



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PETITION NO 395 OF 2012

REVEREND BISHOP SILAS MISOI YEGO.....1ST PETITIONER

REVEREND GEOFFREY GICHURE.....2ND PETITIONER

REVEREND SIMEON OTIENDE.....3RD PETITIONER

VERSUS

THE MINISTER OF STATE FOR PROVINCIAL

ADMINISTRATION AND INTERNAL SECURITY.....1ST RESPONDENT

COMMISSIONER OF POLICE.....2ND RESPONDENT

THE HONORABLE ATTORNEY GENERAL.....3RD RESPONDENT

DAVID M. MBUVI.....4TH RESPONDENT

DAVID TIMKU WAWERU.....5TH RESPONDENT

FREDERICK MUSYOKA MUUNDE.....6TH RESPONDENT

SAMSON BETT.....7TH RESPONDENT

SOLOMON KIPTANUI CHESIBO.....8TH RESPONDENT

AND

CROSS CURRENT INDIGENOUS NETWORK.....INTERESTED PARTY

JUDGMENT

Introduction

1. This petition concerns the leadership of *African Inland Church Kenya* it was consolidated with other suits filed in various courts across the country following the court's ruling delivered on 15th April 2016, to be heard together with this petition.

2. The suits consolidated with this petition were; *HCCC No. 103 of 2014 (Mombasa), Rev Daniel Mutua Maingi & 2 others v Julius Okoth & 12 others; HCCC No241 of 2011 (machakos) Rev Benard Nguyo & 2 Others v Bernard Wambua & 12 others; HCCC No.513 of 2007 (Nairobi) Bishop Rev.Silas Yego & 3 others v David Mulei Mbuvi & 5 others; HCCC No 162 of 2012(Machakos), Amos nzeki & 3 others v Rev James Makau & 3 others; HCCC No 207 of 2011, Rev . David Mbuvi & others v Silas Misoi Yego & others* and *HCCC No. 155 of 2006 David Mbuvi & 21 others v Registrar of Societies & 4 others*. Cross current indigenous network made an application to be enjoined as an interested party which was allowed by consent.

Petition

3. The petitioners' claim is that they are the elected and duly registered officials of the **African inland Church-kenya**, a society registered under the Societies Act, Cap 108 which carries out pastoral and missionary work together with charitable work for the relief of poverty, promotion of education and support of humanitarian relief programmes throughout Kenya; that in order to fulfil this mandate the church owns a substantial amount of properties and maintains good relationship with development partners who support the church financially.

4. The petitioners aver that titles to parcels of land and development thereon are held by the Board of Trustees of the church known as the **African Inland Church- Kenya Trustees Registered** of which the petitioners are members. They contend that they are authorised to hold titles of various parcels of land or any interest in land that may be vested in them by way of purchase or acquisition on behalf of the church.

5. The petitioners further contend that when the church's Constitution was promulgated in 1943, the church was called **Africa Inland Church** but that the church is currently governed by the Constitution promulgated in 2008 and is now known as **Africa Inland Church-Kenya**. They aver that church is organised into five administrative councils, namely; the Local Church Council, (LCC), the Branch Church Council, (BCC), the District Church Council,(DCC), the Regional Church Council (RCC) and the Central Church Council(CCC); that the Local Church Council comprises of a chairman who is in charge of the local church and several elders charged with the mandate of reaching out to the lost, disciplining errant church members and supervising the affairs and property of the local congregation. All these units are charged with various responsibilities according to the regions they controlled.

6. It is the petitioners' case that the Church Constitution provides for the Central Church Council which is responsible for the overall policy formulation on behalf of the church; that the Central Church Council consists of the Presiding Bishop, Deputy presiding Bishop, the Administrative Secretary and the Treasure of the Central Church Council whose current officials were elected into office on 14th February 2007.

7. The petitioners averred that the church had at all times been conducting its affairs smoothly until 2007 when the 4th respondent led a group of people in rebelling against the church leadership, conducted their own rival elections and presented a list of their officials to the Registrar of Societies for registration but their registration was declined while bonafide officials elected in accordance with the Church Constitution and the law who include the petitioners were accepted and registered.

