



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO.681 OF 2006

BETWEEN

REV. SAMUEL MURIITHI NJOGU.....1ST
PETITIONER

REV. JOSEPH KIPTANUI SAMOEI.....2ND
PETITIONER

REV. SAMUEL MBITHI KATHITTA.....3RD
PETITIONER

REV. EPHRAIM WAIGANJO KARIANJAH.....4TH
PETITIONER

REV. GEOFFREY MUTHECHA GITAU.....5TH
PETITIONER

REV. DOMINIC WAGORO.....6TH
PETITIONER

AND

HON. JOHN NJOROGE MICHUKI, MINISTER
OF

STATE FOR PROVINCIAL ADMINISTRATION & INTERNAL SECURITY.....1ST
RESPONDENT

MAJOR GENERAL MOHAMMED HUSSEIN
ALI,

COMMISSIONER OF POLICE.....2ND
RESPONDENT

THE HON. AMOS WAKO, ATTORNEY GENERAL.....3RD
RESPONDENT

JACKSON KIPKEMBOI KOSGEY.....4TH
RESPONDENT

STEPHEN KIGURU KAMAU.....5TH
RESPONDENT

AND

REV. DAVID CHEGE KARIUKI.....INTENDED
INTERESTED PARTY

REV. WAIHARO KAMAU.....INTENDED
INTERESTED PARTY

REV. ENOCK ODHIAMBO OGUOM.....INTENDED
INTERESTED PARTY

REV. EZEKIEL KIMAIYO LETTING.....INTENDED
INTERESTED PARTY

RULING

1. The dispute between the Parties herein relates to *inter alia* control of the assets of the Full Gospel Churches of Kenya. Related to that issue is the question as to whether the Interested Parties and others named below are *bona fide* members of that Church.
2. The dispute has been simmering from as far back as the year 2005 and as regards the present Ruling, on 18th May 2007 Nyamu J (as he then was) issued the following order:

“(1) That the Notice of Motion dated 30 the April 2007 be and is hereby dismissed.

(2) That the Respondents/Applicants do pay the Petitioners/Respondents the costs of the Application to be taxed and certified by the taxing master of the Court.

(3) That the Consent Letter dated 30th March 2007 and filed in Court on 11th April 2007 be and is hereby recognised as an order of the Court along the following grounds.

(4) That the new office bearers elected on the 27th – 28th September, 2006 and registered Registrar of Documents on the 12th January , 2006, be allowed to perform their respective duties as officers of Full Gospel Churches of Kenya.

(5) That pending the inter-partes hearing of this Petition the officers Commanding Police Divisions of Koibatek, Baringo, Molo, Iten, Buruburu, Naivasha, North Kinangop, Nyandarua, Nakuru, Eldoret, Kericho, Bomet, Kasarani, Kayole, Ruiru, Thika, Kisumu, Migori, Kisii, Homa Bay, Siaya, Mombasa Urban, Lamu, Malindi and Wundanyi do enforce the Order of the Court issued by the Honourable Mr. Justice Ransley on 9th March 2005, in Nairobi in High Court Civil Case No.1236 of 2004 against the Fourth and Fifth Respondents and their servants, agents employees and/or followers listed hereunder;

- (a) Eliud Karanja Nyoike – Eldoret FGCK Church**
- (b) Jackson Kipkemboi Kosgey – Mogoition FGCK Church**
- (c) Johsphat Kamau Ng’ang’a – Molo FGCK Church**
- (d) Samuel Wachira Maina – Langalanga FGCK Church**
- (e) Hezekiel Ndegwa Kamau – Lanet FGCK Church**
- (f) Gedeon Muigai Chege – Njoro FGCK Church**
- (g) Ephraim Githinji Kamau – Kihingo FGCK Church**
- (h) James Maina Mwenje – Subukia FGCK Church**
- (I) Francis Njuguna Gitau – Molo FGCK Church**
- (j) Daniel Marindany – Total (Molo) FGCK Church**
- (k) Joseph Cherinyit – Bomet FGCK Church**
- (l) Joseph Sunya Otieno – Londiani FGCK Church**
- (m) Musa Kiplangat Tele – Kipkelion FGCK Church**
- (n) Francis Njoroge Gichure – Kericho FGCK Church**
- (o) Joseph Kimani – Mombasa FGCK Church**
- (p) Samuel Nuyanmgares – Timboroa FGCK Church**
- (q) Sammy Njau Mwangi – Langalanga FGCK Church**
- (r) Kamaiyo Leting – Kapsoiya FGCK Church**
- (s) Simon Wanjohi – Langalanga FGCK Church**
- (t) Samuel Mburu Ng’ang’a – Rongai FGCK Church**
- (u) Peter Githuthia Karanja – Gilgil FGCK Church**
- (v) Geoffrey Kamau Macharia – Kiptagwany FGCK Church**
- (w) Boniface Mbugua Njenga – Ndundiri FGCK Church**
- (x) Peter Muriuki Wambugu – Molo Town FGCK Church**
- (y) David Njuguna – Naishi FGCK Church**
- (z) James Githura - Langalanga FGCK Church**
- (aa) Jack Kairuki – Nyamamithi FGCK Church**
- (bb) Harun Mwangi Wainaina – London (Nakuru) FGCK Church**

