



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 36 OF 2019**

**THE CENTRAL BOARD OF THE AFRICAN INDEPENDENT**

**PENTECOASTAL CHURCH OF AFRICA**

**(Suing through the National Executive members**

**JULIUS NJOROGE GITAU.....1<sup>ST</sup> PLAINTIFF**

**PAUL WATORO GICHU.....2<sup>ND</sup> PLAINTIFF**

**STANLEY MBURU MWANGI.....3<sup>RD</sup> PLAINTIFF**

**STANLEY MUTHOMI.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**REGISTRAR OF SOCIETIES.....1<sup>ST</sup> DEFENDANT**

**FREDRICK WANG'OMBE.....2<sup>ND</sup> DEFENDANT**

**SAMSON MUTHURI.....3<sup>RD</sup> DEFENDANT**

**FREDRICK WANG'OMBE.....4<sup>TH</sup> DEFENDANT**

**REGISTERED TRUSTEE OF AFRICAN**

**INDEPENDENT PENTECOASTAL**

**CHURCH OF AFRICA.....INTERESTED PARTY**

**RULING**

By dint of a plaint dated 20<sup>th</sup> and filed on 25<sup>th</sup> February, 2019 the plaintiffs herein sought several orders against the defendants. At the centre of the dispute is the leadership of the African Independent Pentecostal Church of Africa. There is a serious contest for leadership in this church which, going by the pleadings at the time of filing this plaint had three Arch Bishops.

Alongside the said plaint, there was filed an application under certificate of urgency by way of Notice of Motion seeking several conservatory orders related to the main dispute. When this matter came before me for hearing on 23<sup>rd</sup> April, 2019 I invited counsel on record to address the court on its jurisdiction to hear the application, in view of the provisions of the Constitution governing the operations of this church.

Having heard the submissions of counsel relating to that issue, I am now in a position to express myself in that regard. There is an Amended Constitution of this church filed with the Registrar of Societies on 20<sup>th</sup> December, 2010. The said Constitution provides *inter alia*, dispute resolution mechanisms within the church. In particular, Article VII at clause 10 provides at Section 1 that there shall be established a church dispute settlement tribunal called The Church Tribunal. Section 2 a) provides the composition of the said tribunal and the membership

thereof. At Section 2 b) the said Tribunal is mandated to seek a solution through negotiation, mediation and arbitration. It is further provided that, where this process is impracticable, the tribunal shall hear the parties and make a formal decision.

The provisions of this Constitution which prompted me to ask counsel to make submissions, are provided under Section 2 entitled “**The process**”. Under those provisions the constitution states as follows,

**“1. No Member or organ of the Church shall refer any dispute relating to the Church and its Members to any court of law unless such dispute has been first referred to and determined by the National Tribunal.**

**2. The Church as an institution is a body by itself established under the Societies Act Cap 108 of the Laws of Kenya which falls under Section (6) of the Arbitration Act of 1995 as a Parliamentary Act.**

**3. Section 6 (1) of the Arbitration Act is worded in mandatory terms.**

**4. It provides that the court “shall” stay the proceeding pending the resolution of the dispute by Arbitration.**

**5. Every Member of the Church regardless of his status “shall” first of all exhaust the arbitration option before going to any further step or any Court of law.”**

The foregoing provisions expressly deny the court the jurisdiction as the first port of call to entertain the disputes of this church. Any other interpretation will not be in consonant with the language and intention of that constitution.

The material presented by the parties herein does not show any compliance with the provisions of the church constitution I have cited above. It has been submitted that the said Tribunal has not been established and therefore this court is properly seized of the dispute. Further, counsel appearing for the parties have referred to several decisions which support the rival positions taken by the parties. These include Solomon Muyeka Alubala vs. Capital Markets Authority & Another (2018) e KLR, Football Kenya Federation v Kenyan Premier League Limited & 4 others [2015] eKLR, Godfrey Kimathi & 2 others vs. Jubilee Alliance Party (2015) e KLR. I have considered those decisions and related them to the dispute herein.

Another provision which is outstanding in that constitution is clause 10 of “**The process**” aforesaid. This clause provides as follows,

**“Any member wishing to take the Church or its members to court must get written clearance letter signed by the church/chancellor.”**

Such a letter has not been exhibited by the plaintiffs. The nonexistence of the Tribunal should not be used as an excuse for avoiding compliance with the constitution. The tenor, context and spirit of that constitution require full compliance, which in this case has not been done.

I subscribe to the position that, where parties have expressly elected to provide internal dispute resolution mechanisms in their operations, they are bound thereby and unless and until that process is applied and exhausted, recourse to the courts should not be entertained.

The church is not a political party, but I draw comparison to the constitutions of such parties which provide internal dispute resolution mechanisms that must be complied with. Any aggrieved person then moves to the Political Parties Disputes Tribunal and thereafter to the courts. The Tribunal and the courts have denied audience to any person who has not submitted the dispute to the process provided in the constitution. That position applies to this case in equal measure. I did not raise this issue in abstract. Article 159 (2) (c) of the Kenya Constitution, 2010 provides as follows,

**“(2) In exercising judicial authority the courts and tribunals shall be guided by the following principles –**

**(c) Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted subject to clause (3).”**

Notwithstanding the original jurisdiction conferred upon the court by the Constitution of Kenya, 2010 it is clear to me that the suit brought by the plaintiffs herein is premature, because the internal dispute resolution mechanism provided in the church constitution has not been initiated and or exhausted. I hesitate to strike out the same because in the first place, the defendants did not ask for that order and secondly, the pleadings filed provide sufficient ground for internal dispute resolution wherefrom the issues can be crystallised for that purpose.

For reasons set out above, I decline to hear the dispute and leave it to counsel to advise their respective clients. Believing the parties herein draw inspiration from the Holy Book, some guidance may be found in **Psalm 32 verse 8 (NIV)** which provides,

**“I will instruct you and teach you in the way you should go; I will counsel you and watch over you.”**

Each party shall before their own costs.

**Dated, signed and delivered at Nairobi this 22<sup>nd</sup> Day of May, 2019.**

**A. MBOGHOLI MSAGHA**

**JUDGE**