8. The petitioners further aver that some constitutional amendments were effected by the Central Church Council in their meeting held on the 8th October 2008, bringing changes to the administration of the Church to the effect that the office of the Bishop of AIC Kenya changed to the office of the Presiding Bishop and the amendments were duly approved by the Registrar of Societies with no objection to their implementation

9. The petitioners contend that the Central Church Council in exercise of its powers ex-communicated the rebels in a meeting held on 21st and 22nd March 2007 and the Registrar general gazetted the cancellation of marriage licences of all the excommunicated members namely; David Mulei Mbuvi, Samson Bet Rev Zacharia Chirchir Rev Peter Kipketer Mavu Rev Stephen Mwendwa Kingangi, Rev Solomon Kiptanui Chesiboi, Rev Jackson Tiriona Muoka, Rev Jackson Kimenyi Ngone, Rev Stanley Chumba, Rev Benson Muange Mwangangi, Rev Jonathan Rotich. Rev Abraham Jarus and Rev Zacharia Cheruiyot.

10. It is the petitioners' further contention that despite the outcome of various elections and notwithstanding the fact of excommunication, the 4th to 8th respondents embarked on a strategy to make the Church un governable; have been threatening to use physical violence; disseminating false propoganda to church members; seizing of church buildings and pursuing a series of vexatious suits. The petitioners aver that the 4th to 8th respondents have abused the court process by instituting suits involving the same parties and subject matter which has denied the petitioners protection and benefit of the law. They state that despite efforts to engage the servants of the 2nd respondent to maintain law and order they have not taken action or carried out investigations.

11. The petitioners contend that together with their followers, they are being hindered from enjoyment of their freedom of conscience in particular freedom of religion because they are being prohibiting from using the church buildings and resources. The petitioners further contend that they have been assaulted, abused and harassed by the group allied to the 4th respondent; that church finances have been plundered and other properties taken away from other congregations thus their freedom of association curtailed.

12. According to the petitioners, the 1st and 2nd Respondents have not extended to them lawful assistance in order to guarantee their security of the person, privacy and enjoyment of church resources, assets and freedom of association. The petitioners therefore seek the following reliefs;

a) A Declaration that the petitioners' right to security of the person as guaranteed under Article 29 (c) of the constitution has been violated by the 4th to 8th Respondent.

b) A declaration that the petitioners' freedom of conscience, religion, belief and opinion as guaranteed under Article 31(b) of the Constitution.

c) A declaration that the petitioners' freedom of conscience, religion, belief and opinion as guaranteed under article 32 of the constitution has been violated by the 4th to 8th respondent.

d) A Declaration that the petitioners' freedom of association as guaranteed under Article 36 of the Constitution has been violated by the 4th to 8th respondent.

e) A declaration that the petitioners' right to property as guaranteed under article 40 of the Constitution has been violated by the 4th to 8th Respondent.

f) A declaration that the 1st, 2nd and 3rd respondents have failed to protect the petitioners' right to property as guaranteed under article 40 of the constitution.

g) This honourable court do issue an Order of MANDAMUS compelling the 2nd respondent to investigate allegations made to the effect that the 4th and 5th Respondents by the themselves, agents, servants or adherents have perpetrated or instigated others to court unlawful acts of violence and trespass against the AIC congregation and property in various local churches throughout the country.

h) This honourable court be pleased to issue a PERMANENT INJUNCTION to restrain the 4th to 8th respondents, their servants, agents, adherents and followers from inciting and or attempting to split the church administration, interfering with any office bearers of the church, colluding with any official currently in office and past officials or any other member of the AIC and/or holding illegal meetings touching on matters of the National, regional and /or Local Church administration of the AIC.

