th and 11th to 15th Interested Parties Petitioners submitted that the Petitioners did not explain what prejudice they would suffer, a fact that counsel for the 6th Interested Party fully associated himself with.
11. This court was clear in its decision of 11th July 2024 that the elections were to be conducted by the 1st Respondent in the manner that she deemed fair to conduct the elections. All the candidates were involved in the pre-planning as was pointed out by the 7th Interested Party.
12. It was not the intention of this court to micromanage the 1st Respondent on how the elections were to be conducted as it was clear from the history of the Church that they had been unable to manage their affairs. This was an extra ordinary election calling for extraordinary solutions but within the confines of the law. Indeed, in Paragraph 138 of its decision of 11th July 2024, this court appreciated the challenges of the Church agreeing on a particular procedure to hold elections.
13. Presently, the Church members were geared to conducting the elections. The Petitioners came very late in the day to stop the elections when preparations must have already been done. The injunctive



would indeed cause grave injustice to many members of the Church. It was not lost to this court that the members could also have opted to hold other elections depending on how they would have amended their Constitution as this court observed in its decision of 11th July 2024. This court therefore agreed with the 1st Respondent and the Interested Parties that the Petitioners failed to demonstrate the prejudice they would suffer if the court did not grant the injunctive orders.

14. The fact that one (1) candidate would not be present during the voting exercise was not sufficient reason to stop an election as it was not known where the candidate was and how long it would take for him to be traced. This court did not want to say more on this issue as the same appeared to have been reported to the police, a fact that his counsel intimated to this court.
15. The issue of irregularities was not an issue within the province of the criteria of granting an interlocutory injunction. If any member of the Church was aggrieved by the decision of this court, they had the option of either approaching it by way of review or by appealing to the Court of Appeal. It was functus officio as far as the matters of elections of the Church were concerned.
Granting an injunction in this Petition was tantamount to this court sitting on its own decision.
16. There were laches on the part of the Petitioners in bringing the application herein. The action complained of occurred on 30th August 2024. The fact of negotiations which were not evidence before this court was not sufficient reason to come at this late stage. Indeed, equity does not tolerate and/or aid indolence. The 1st Respondent was bound by the time lines that this court gave in its decision of 11th July 2024. The balance of convenience thus lay in this court not granting an injunction at this stage.
17. Notably, the parties herein had raised substantive issues which could bring the court at risk of considering the merits or otherwise of the Petition herein. This court thus restrained itself from commenting on the same.

Disposition

18. For the foregoing reasons, the Petitioners' Notice of Motion application dated 24th September 2024 and filed 25th September 2024 was not merited and the same be and is hereby dismissed with costs to all the Respondents and the Interested Parties except to the 1st Respondent as it would be unconscionable to grant costs to a government payable by its citizen,
19. It is so ordered.

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

J. KAMAU

JUDGE

