



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CONSTITUTIONAL PETITION NUMBER 25 OF 2015**

**REVEREND PETER INUANI (acting on behalf of membership of**

**Chavugami PAG-(K) CHURCH DISTRICT.....PETITIONER**

**AND**

**REVEREND SOLOMON KEVERENGE.....1<sup>ST</sup> RESPONDENT**

**REVEREND ZACHARY MATENI(enjoined on behalf of the**

**BOUNDARY REVIEW COMMISSION OF PAG-(K) CHURCH.....2<sup>ND</sup> RESPONDENT**

**AND**

**REVEREND PARTICK LIHANDA**

**(enjoined on behalf of the PAG-(K) Church.....INTERESTED PARTY**

**RULING**

1. The petitioner has filed an amended petition dated 17<sup>th</sup> December, 2015 seeking for orders that this honourable court-

a) do find the minutes of the committee meeting held on 14<sup>th</sup> July, 2015 at the Conference Side Hall titled “ Boundary Review Commission Rules” a copy which was filed in court by the respondents to be invalid and not the operating rules required by article 9.5 of the PAG- Kenya Church Constitution and so declare. The Boundary Review Commission be restrained from engaging in any district boundary review of Pentecostal Assemblies of God (PAG K) Church or discharging any of the functions conferred on it by the church constitution until after formulation of the operating rules in compliance with article 9.5 of the same church constitution.

b) issues a permanent injunction restraining the respondent as individuals and as a commission from proceeding on the basis of the purported Boundary Review Commission Rules of 14<sup>th</sup> July, 2015 with regard to Chavugami District or acting on any finding of a meeting held or to be held pursuant to those rules or interfering with the operations or administrative structure of Chavugami PAG Church district on the basis of the same or at all. The Boundary Review Commission be restrained from interfering with the administration or operations of Chavugami PAG K Church District and or its current administrative structure unless the commission is acting in the exercise of the general review of the district boundaries under Article 9(1) (b) of the church constitution within the framework of the operating rules.

c) do find and declare the respondents by their conduct to have violated the PAG – Kenya Church Constitution and by extension the applicant’s right and fundamental freedom to worship an association the Boundaries Review Commission be directed to strictly comply with the church constitution and to respect the rights and fundamental freedoms of the petitioner and the church membership guaranteed by the national constitution while discharging any or all the functions conferred on the body.

d) do issue an order declaring null and void any meeting held by the respondents to deliberate about Chavugami PAG- Kenya district on the basis of the aforesaid rules or at all. The honorable court do grant any other order that is just to meet the circumstances of the case.

e) The respondents be ordered to meet the costs of the petition.

2. The petition was opposed by the respondents vide their response dated 5<sup>th</sup> October, 2018 and who also relied on the replying affidavit of

the 1<sup>st</sup> respondent, Rev. Solomon Keverenge, sworn on 7<sup>th</sup> October, 2015.

### **Case for petitioner**

3. The petitioner contends that he is a member of Pentecostal Assemblies of God– Kenya and the current District Overseer, Chavugami PAG District having been duly elected at the elections of the church held in February 2014. The interested party is the General Superintendent of the PAG Kenya and the spiritual head of the church while the two respondents are appointed members of the Boundaries Review Commission of the church.

4. That article 8 of the church constitution establishes church districts and offices and provides for the various duties of each district offices and the district committee. The overall supervision of the assemblies of the church fall under the jurisdiction of the District Committee.

5. That article 9 establishes the Boundaries Review Commission (hereinafter referred to BRC) and provides for its duties at par 9.1 to include;

- a) the review of district boundaries once every three years
- b) upgrading branch churches to Assembly status
- c) conferring upon assemblies the status of full autonomy
- d) listening to interested parties, before reaching a decision
- e) maintaining accurate records of assemblies and districts.

