



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO. 140 OF 2019

JEREMIAH MUEMA NDETI.....1ST PETITIONER
FRANCIS MUEMA MAKANDA.....2ND PETITIONER
MARIETTA FELISTAS DAVID.....3RD PETITIONER
JAMES NJENGA.....4TH PETITIONER
PAUL MABWAL.....5TH PETITIONER
DAVID KIRUL.....6TH PETITIONER
SOLOMON CHEPSIROR.....7TH PETITIONER
JULIUS KILINDA.....8TH PETITIONER
SHANDRACK SILA.....9TH PETITIONER
ROBERT MUTUA.....10TH PETITIONER

VERSUS

THE REGISTRAR OF SOCIETIES.....1ST RESPONDENT
THE HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

AND

REV. DR. SILAS YEGO.....1ST PROPOSED INTERESTED PARTY
REV. ABRAHAM MULWA.....2ND PROPOSED INTERESTED PARTY
REV. JOHN KITALA.....3RD PROPOSED INTERESTED PARTY
REV. DAVID MULEI MBUVI.....4TH PROPOSED INTERESTED PARTY

RULING

PETITION

1. The Petitioners through a Petition dated 25th March 2019 pray that the Respondents do within 90 days from the date of Judgment supply

the Petitioners through their advocates with the following information received and documents:-

- a) *Details of registration including certificates, constitutions, office bearers and returns made by Africa Inland Church between 1961 and 1981.*
- b) *All the returns, documents, constitutions and inventories filed by Africa Inland Church between 1981 and the date of judgment in this Petition.*
- c) *All certificates, constitutions, office bearers and returns made by Africa Inland Church Kenya from the time it was registered to the date of the judgment.*
- d) *All certificates, constitutions, office bearers and returns made by the following societies:*
 - i) *Africa Inland Church Kenya (Central Rift Area) under certificate number SOC/56708.*
 - ii) *Africa Inland Church Kenya (Central Rift Area) under certificate number SOC/56709.*
 - iii) *Africa Inland Church Kenya (Coast Area) under certificate number SOC/56710.*
 - iv) *Africa Inland Church Kenya (Kitui Area) under certificate number SOC/56711.*
 - v) *Africa Inland Church Kenya (Machakos Area) under certificate number SOC/56712.*
 - vi) *Africa Inland Church Kenya (Marsabit Area) under certificate number SOC/56713.*
 - vii) *Africa Inland Church Kenya (Nairobi Area) under certificate number SOC/56714.*
 - viii) *Africa Inland Church Kenya (Makueni Area) under Certificate number SOC/56715.*
 - ix) *African Inland Church Kenya (Nakuru Area) under certificate number SOC/56716.*
 - x) *African Inland Church Kenya (North Rift Area) under certificate number SOC/56717.*
 - xi) *African Inland Church Kenya (Nyanza Area) under certificate number SOC/56718.*
 - xii) *African Inland Church Kenya (Southern Area) under certificate number SOC/56719.*
 - xiii) *African Inland Church Kenya (South Rift Area) under certificate number SOC/56720.*
 - xiv) *African Inland Church Kenya (Turkana Area) under certificate number SOC/56721.*

APPLICATION

2. Before me are two applications; the first application by 1st, 2nd and 3rd Proposed Interested Parties pray for the following orders:-

- a) *Prayer 1 spent.*
- b) *That this Honourable Court be pleased to enjoin into these proceedings Rev. Dr. Silas Yego, Rev Abraham Mulwa and Rev. John Kitala as Interested Parties in their capacity as officials of the Africa Inland Church-Kenya (“AIC-Kenya” or “AIC”)*
- c) *That the costs of this Application be provided for.*

3. The 1st application is based on several grounds on the face of the application and supported by affidavit of Revered Dr. Silas Yego sworn on 30th May 2019 and annexures thereto. It is further supported by further affidavit by Rev. Abraham Mulwa sworn on 3rd July 2020.

4. The second application is dated 17th July 2019 by the 4th Proposed Interested Party and is based on several grounds on the face of the application and supported by supporting affidavit by David Mulei Mbuvi sworn on 17th July 2019.