i) This Honourable Court be pleased to interdict and restrain the 4th to 8th Respondents and their followers and/ or agents and /or servants from preaching, disrupting, interfering, holding illegal meetings and or worshipping in any of the petitioners Churches

j) This honourable court be pleased to issue an order of mandamus compelling the 1st and 2nd respondents to forthwith protect the petitioners and their followers to congregate and worship at their churches by deterring any format of interference from the 4th and 5th Respondents and /or their followers and or agents

k) This honourable court be pleased to issue an order of MANDAMUS compelling the 1st and 2nd Respondents to provide security generally to the petitioners and their followers by restraining the 4th to 8th respondents and or/their meetings and/or worshipping in the African inland church property.

l) This Honourable court be pleased to declare that the Petitioners and AIC congregations are entitled to the assistance of the 2nd Respondent and its servants and agents generally in restraining the 4th to 8th Respondents from preaching, disrupting ,entering, interfering with, holding illegal meetings and/worshipping in the church property

m) This honourable Court be pleased to issue any other order that may deem to be fit and just to ensure that law and order is maintained in church and that the rule of law is applied.

n) Damages

o) Costs of this petition

Responses

13. The 4th and 7th respondents filed a reply to the petition as well as a cross petition. They averred that the name of the Church was and still is **African Inland Church** which has never been changed and that the Church's properties can also be held by individual local branch churches.

14. They denied that the church constitution sets up a policy making organ known as the Central Church Council that is responsible for the overall policy making for the AIC; that the alleged elections that took place on the 14th February 2007 were a sham, stage managed, null and void and contrary to the Church constitution. They contended that no notice or proper notice was issued or served; that proper election procedures were not followed and that no requisite quorum were attained.

15. It is these respondents case that elections had been conducted on 13th February 2007 where the 4th respondent was elected Bishop of the Church while the 7th respondent was elected the Assistant Bishop; that Pastor David T waweru was elected administrative secretary; Pastor Boaz Omondi as administrative secretary, Rev Julius Murgor, treasurer and Rev Peter Maru Mission Board Coordinator. They contended that when they presented the list of elected officials to the Registrar of Societies they were denied registration because the petitioners had already influenced the Registrar not to register them.

16. The respondents aver that after conducting sham elections on the 14th February 2007 the petitioners later registered totally distinct and different legal entity known as **African Inland church Kenya** and proceeded to register subsidiary societies under the banner Africa Inland Church Kenya country wide and left **African Inland Church** to the leadership of the 4th Respondent, but refused to hand over the office and control of AIC churches. They therefore averred that the petitioners are estopped from making any claim over AIC.

17. The respondents further refuted the allegation that they are rebels and that the purported excommunication was contrary to the AIC constitution. They contended that their ex communication was set aside by the court. They stated that any suits instituted were proper and lawful and subject to determination on whether there exist two entities **African inland Church Kenya** and **African Inland Church**. They denied infringing on the petitioners' right of freedom of conscience and religion or prohibiting them from using church buildings. They further denied assaulting, harassing any one or seizing church property.

18. It is the 4th and 7th respondents' case that the allegations made against them are baseless and though made to appear criminal, no charges have been preferred against them. They contended that the petition discloses no constitutional issues; that the petition has been brought in

bad faith as the petitioners did not want scrutiny and accountability while in office; that the 1st petitioner has personal interest in the assets and income and he views them as a stumbling block.

Cross Petition

19. The 4th and 7th respondents filed a cross petition which largely repeated their averments in their reply, adding though that the 1st petitioner's acts are a constitutional coup on the church and is tantamount to clinging to power. They contended that through use of unorthodox means, influence and bribery, the petitioners prevented the Registrar of Societies from registering them as elected leaders and instead had the petitioners registered. The 4th and 7th respondents contended that the amendments to the constitution effected in 2008 were unilateral, un-procedural and inconsistent with the Church constitution.