6. That article 9.5 regulates the business of the BRC and provides as follows:

***“subject to the provisions of this article, the Boundaries Review Commission shall make its own rules for regulating its business and shall not be subject to the direction of any person or authority.”***

7. That pursuant to the election of February 2014 some people in the petitioner’s district who were disgruntled with the outcome of the election started to disrupt church services. That on or about 20<sup>th</sup> September 2015 the petitioner was served with a letter dated 24<sup>th</sup> September, 2015 authored by the two respondents notifying him of BRC visitation to Chavugami PAG – Kenya District and Assembly on 24<sup>th</sup> September, 2015 and calling for attendance of the petitioner, the district committee members and pastors. That the letter was copied to the interested party and the proposed new district.

8. It is the contention of the appellant that the conduct of the respondents grossly violates both the church constitution and the national constitution and threatens the rights and fundamental freedoms of the petitioner and the church members of Chavugami PAG – Kenya District. That the BRC has not formulated the operating rules for the purpose of regulating the business as required by article 9.5 of the church constitution. That review under article 9(1) (b) can only be done once in three years. There is no provision in the church constitution for review of a single district in isolation. That the BRC never involved the petitioner and Chavugami District Committee in the scheduling of the meeting which is against Article 8 of the church constitution that vests the supervision of the assemblies and the church branches in the district and their appraisal for upgrading on the committee. That the national constitution guarantees the petitioners the right to worship in a secure and safe environment and within a church membership that respects its constitution and rules which the BRC is abusing thereby inviting the intervention of the court of law. That the nature of the dispute involves issues beyond the ordinary disputes to be resolved by the Tribunal established under article 22 of the church constitution more so when article 9.5 takes the commission outside the control of the tribunal.

### **Response to the amended petition**

9. The respondents in their response denied to have violated neither the church constitution nor the national constitution of Kenya. That the true position in regard to the petitioner’s district was that there was a group of assemblies numbering about 25 that requested for their own district from the mother district of Chavugami. That the group had followed all the laid down procedures when they did so. That the letter dated 24<sup>th</sup> September, 2015 was validly executed by the respondents in discharge of their mandate and powers granted to them under Church Constitution. That the petitioner was served with the letter whose purpose of visitation was stated in the letter.

10. It was contended that the PAG Church constitution under article 9.1 (b) mandates it to upgrade branch churches to assembly status and that it is under article 9.1. ( a) that the BRC is mandated to review districts every three years. That it is not true that they had singled out Chavugami district for review since at that time they had a programme scheduled as from August to December, 2015 to visit other districts which had requested for review. That the petitioner’s district had not been reviewed since 1997.

11. They stated that the operation rules were formulated by the BRC sitting as a committee on the 14<sup>th</sup> July, 2015 and it does not matter whether the rules were formulated in a committee or by minutes as the church constitution has not provided a prescribed format by which such rules should be drafted and such power is in any event not subject to the direction of any person or authority.

12. The respondents further stated that the date of the invitation letter is a typographical error since the document itself is stamped 11<sup>th</sup> September, 2015 and not 24<sup>th</sup> September, 2015.

## Submissions

13. The advocates for the petitioner, **A.B.L Musiega& Co. Advocates** submitted that article 9.5 of the church constitution mandates the BRC to have operating rules within which to carry out its functions. That the purported minutes of 4/7/2015 is a gross violation of the churches constitution because the meeting that formulated the rules was convened by the committee which is not provided under the constitution. This means that the commission has not put in place its operating rules and as such the BRC cannot be said to be acting on rules that were not set down by the commission itself.

14. Further that the notice fails to disclose the reasons of the visit of the BRC nor does it disclose the identity of the group that requested for the visitation. That the mission of the commission to Chavugami District was a clear manifestation to deny the petitioner access to information while discharging official function conferred by the constitution. That this is a violation of article 32 of the national constitution of Kenya. Further that the decision to visit the district was as a result of playing control to other persons or body which is against the provisions of article 9.5 of the church constitution that provides that in carrying out its mandate the commission should be free from directions of any person or authority. That the respondents have blatantly violated their governing constitution under article 9.5 which has created an environment that is hostile and unconducive to the petitioners to have a conclusive environment to exercise their right of worship. That their actions have raised security concerns and even extended to chaotic scenes thus disrupting the peaceful enjoyment of the right to worship by the petitioner. That failure to have operating rules duly put in place by the commission and not the committee as exhibited in the 14<sup>th</sup> July, 2015 minutes is a disregard for its own constitution.