PETITIONERS RESPONSE

5. The Petitioners are opposed to the 1st, 2nd and 3rd Proposed Interested Parties application and rely on replying Affidavit of Jeremiah Muema Ndeti dated 3rd September 2019.

THE 1ST, 2ND & 3RD PROPOSED INTERESTED PARTIES RESPONSE

6. The 1st, 2nd & 3rd Proposed Interested Parties files response to 4th Proposed Interested Party application. The 1st, 2nd & 3rd Proposed Interested Parties are opposed to the 4th Proposed Interested Party's application through a further Affidavit by Rev. Abraham Mulwa sworn on 3rd July 2020.

ANALYSIS AND DETERMINATION

7. I have carefully considered the parties two applications, the affidavits in support and affidavits in opposition as well as parties rival submission and from the same the following issues arise for consideration.

a) Whether the 1st, 2nd and 3rd Proposed Interested Parties and the 4th Proposed Interested Party have met the criteria set out for a party to be enjoined as an interested Party in the proceedings?

A. WHETHER THE 1ST, 2ND AND 3RD PROPOSED INTERESTED PARTIES AND THE 4TH PROPOSED INTERESTED PARTY HAVE MET THE CRITERIA SET OUT FOR A PARTY TO BE ENJOINED AS AN INTERESTED PARTY IN THE PROCEEDINGS?

8. The *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*. (otherwise known as *the Mutunga Rules*) under Rule 7(2) provides that a Court may on its own motion join any interested party to the proceedings before it. Rule 2 of the *Mutunga Rules* defines an "Interested Party" to mean *a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation*";

9. In the case of *Francis Kariuki Muruatetu & another v. Republic & 5 others (2016) eKLR*, the Supreme Court delineated the scope for admission as an Interested Party by stating as follows:-

"Enjoinment is not as a right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:

i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral.

ii) The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.

iii) Lastly, a party must, in its participation, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submission are not merely a replication of what the other parties will be making before court."

10. It clearly follows that for one to be enjoined to a suit as an Interested Party, such person has to demonstrate that it is necessary that he/she be enjoined in the suit to enable the court settle all questions involved in the matter. The proposed interested party has to set out the personal interest or stake that the party has in the matter and demonstrate he has an identifiable interest which stand apart from anything that is merely peripheral.

11. The 1st, 2nd and 3rd Proposed Interested Parties have demonstrated that the 1st Proposed Interested party is former presiding Bishop of "AIC" or "AIC-Kenya", whereas the 2nd proposed Interested Party is the current presiding Bishop of "AIC" or "AIC-Kenya" and the 3rd Respondent is also an official of "AIC" or "AIC-Kenya". The 1st, 2nd, and 3rd Proposed Interested Parties have a legitimate and identifiable stake or legal interest or duty in these proceedings by virtue of the fact that the 1st Proposed Interested Party was a bonafide official of AIC or AIC—Kenya, whereas the 2nd and 3rd Proposed Interested Parties are the bona fide officials of the AIC or AIC-Kenya which will definitely be affected by the decision of the Court in these proceedings and whose interest will not be well articulated unless they are enjoined in these proceedings and appear in the proceedings to advance the cause for "AIC" or "AIC-Kenya".

12. The 4th Proposed Interested Party in his affidavit dated 17th July 2019 aver that he has been the Bishop of AIC and that he is still recognised as such by the members of the Church. He further avers that there was *High Court Petition No. 395 of 2012* which was concluded and members of AIC refused to recognise the 1st, 2nd and 3rd Proposed Interested parties but recognised the 4th Proposed Interested Party as their Bishop. The 4th Proposed Interested Party contend his name was adversely mentioned in *Petition No.395 of 2012*. The Petitioners aver that *High Court Petition No. 395 of 2012* has nothing to do with this Petition and the election of the Head of the Church. They further contend not to have filed the current Petition on behalf of the church but for protection of their rights to association.