20. They went on to contend that despite creating two distinct legal entities *Africa Inland Church Kenya* and *African Inland Church*, the petitioners have refused to hand over instruments of office for the latter and instead they interfering with the 4th Respondent's management despite the fact that the registration numbers of the two differ and there is no link between the two. They contend that the 1st petitioner has committed irregular acts and his affinity for property is well known; that he has been cited by the commission into irregular allocation of public land and condemned by the National Assembly Investments Committee for committing sacrilegious acts and that the Committee recommended that he should be cited for unreligious conduct. They therefore sought the following reliefs;

- 1) A declaration that the petitioners' alleged election held on 14/02/2007 was null and void and of no legal consequence.**
- 2) A declaration that the purported amendment of the AIC constitution 1981 was null and void and of no legal effect**
- 3) A declaration that the African inland church-Kenya (AIC- Kenya) is a separate and distinct legal entity from African Inland church (AIC).**
- 4) A declaration that the 1st petitioner is the presiding bishop of African inland Church-Kenya (AIC-Kenya) while the fourth Respondent is the Bishop of African inland Church (AIC).**
- 5) A permanent injunction to bar the petitioners by themselves, servants agents or whoever is acting on their behalves from interfering with the 4th Respondents leadership of AFRICA INLAND CHURCH or in any manner interfering with the functions and control of the church and its affiliates or contravening their constitutional rights to freedom of association under article 36 (i) and freedom of religion under article 32 (i) of the constitution.**
- 6) An order compelling the Petitioners to hand over office, instruments and properties belonging to AFRICA INLAND CHURCH to the 4th respondent.**
- 7) Any other relief that this court may deem fit to grant in the circumstances.**
- 8) Costs of the petition and Cross petition to the 4th respondent.**

21. On the 2nd of March 2017 the petitioners filed grounds of opposition against the 4th and 7th respondent's reply to petition and cross petition contending that the reply to the petition and the Cross-petition have been filed after inordinate delay; that the reply to petition and the Cross-petition have been filed without leave of Court; that the 4th to 8th respondents are guilty of laches in filing the reply and Cross-petition after four years and six months and therefore acting in bad faith; that in filing the reply to petition and the cross-petition after such a long time it is in violation of rules 3 (4) and (5), 15 and 21 of the *Constitution of Kenya (protection of rights and fundamental freedoms) practice and procedure rules, 2013*. They contend therefore that the reply to petition and the Cross-petition are an abuse of the Court process intended to delay the hearing of the petition.

Other suits

22. In *HCCC No 513 of 2007 Bishop Silas Yiego & 3 others sued David Mutei Mbuvi & 50 Others* seeking declarations that they were the duly elected officials of AIC and orders of injunction restraining the defendants (Petitioners herein) and their agents from interfering with the management of AIC. The defendants filed a defence denying the plaintiffs' claims and stated on their part to be the elected officials of AIC and claimed they were expressing their rights of association.

23. The other suit is *HCCC No 162 of 2012(MKS) Amos Nzeki & 3 Others sued Rev. James Makau & 2 Others* with the plaintiffs claiming to be officials of AIC Matheni DCC who were suing on their own behalf and that of the DCC. They sought a declaration that they are entitled to freedom of assembly and worship without the defendants' interference and an injunction restraining the defendants from interfering with their right of worship or inter meddling with the affairs of AIC.

24. The respondents filed a defence denying the plaintiffs' claim and counter claimed that the 1st defendant's is Chairman of AIC Kangundo region, the 2nd defendant the Church elder Mathani, while the 3rd defendant is a member of AIC Mathani. They contended that the defendants were trying to interfere with the church activities. They sought to have themselves declared as the officials and that the plaintiffs were violating their right to freedom of association and assembly and an injunction to restrain the plaintiffs from interfering with the church activities.

25. The other suit is HCC No 241 of 2011 (MKS) *Rev. Benard Nguyo & 2 others v Benard Wambua & 12 others* in which the plaintiffs

claimed to be the registered officials of AIC Kenya in Machakos Area which supports all regional councils. They sought a declaration that the 1st defendant was not an employee of AIC Kenya since he had been employed by the 2nd to 13th respondents who are not bona fide members of AIC Makutano Local Church Council an order to remove r open the church doors and that the defendants be ordered to and over AIC Makutano to them and an injunction restraining the defendants from interfering with the management affairs of AIC Makutano. The defendants filed a defence denying the plaintiffs' claims and contended that the plaintiffs are in a different entity known as Africa Inland Church (Machakos Area) which is different from AIC Kenya.