15. The advocates for the respondents, and the interested party **Amasakha& Co. Advocates**, on the other hand submitted that the petition only raises ecclesiastical matters which are of internal and domestic nature and the petitioner has not demonstrated how the bill of rights has been contravened. That the mere citation of an article of the constitution of Kenya does not amount to breach of those articles. That what the petitioner seems to be complaining about is that the BRC rules were formulated by a committee of BRC and not the committee itself. That the petitioner is thereby asserting that the respondents violated or breached the constitution of the church and not the bill of rights. That a breach of the rules of a society cannot amount to breach of the bill of rights. Further that the church constitution does not prescribe the format by which the BRC rules should be made and it does not therefore matter that the rules herein were formulated by the committee of BRC.

16. That the petitioner also seems to be complaining that BRC did not perform its duties in accordance with article 9.1 of the church constitution that provides for review of district boundaries. That no explanation has been given that the alleged failure infringes on the bill of rights.

Further that the petitioner alleges that he was excluded in the preparation for the visitation by the commission with no allegation of breach of the bill of rights.

17. On the second issue the advocates submitted that the PAG – Kenya Church constitution lays down mechanism of dispute resolution under article 22.

That article 22.1 provides that:

**“No member, pastor or official of the church shall take any matter or dispute involving a member, pastor, official organ of the church to a court of law or any tribunal without first exhausting the dispute resolution machinery provided herein after.”**

18. That article 26. 1(a)(v) of the church constitution establishes a committee whose mandate is to hear disputes touching on, inter alia, district boundaries, autonomy of assemblies and creation of new districts. That the petitioner should have taken the matter to that body before filing this matter in court. On this proposition, the advocates relied on the decision in the case of East Africa Pentecostal Churches Registered Trustees and 1754 others Vs Samuel Mugana Henry and 4 others, constitutional petition No. 14 of 2014( 2015) eKLR where Makau J considered a similar arbitration clause involving a church like in this case and held that:

**“the principles that where an institution or a statute has established a dispute resolution procedure then that process must be strictly followed or applied is of universal application. The mere fact that the constitution is cited or invoked is not sufficient to qualify the matter to be a constitutional matter and confer a licence to the High Court to inquire, investigate, arbitrate, surcharge, or in any manner deal with the issues which can be dealt with through the dispute resolution procedure provided by constitution or a statute.”**

## Analysis and Determination

19. The advocates for the respondents and the interested party framed the questions for determination to be -

1. Whether the petition raises constitutional or justiciable issues to warrant this court to exercise its jurisdiction to hear and determine the petition.
2. Whether the minutes of 14<sup>th</sup> July 2015, are valid operation rules for BRC.
3. Whether the respondents' actions violated the petitioner's right to worship.
4. Whether the petitioner ought to have pursued the dispute resolution mechanism laid down by PAG - Kenya Church before filing the instant petition.

20. On the first issue, the question is what constitutes a constitutional question. This was discussed in the **South African case of Fredrick's & Others Vs MEC for Education and Training, Eastern Cape & Others** in which Justice O'Regan recalling the constitutional court's observation in *Vs Boesak* noted that:

**“The Constitution provides no definition of “ constitutional matter,” what is a constitutional matter must be gleaned from a reading of the constitution itself: if regard is had to the provisions of ....the constitution, constitutional matters must include disputes as to whether any law or conduct is inconsistent with the constitution, as well as issues concerning the status , powers and functions of an organ of state ..., the interpretation, application and upholding of the constitution are also constitutional matters. So too, ....., is the question whether the interpretation of any legislation or the development of the common law promotes the spirit, purport and objects of the Bill of Rights. If regard is had to this and to the wide scope and application of the Bill of Rights, and to the other detailed provisions of the constitution, such as the allocation of powers to various legislatures and structures of government, the jurisdiction vested in the constitutional court to determine constitutional matters and issues connected with decisions on constitutional matters is clearly an extensive jurisdiction.”**

21. In **CNM Vs MG( 2018) eKLR** it was stated that a constitutional question is an issue whose resolution requires the interpretation of the constitution rather than statute.