13. I have carefully considered the parties rival submission and contrary to the Petitioners' contention, I find that this Petition has everything to do with the judgment of this Honourable Court in the *High Court Petition No. 395 of 2012 Rev. Bishop Silas Misoi Yego & 2 others vs. Minister for state for Provincial Administration and Internal Security, Commissioner of Police, David M. Mbuvi & 4 Others* in which case Hon. Justice E. C. Mwitia delivered his judgment in the matter on 23rd November 2018 in favour of the three Petitioners in that matter. In the judgment the court held:-

a. A declaration is hereby issued that there is only one Society Known as African Inland Church-Kenya.

b. A declaration is hereby issued that Reverend Bishop Silas Misoi Yego, Reverend Geoffrey Gichure, Reverend Simeon Otiende and Reverend Dr. David Mulwa are the officers of African Inland Church-Kenya.

c. The respondents' cross petition is dismissed.

d. This being a dispute among church members, I make no order with regard to costs.

14. The present Petition is therefore similarly related to ***High Court Petition No. 395 of 2012*** as the reliefs sought in the Petition directly concern the affairs of "AIC" or "AIC-Kenya" in which the 1st, 2nd and 3rd Proposed Interested Parties have a legitimate and identifiable stake or a legal interest or duty in the proceedings before this court. I find by virtue of ***Rule 2 of the Mutunga Rules***, as the 1st, 2nd & 3rd Proposed Interested Parties are not parties to these proceedings or are not directly involved in the litigation they ought to be enjoined in these proceedings to advance their cause in these proceedings.

15. The 4th Proposed Interested Party as pointed out by the 1st, 2nd and 3rd Proposed Interested Parties has never been a Bishop of AIC nor according to the officials of "AIC" or "AIC-Kenya" a member of AIC. The Courts Judgement in ***High Court Petition No. 395 of 2012*** has indicated who are the bonafide officials of AIC-Kenya which excluded him. He has not produced any documentary evidence confirming he is a member of AIC or an official of AIC or AIC-Kenya. The 1st, 2nd and 3rd Proposed Interested Parties have denied the authenticity of letters and documents relied upon by the Petitioners and the 4th Proposed Interested Party. In such a situation I find that the 4th Proposed Interested Party has no interest or stake in the affairs of "AIC or AIC-Kenya" Church. He has failed to demonstrate that he has substantial interest in the suit nor has he shown what prejudice he stands to suffer if he is not enjoined in these proceedings. It is further clear the Petitioners are followers of the 4th Proposed Interested Party and would stand to suffer no prejudice if their leader is not enjoined. The 4th Proposed Interested Party interest or stake is well represented by the Petitioners who it appears are doing proxy litigation for 4th Proposed Interested Party to circumvent the court's decision in ***High Court Petition No. 395 of 2012*** in which the 4th Proposed Interested Party was the 4th Respondent and which case was heard by competent Court and arrived at a decision. The 4th Proposed Interested Party if he was dissatisfied with the Court decision in ***High Court Petition No. 395 of 2012*** he should have exercised the right of appeal.

16. However this Court finds that the 4th Proposed Interested Party contend that he is well versed with the information that the Petitioners are seeking and that he is the only one who can substantially provide all the information that has been sought in the Petition and he sought to be enjoined as an authority to affairs of the Church. I find though the 4th Respondent's position has been challenged by the 1st, 2nd and 3rd Respondents, that in the interest of effective and effectual determination of all issues in controversy once and for all, in this matter, he ought to be enjoined as an Interested Party.

17. The upshot is that, I have considered all the applications and I proceed to make the following orders:-

a) The application by 1st, 2nd and 3rd Proposed Interested Parties dated 1st June 2019 be and is HEREBY allowed and the 1st, 2nd and 3rd Proposed Interested Parties are enjoined in these proceedings as 1st, 2nd and 3rd Interested Parties respectively.

b) The 1st, 2nd and 3rd Interested Parties do file and serve their respective responses to the Petitioners Petition dated 25th March 2019 within 15 days from the date of the ruling.

c) The application by the 4th Proposed Interested Party is considered and allowed so as to enable Court consider and determine all matters in controversy once and for all.

d) The 4th Proposed Interested Party to file response to the Petition dated 25th March 2019 within 15 days from the date of this ruling.

e) Costs of the applications be in the cause.

Dated, Signed and Delivered at Nairobi on this 25th day of February, 2021.

J. A. MAKAU

JUDGE