26. And finally HCC No 103 of 2014 (Mombasa) *Rev Daniel Mutua & 2 others v Rev. Julius Okoth Nudi & 12 Others*, in which the petitioners sought a declaration that the 1st –to 3rd defendants were suspended by the AIC; that AIC Tudor is the property of the AIC and the defendants have no legal right to control the property. They contended that the 4th – 13th defendants are not bonafide officials of AIC Tudor and sought an injunction restraining the 1st - 3rd respondents either by themselves or their agents from dealing with AIC Tudor unless the suspension is lifted by the AIC Council.

27. The defendants filed a defence denying the plaintiffs' claim and contended that in 2007 national elections were held to elect the head and Presiding Bishop but the elections were disputed leading to a splinter group called AIC Kenya under Bishop Rev. Silas Yego; that the splinter group attempted to annulled the constitution which was challenged in Misc Appl No 155 of 2006 (NBI) which is still pending hence the amended constitution is not valid. They stated that they are obeying the AIC Constitution of 1981 and that the AIC Kenya is a splinter group. They also contended that there is ELC Suit No 212 of 2014 of Mombasa which is pending. The nature of the prayers in these suits and the responses thereto is a clear indication that the suits mirror the dispute in the petition and the genesis is addressed by the present petition and cross petition.

Petitioner's submissions

28. **Dr. Khaminwa**, learned Senior Counsel appearing together with **Mr Maloba** submitted, highlighting their written submissions dated 10th September 2016 and filed on the same day, that there is only one Africa Inland Church in Kenya headed by the 1st petitioner; that AIC has one doctrine founded and that the main churches were founded by men and women of integrity who came to Africa to spread the word of God.

29. Learned Senior Counsel submitted that there are no two AIC churches in Kenya and that this is true from the historical documents. He contended that AIC has a constitution that was amended in 2008 and urged the court to make a finding that there is only one AIC in Kenya, headed by the 1st petitioner and not the 4th respondent. **Dr Khaminwa** submitted that the 4th respondent was excommunicated and that the 1st petitioner was elected following elections that were held by the church.

30. **Mr Maloba** took over and submitted that there were several suits filed in different court stations but which were consolidated by an order made on 15th April 2016 with the present petition as the lead file. He also submitted that parties filed agreed issues dated 25th October 2016 and filed on 1st November 2016. According to learned counsel, the dispute involves the leadership of AIC, submitting that in the affidavit sworn on 1st September 2012 in support of the petitioner, the church has very many projects including hospitals and school, and employs many people.

31. He contended that the constitution of the church was lawfully amended in 2008 brining in new offices and established autonomous branches; that the changes were submitted to the Registrar of Societies who approved and registered the amended constitution. **Mr Maloba** further contended that the 4th respondent and his followers were excommunicated but despite this, the 4th respondent continues to hold himself out as the Bishop of AIC claiming it is different from AIC Kenya.

32. In **Mr Maloba's** view, the 4th respondent has been a member and official of AIC Kenya as the Administrative Secretary up to 1997 when he resigned to go for a political office. Learned counsel submitted that the 4th respondent came back in 1999 and was appointed Pastor of AIC Kenya Bondeni local church and was later posted to Nairobi AIC Kenya Church Jericho, then to Jericho DCC and eventually was elected as the head of Nairobi East Regional Council, (NBI RCC). **Mr Maloba** went on to submit that the Registrar of Societies in letters dated 17th October 2008 and 23rd February 2007 confirm that there is only one AIC.

33. Referring to the 4th and 7th respondents' response and cross petition, **Mr Maloba** contended that there is no evidence that an application had been made to the Registrar of Societies for registration of another society apart from AIC Kenya and contended that section 17 of the Societies Act restricts the Registrar of Societies from registering societies that may cause confusion.

4th Respondent's Submissions

34. **Mr Kabahati**, learned counsel for the 4th respondent submitted relying on their reply to the petition and cross petition dated and filed in court on 24th February 2017 as well as written submissions dated 20th March 2017 and filed on 21st March 2017, that there are two churches AIC and AIC Kenya. According to **Mr Kabahati** this is evidenced by the fact of registration of AIC on 2nd December 1961 and the AIC Kenya which was registered later.