22. It is important to bear in mind that the constitutional command in article 159 of the constitution of Kenya 2010 obligates this court to interpret the constitution in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the Bill of Rights and permits the development of the law and contributes to good governance.

23. The High Court in **James Kugocha Vs Chief County Officer Department of Infrastructure (2018) eKLR** explored the competencies of a petitioner and stated that-

**“As to whether the petition is competent, the law was settled in the Court of Appeal case of MumoMatemu Vs Trusted Society of Human Rights Alliance & 5 others (2013) eKLR and that of AnaritaKarimiNjeru vs Attorney General Petition No. 1 of 1978 1 KLR 154.**

**A petitioner must be specific as to the rights violated and give particulars of it. This serves the purpose of generating the issues for determination before the court and assists the opposite party to prepare a comprehensive response. The constitution of Kenya (Protection of Rights and Procedure Rules, 2013) require in Rule 10(2) that a constitutional petition shall contain the facts relied upon; the constitution provision violated; the nature of injury caused and the relief sought.”**

24. The petitioner cited the provisions of articles 29,32 (1), 36, 37, and 47 of the constitution which provide as follows:-

Article 29 that

‘Every person has the right to freedom and security of the person, which includes (amongst others) the right not to be

(c) subjected to any form of violence from either public or private sources.

(d) Subjected to torture in any manner, whether physical or psychological.

**Article 32(1) that every person has the right to freedom of conscience , religion, thought, belief and opinion.”**

1). Every person has the right, either individually in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship.”

Article 47 that;-

“ Every person has the right to administrative action that is expeditious, efficient, lawful reasonable and procedurally fair.

25. The petitioner contends that the Chavugami PAG – Kenya District is experiencing incidences of insecurity to be blamed on the factions which are against the administration of the petitioner and his committee. That for the commission to call for a meeting at such volatile venue and require the petitioner and his team to attend without adequate prior arrangement for security was a scheme on the part of the commission to open the petitioner to insecurity and lock him and his membership out of the affairs of his church which is in violation of the right to worship and personal security enshrined in the national constitution. Further that the commission did not disclose the identity of the section of the group that requested for visitation by the BRC to Chavugami District and the commission's mission there which is a manifestation on the part of the commission to deny the petitioner and his team access to information while discharging official function conferred by the church constitution which is a violation of article 35 of the national constitution.

26. The petitioner also contends that the respondents have acted in breach of the church constitution. That the operating minutes of the BRC were not made by the committee itself. They cannot thereby be purported to be the operating ground rules of BRC. That the BRC has not followed the church constitution in purporting to review the boundaries of Chavugami District. It is contended that the actions by the respondents have violated the petitioner's right to worship as guaranteed by article 32 of the constitution of Kenya.

27. The respondents on the other hand contend that the complaint by the petitioner is a breach of the church constitution and not a violation

of bill of rights.

28. Rule 9.5 of the Church constitution grants powers to the BRC to make its own rules for regulating its business. The rules contested herein were made by a committee of BRC and not the BRC itself. The question is whether the rules are valid operating rules.

29. The church constitution does not provide the manner in which the BRC shall make its rules. In the absence of such a process I am inclined to agree with the advocates for the respondents that rules made by a committee of the BRC are valid rules. A committee of the commission acts on powers donated to it by the BRC. The court notes that the BRC is comprised of 7 members. Five of the members were present when the rules were formulated. There is no argument that there was no quorum when the rules were made. I therefore hold that the impugned rules were validly formulated. The submission by the counsel for the petitioner that there are no valid operating rules does not stand. The argument is thereby dismissed.

