



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1115 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

BETWEEN

ALEX MISIGO MATISHA.....APPLICANT

VERSUS

THE REGISTRAR OF SOCIETIES.....RESPONDENT

AND

SIMON RUGUT .....1<sup>ST</sup> INTERESTED PARTY

SAMSON KHALWALE .....2<sup>ND</sup> INTERESTED PARTY

JACOB LUSENO.....3<sup>RD</sup> INTERESTED PARTY

LEVI BOSIKO BWAMU.....4<sup>TH</sup> INTERESTED PARTY

MAXWEL SHITSIMI .....5<sup>TH</sup> INTERESTED PARTY

RULING NO. 2

1. Alex Misigo Matisha, the Applicant herein, filed an application by way of a Chamber Summons dated 9<sup>th</sup> October 2020, seeking orders that he be granted leave to seek for an order of mandamus to compel the Respondent to forthwith intervene in the affairs of the African Church of the Holy Spirit, which he stated is currently embroiled in leadership wrangles and financial impropriety with normal operations heading to a standstill.

2. On 14<sup>th</sup> October 2020, this Court delivered a ruling thereon, wherein it ordered and directed as follows:

**I. The Applicant shall serve the Respondent and Interested Parties with the Chamber Summons dated 9<sup>th</sup> October 2020, (ii) skeletal submissions on the said Chamber Summons (iii) a copy of these directions and (iv) a hearing notice with twenty-one (21) days of today's date.**

**II. The Respondent and Interested Parties are granted leave to file and serve their responses to the Chamber Summons dated 9<sup>th</sup> October 2020 and skeletal submissions thereon within twenty-one (21) days of service by the Applicant.**

**III. The Chamber Summons dated 9<sup>th</sup> October 2020 shall be heard on 14<sup>th</sup> December 2020.**

**IV. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear and determine the Applicant's Chamber Summons dated 9<sup>th</sup> October 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.**

**V. All the parties shall file their pleadings and submissions electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com)**

and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

VI. The service of pleadings and documents directed by the Court shall be by way of personal service and electronic mail, and in the case of service by way of electronic mail, the parties shall also email a copy of the documents so served to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

VII. The parties shall also be required to file and send to the Deputy Registrar of the Judicial Review Division their respective affidavits of service evidencing personal service, by way of electronic mail to [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

VIII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 14<sup>th</sup> December 2020.

IX. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the Applicant by electronic mail by close of business on Thursday, 15<sup>th</sup> October 2020.

X. Parties shall be at liberty to apply.

3. On 14<sup>th</sup> December 2020, when the matter was next mentioned for directions, and after noting that the Interested Parties had since filed replying affidavits whereas there was no record of any response filed by the Respondent, the Court further directed as follows:

I. The Respondent is granted the last opportunity to file and serve its response to the Chamber Summons dated 9<sup>th</sup> October 2020 within fourteen (14) days of today's date.

II. The ruling on the Chamber Summons dated 9<sup>th</sup> October 2020 shall be delivered by email on 9<sup>th</sup> February 2021.

III. All the parties shall file their pleadings and submissions electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

IV. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for ruling on 9<sup>th</sup> February 2021.

V. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the *ex parte* Applicant, Respondent and Interested Parties by electronic mail by close of business on Thursday, 17<sup>th</sup> December 2020.

VI. Parties shall be at liberty to apply.

4. The Applicant has now filed another application by way of a Notice of Motion dated 5<sup>th</sup> February 2021, seeking the following orders:

1. THAT the present application be certified urgent and the same be heard on priority basis.

2. THAT the Honourable Court be pleased to make a finding that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Interested Parties are in civil contempt of the court order issued on 14<sup>th</sup> December 2020.

3. THAT upon the said finding the Honorable Court be pleased to commit them to jail for a period not exceeding six (6) months.

4. THAT any other order which the Honorable Court may deem fit to grant in the circumstances.

5. THAT the costs of this application be provided for.

5. The said application, which is the subject of this ruling, is supported by an affidavit sworn 5<sup>th</sup> February 2021 by the Applicant. The grounds for the application are that the ruling delivered on 14<sup>th</sup> December 2020 were duly served upon the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Interested Parties, however that despite the said service, the said Interested Parties led by the 2<sup>nd</sup> Interested Party have embarked on various meetings duly orchestrated to remove the Applicant from his position as the Deputy High Priest of the African Church of the Holy Spirit. Therefore, that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Interested Parties actions are in breach of the ruling of the Court.

6. The Applicant annexed a copy of the directions issued herein on 14<sup>th</sup> December 2020, and letter dated 21<sup>st</sup> November 2020 from members of the African Church of the Holy Spirit addressed to the Respondent herein.

#### The Determination

7. I have reproduced the orders and directions granted by this Court since the commencement of this suit *in extenso* in the foregoing, to

demonstrate the frivolous and vexatious nature of the instant application. This is for the reason that there are no substantive orders issued by this Court directed at the 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Interested Parties, which restrain or injunct them from any action, that can be the subject of the Applicant's application for contempt of court. The said application is thus clearly an abuse of the process of court and wastage of this Courts time and resources. In addition, there is a pending ruling of the Chamber Summons application as to whether the Applicant can even be granted leave to bring a substantive suit in the first place.

8. I accordingly order as follows:

**I. The Applicant's Notice of Motion dated 5th February 2020 is dismissed *in limine* with no order as to costs.**

**II. The ruling on the Applicant's Chamber Summons dated 9<sup>th</sup> October 2020 shall be delivered by email on 19<sup>th</sup> March 2021.**

**III. All the parties shall file their pleadings and submissions electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

**IV. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for ruling on 19<sup>th</sup> March 2021.**

**V. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the Applicant, Respondent and Interested Parties by electronic mail by close of business on Thursday, 18<sup>th</sup> February 2021.**

**VI. Parties shall be at liberty to apply.**

9. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF FEBRUARY 2021**

**P. NYAMWEYA**

**JUDGE**