35. Learned counsel contended that the 1st petitioner is purporting to lead two churches which is inconsistent with the constitution of the church, the Societies Act and church doctrine. He contended that AIC Kenya was brought into existence by the amended constitution in 2008; that AIC is governed by its constitution (page 38) and that constitutions of AIC and AIC Kenya have different governance structures hence cannot apply the same constitution.

36. **Mr. Kabahati** contended that any amendments to the AIC constitution were not done legally and relied on section 19 of the Societies Act

to augment his argument. He also contended that the 1st petitioner cannot be in office perpetually yet the constitution of AIC gives a term of 5 years. He urged the court to find that there are two different entities namely; AIC and AIC Kenya and that the court should nullify registration of AIC Kenya.

5th to 8th respondents' submissions

37. **Mrs Kimuli** learned counsel for 5th - 8th respondents associated himself with the submissions of **Mr Kabahati** and relied on their submissions dated 19th April 2017 and filed on the same day. In essence **Mrs Kimuli** submitted that **African Inland Church** and **African Inland Church Kenya** are distinct and he was of the view that HCCC No 103 of 2016 is not related to this petition.

Determination

38. I have considered this petition, the responses thereto as well as the cross petition. I have also considered the other suits that were consolidated with this petition as well as the submissions by counsel for the parties. In my view, this petition does not raise a pure constitutional question for this court's determination. This is so because all parties are in agreement that the dispute herein and in the other suits relate to the leadership of the church. This court, sitting as a constitutional court, would have therefore declined to hear the petition on that basis and refer it to the Civil Division for determination. However, due the age of the petition, and in order to serve justice to parties, it is only fair and proper that this court assumes its general jurisdiction and determines the dispute rather than declining to do so thus delaying the course of justice. I should also point out at this stage that even though a number of suits were consolidated with this petition, parties to those suits did not take active participation in these proceedings thus reducing the contest to the issues raised in the petition and cross petition.

39. Upon considering the petition and cross petition as well as submissions made on behalf of the parties, only two issues arise for determination, that is; whether there are two distinct churches, **African Inland Church** and **African Inland Church- Kenya** and secondly, who the true officials of the Church are since the wrangles relate to the leadership of the society.

Whether there are two distinct churches

40. The petitioners and respondents were once members of the same Church the **African Inland Church**. The Church is said to have later changed its name to **African Inland Church- Kenya**, which the respondents do not appear to agree with and claim to be officials of the original church, **African Inland Church**. They contend that the petitioners are officials of **African Inland Church- Kenya** which, according to the respondents, is different from their Church, **African Inland Church**. They also claim that the elections held in February 2007 leading to the petitioners being registered as the elected officers of the church were a sham because they were held in violation of the church constitution. They further argue that amendments to the society's constitution were not done lawfully.

41. The petitioners hold a position contrary to that of the respondents contending that there is only one church, **African Inland Church- Kenya** which they lead and that the impugned elections were properly conducted. They also argue that their registration as officers of **African Inland Church Kenya** was lawfully done and further that amendment of the church constitution was done in accordance with the society's constitution and the law. They argue that the respondents are a splinter group and not members of **African Inland Church- Kenya**.

The Record

42. What does the record say? Are there two or one **African Inland Church**. According to the record, there is attached a copy of the constitution (Revised 1981) which shows the name of the church as **African Inland Church -Kenya**. There is no other constitution attached to the pleadings. There is, however, a copy of certificate of exemption from registration in the name of **African Inland Church** dated 1961. This was before the 1981 revision of the church's constitution showing the name of the society as **African Inland Church-Kenya**.

43. It has also been contended that the 4th respondent was a leader in this church (**African Inland Church-Kenya**) until 1997 when he left to join national politics; returned in 1999 and was appointed to serve in various positions in the same church. The 4th respondent has not controverted these averments in any way.