30. Article 9.1 of the church constitution grants the BRC the power to review district boundaries every three years, upgrading branch churches to assembly status and conferring upon assemblies the status of full autonomy. The rule requires the BRC to get the views of interested parties before reaching a decision of the above.

31. Evidence filed before the court indicates that the BRC wrote a letter to the petitioner informing him of the BRC's visitation to Chavugami and the reasons for the visit. The reasons for the visit as stated in the letter was to hear a request from a section of a group from PAG – Chavugami for boundary review. There is nowhere in the church constitution where it is provided that the BRC had to consult the petitioner before visiting Chavugami for the purpose of reviewing the district boundary.

32. The BRC have annexed to their response its programme for the months of August to December, 2015. That included a visitation to Chavugami. There is then truth that only Chavugami District was targeted for review. There is no evidence that the visitation was at the control of some other people as alleged by the petitioner. The BRC was carrying out its mandate as provided in the constitution when it arranged for its visitation to Chavugami. If there was for the petitioner to make arrangements for it with the local security agents. A security threat by other parties other than BRC cannot be blamed on the BRC. There was thereby no evidence that the visitation by BRC to Chavugami violated the right of worship of the petitioner. The argument to that end does not stand.

33. Having found that the BRC was acting within its mandate as laid out in the church constitution, I have to consider whether the petition raises any constitutional issues.

34. The principles laid out in **Anirita Karimi Njeri** case (supra) was that a petitioner in a constitution petition should set out with a degree of precision that of which he complains, the provision of the constitution said to be infringed and the manner in which they are alleged to be infringed. Though the petitioner herein cites several articles of the constitution which he contends were infringed, it is my considered view that he has not established that there was any infringement of the constitution. In the first place the operating rules, as stated above, were properly formulated. The rules as they stand now do not infringe any of the rights of the appellant.

35. Further to the above the petitioner has not established that it was a church constitutional requirement that the petitioner be involved in preparing for the BRC visitation to the District. Though courtesy would have demanded that there was nothing illegal in the BRC informing the petitioner that they were going to visit his district. The letter to the petitioner stated the reasons for the visit. There is thereby no constitutional issue raised in that complaint. The petition only discloses a dissatisfaction on the manner the petitioner was treated by the BRC by failing to involve him in preparation of the visitation to his district. I hold that the petition does not raise any issues that require the interpretation of the constitution.

36. Article 22.1 of the church constitution requires an official of the church to exhaust the dispute resolution mechanism established by the church before taking the matter to court. Such a proposition received the backing of the Court of Appeal in **The Speaker of the National Assembly – Vs Karume** (2008) IKLR 426 where the court held that:

**“Where a dispute resolution mechanism is provided for in a statute and where there is a clear procedure for the redress of any particulars grievance by the constitution or statute that provision ought to be strictly followed.”**

37. In **East Africa Pentecostal Churches Registered Trustees and 1754 others Vs Samuel Muguna, Henry & 4 others** (2015) eKLR where Makau J. considered a similar provision as article 22.1 in this petition and held that the plaintiffs were in violation of the church constitution in failing to pursue their grievance as provided in the church constitution before pursuing their claim before a court of law.

38. The petitioner herein was required by the church constitution to exhaust the dispute resolution mechanism provided by the church before resorting to court. He did not follow that procedure. The issues complained of were within the mandate of the disputes resolution committees established by the church constitution. It is therefore my finding that the petition is improperly before the court.

39. In the foregoing this court finds that the petition does not raise any constitutional issues. The court also finds that the petitioner should have pursued the dispute resolution mechanism laid down by the PAG – Kenya church before filing the petition in court. In the premises the petition is incompetent and is accordingly stuck out with costs to the respondents and interested party.

**Delivered, dated and signed in open court at Kakamega this 26<sup>TH</sup> day of March 2019.**

**J. NJAGI**

**JUDGE**

In the presence of:

..... for petitioner

.....for respondents and interested party

Parties:

Petitioner .....

1<sup>st</sup> respondent.....

2<sup>nd</sup> respondent.....

Interested party.....

Court Assistant .....