44. In this respect, traceable on record are letters exchanged between the church and the 4th respondent over the latter's desire to join national politics. First, is copy of letter dated 29th July 1997 from **Rev Titus Kivunzi** to the 4th respondent referring to the 4th respondent's letter intimating his desire to leave the church to join politics, advising the 4th respondent to write a letter resigning from the church. **Rev Titus Kivunzi** signed for **African Inland Church- Kenya** and copied the letter to **Rev. Silas K Yego**, the 1st petitioner herein. **Rev David M Mbuvi** then wrote a letter of resignation dated 30th July 1997 addressed to The Bishop, **African Inland Church -Kenya** actualising the advice.

45. Further, there are letters from the Registrar of Societies dated 17th October 2008 to the Secretary, **African Inland Church -Kenya** acknowledging and informing the Church that amendments to its constitution had been approved and that the Registrar had no objection to their implementation, a "**certificate of incorporation for African Inland Church Kenya Trustees Registered**", dated 26th June 1971 and Gazette Notice No. 2877 of 19th March 2010 by the Senior Deputy Registrar of Societies cancelling the 4th respondent's Licence to celebrate marriage showing the 1st respondent's denomination as **African Inland Church -Kenya**, among many other documents are also on record.

46. The 4th to 8th respondents having claimed that there is another church, **African Inland Church** distinct from **African Inland Church- Kenya** had the legal burden to prove existence of that other society. That is what sections 107 through 109 of the Evidence Act require. Section 107 (1) provides that **whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist**, Section 108 states that **the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side**; while section 109 is to the effect that **the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that**

fact shall lie on any particular person.

47. The 4th to 8th respondents having alleged that there are two distinct societies, assumed the burden of proving that fact to enable the court come to such a conclusion. They did not.

48. It is therefore, plain as seen above that ***African Inland Church-Kenya*** has been in existence for many years and the 4th respondent has been an active member of the church for as long as the record can show. The 4th to 8th respondents' own documents attached to the reply to the petition and cross petition, include letter dated 15th February 2007 from ***Lumumba Muma & Kaluma Advocates*** to the Registrar of Societies claiming that these respondents were the elected officers of ***African Inland Church-Kenya*** following that month's elections. Their claim that there is another entity known as ***African Inland Church*** is, to say the least, not factually correct as it is not supported by the record.

49. Section 21 of the Societies Act requires an exempted society to notify the Registrar in case of change of its name. The fact that the society has been using the name ***African Inland Church-Kenya*** in its communication with the Registrar and conducting its affairs as such would imply that the change of name was authorised by the office of the Registrar of Societies. And if the 4th respondent is a member and leader of such a society (***Africa Inland Church***), his claim is also not supported by material evidence. I need no authority to support this factual finding because the record and the law, the Societies Act, supports this position given the letters from none other than the Registrar of Societies who is mandated to oversee the registration management of societies under that Act. I therefore find and hold that, based on the evidence on record, there is only one Society registered and known as ***African Inland Church- Kenya***.

50. If the 4th respondent leads another Church Known as ***African Inland Church***, he must be aware of section 4(1) of the Act which makes every society which is not registered or exempted from registration an unlawful society except where it has applied for registration or for exemption from registration and it has not been notified of the determination of its application. Moreover, section 5 of the Act makes it an offence for a person to manages or assist in the management of an unlawful society. The respondents could have also shown that ***African Inland Church*** did not change its name to ***African inland Church- Kenya*** and that it has been operating under the old name as required by the Societies Act. Either way, the 4th to 8th respondents have failed to justify their claim of existence of another society.

Who the Officers of African Inland Church- Kenya are

51. It has been already been pointed out in this judgment that the dispute in this petition revolves around the leadership and management of ***African Inland Church –Kenya***, a society registered under the Societies Act (Cap 108). This emerges from the reading of the pleadings, submissions of the parties, the reliefs sought as well as the issues both sides want resolved.

52. The record bears the fact that elections were held in February 2007 and there emerged two rival groups each claiming to have won the elections. One group was led by the 1st petitioner while the other group was under the leadership of the 4th respondent. The 4th respondent's group tried without success to be registered as officials of the church. They now contend that the Registrar of Societies declined to register them because he/she was manipulated to register the 1st petitioner's group.

53. The fact that the petitioners were registered as officials of ***African Inland Church –Kenya*** is borne in a letter from the Registrar dated 17th October 2007. It shows the petitioners as the officials of the society. Section 17 of the Act provides that in case of a change of officers, or the title of any office of a registered society, a notice should be given to the Registrar within fourteen days of the change, and the notice should be signed by three of the officers of the society. The section further states that any registered society which fails to give notice of such change is guilty of an offence.

54. In that respect, ***African Inland Church- Kenya*** gave notice of change of its officers which was accepted by the Registrar who issued another letter of the same date giving names of the society's officers as ***Rev. Silas Yego-Presiding Bishop, Rev. Geoffrey Gichure-Deputy Presiding Bishop, Rev. Dr. David Mulwa- Administrative Secretary*** and ***Rev. Simeon Otiende- Treasurer***. There is no other evidence to show that at the time the petition was filed, officials of the church had changed. There is also a letter from the Registrar dated 17 October 2017 accepting amendments to the church constitution which means the petitioners complied with the law in amending that constitution.

55. ***African Inland Church–Kenya*** being a society is governed by the provisions of the Societies Act and falls under the supervision of the Registrar of Societies. It is therefore important to note the provisions of section 18 of the Act which deals with resolution of disputes relating to the management of societies. The section states that;

1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of a registered society as a result of which the Registrar is not satisfied as to the identity of the persons who have been properly constituted as officers of the society, the Registrar may, by order in writing, require the society to produce to him, within one month of the service of the order, evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the society or of the institution of proceedings for the settlement of such dispute.

2) If an order under subsection (1) of this section is not complied with to the satisfaction of the Registrar within the period of one month or any longer period which the Registrar may allow, the Registrar may cancel the registration of the society.

3) A society aggrieved by the cancellation of its registration under subsection (2) may appeal to the High Court within thirty days of such cancellation.

56. The section provides a mechanism for dealing with disputes that pit members among themselves and or officials of the church. If it is true that there was a dispute over the leadership of ***African Inland Church –Kenya***, the Registrar was required to apply section 18 of the Act

to address the dispute. Looking at the record and more so the letter from the Registrar dated 17th February 2007, the office confirmed who the officers of the church were. Letter of objections by the respondents' advocates dated 20th February 2007 was received and responded to by the Registrar's letter of 23rd February 2007 confirming that the petitioners properly convened the meetings of 13th and 14th February 2007. It means therefore that had there been a leadership dispute, such a dispute would have been reported for purposes of resolution applying the provisions of section 18 of the Act.

Conclusion

57. In this petition, the petitioners have argued that there is only one church while the 4th to 8th respondents have contended that there are two distinct churches, **African Inland Church –Kenya** under the leadership of the petitioners and **African Inland Church** which is under 4th respondent's leadership and each side has sought declarations to that effect in the petition and cross petition. Taking these rival contentions and the record into account the irresistible conclusion I come to is that there cannot be any reasonable justification for the respondents' claim to be leaders of **African Inland Church- Kenya**. Their claim is factually unsustainable and so is also their claim that there is another church apart from **African Inland Church-Kenya**.

Disposition

58. Having therefore given due consideration to this petition, the response, the evidence on record, submissions by counsel for the parties and the law, I am satisfied that the petitioners have made out a case that there is only one church **African Inland Church- Kenya**. I am also satisfied that according to the evidence on record the petitioners are the officers of the said society. However, the respondents have not discharged the burden of proof that there is a society known as **African Inland Church** and that they are the officers of the said society. Their cross petition must, therefore, fail.

59. The upshot is that the petition dated 6th of September 2012 succeeds and I make the following orders which I find appropriate in the circumstances of this case.

- 1) A declaration is hereby issued that there is only one Society Known as African Inland Church-Kenya.**
- 2) 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.**
- 3) The respondents' cross petition is dismissed.**
- 4) This being a dispute among church members, I make no order with regard to costs.**

Dated Signed and Delivered at Nairobi this 23rd November 2018

E C MWITA

JUDGE