- (cc) Stephen Kiguru Kamau – Buruburu FGCK Church**
- (dd) Peter Mwaura – Buruburu FGCK Church**
- (ee) Jonathan Kiragu – Githurai FGCK Church**
- (ff) John Muchunu Gachuki – Kayole FGCK Church**
- (gg) Eliud Makunyi – Dandora FGCK Church**
- (hh) David chege – Kitengela FGCK Church**
- (ii) Peter Gaitho Wanderi – Ruiru FGCK Church**
- (jj) Jeans Ochieng Orum – Thika FGCK Church**
- (kk) Waiharo Kamau – Gatunyu FGCK Church**
- (ii) George Ndungu Njoroge – Gatundu FGCK Church**
- (mm) Stanley Waweru – Njambini FGCK Church**
- (nn) Peterson Njau – Kibera FGCK Church**
- (oo) Peter Mwaura – Buruburu FGCK Church**
- (pp) David Onyango Oguom – Langata FGCK Church**
- (qq) Joseph Kirura – Wanyororo FGCK Church**
- (rr) John Macharia – Gakoe FGCK Church**
- (ss) Boniface Gogo Mwaura – Hongwe FGCK Church**
- (tt) David Kimani Kabora - FGCK Church**
- (uu) George Odoyo Owiti – Kisumu Town FGCK Church**
- (vv) Enock Odhiambo Oguom – Migori FGCK Church**
- (ww) Ezekiel Owino – Rongo FGCK Church**
- (xx) William Otieno – Siaya FGCK Church**
- (yy) David Lelei – Kapsabet FGCK Church**
- (zz) Paul Mwang – Langas FGCK Church**
- (aaa) Jeremiah Githuku – Langalanga (Nakuru) FGCK Church.”**

3. On 26th September 2012, however, the Intended Interested Parties by a Notice of Motion Application prayed for the following orders;

“(1) That this Application be certified urgent, service be dispensed with and heard ex-parte in the 1st instance.

- (2) *That the Applicants in this matter be enjoined as Interested Parties.*
- (3) *That pending the hearing and determination of this Application there be a stay of execution of the order issued on 21st May 2007.*
- (4) *That this Honourable Court be pleased to set aside, vary and or review its order issued on 21st May 2007 together with the Ruling delivered on 18th May 2007.*
- (5) *That the costs of this Application be provided for.”*

Intended Interested Parties’ case

4. The Intended Interested Parties filed four identical Supporting Affidavits by each one of them sworn on 13th August 2012 and it is their case that;
 - (i) Based on the aforesaid orders of Nyamu J, the Petitioners have blocked them from conducting services in their respective churches.
 - (ii) The said orders were directed at persons named therein and no other persons including themselves.
 - (iii) Although they were not Parties to the proceedings leading to the issuance of the said orders, they, and their followers, were evicted from their Churches together with their followers on the basis of the said orders.
 - (iv) They have suffered and will continue to suffer hardship and irreparable loss if the orders are not set aside, varied or reviewed as prayed.
5. No submissions oral or written, were made by Counsel for the Intended Interested Parties and so I will take their Application and Supporting Affidavits as speaking for themselves.

Petitioners’ case

6. The Petitioners in response to the Application filed grounds of opposition on 9th November 2012 and on 16th December 2013, they filed a Replying Affidavit sworn on the same day by Ephraim Waiganyo Karianjahi, the 4th Petitioner.
7. Their case is firstly, that the Application is devoid of merit, has been overtaken by events and is also misguided. Secondly, that the Intended Interested Parties as well as the 4th and 5th Respondents were ex-communicated from the Full Gospel Churches of Kenya, their licences cancelled and therefore have no legitimate interest in the affairs of the said Church.
8. Thirdly, that the 4th and 5th Respondents have founded other Churches in which they have declared themselves as leaders i.e. Worldwide Full Gospel Mission of Kenya and Living Hope Ministries, respectively, and therefore they have no legitimate interest in the affairs of any other Churches including the Full Gospel Churches of Kenya. That the Intended Interested Parties are also followers, agents, servants and/or Pastors of the World Wide Full Gospel Mission of Kenya and similarly have no interest in the affairs of the Full Gospel Churches of Kenya.
9. Fourthly, that in **Civil Appeal No.145 of 2007**, the Court of Appeal upheld the orders issued by Nyamu J and the same cannot be challenged in this Court as they are binding on both this Court and Parties before it.
10. Lastly, that the Intended Interested Parties are busybodies, trouble shooters and are merely intent

on fanning chaos in the Full Gospel Churches of Kenya for malicious reasons hence their coming to Court more than five years after the orders aforesaid had been issued. Like the Intended Interested Parties, the Petitioners made no oral or Written Submissions while all the Respondents filed no response(s) to the Application at all.

Determination

Two issues arise for determination;

- i. Should the Intended Interested parties be joined to the present proceedings?
- ii. Should the orders of Nyamu J be set aside, varied or reviewed?

11. Issue no (ii) can only be determined if I find it fit to enjoin the Intended Interested Parties in the proceedings as such and if not, the determination of the former issue would be a moot point.

12. In constitutional litigation, joinder of a party to a pending Petition is presently governed by the Constitution of Kenya (**Fundamental Freedoms and Rights) Practice and Procedure Rules, 2013**. Prior to that they were governed by the same Rules enacted in 2003.

13. **Rule 5(d)(ii)** of the 2013 Rules provides as follows;

“5 (d)(i) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just-

- i. **Order that the name of any party improperly joined , be struck out; and**
- ii. **That the name of any person who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court adjudicate upon and settle the matter, be added.”**

14. The question that then arises is whether the Intended Interested Parties have established that they are either a necessary party or that they have a sufficient interest in the present litigation. According to them, they are entitled to be enjoined solely because they are affected by the orders of Nyamu J aforesaid and therefore they seek to be enjoined to the proceedings to protect their rights and interests.

15. I have considered the above submission in the Application under consideration and note that there is absolutely no evidence that the orders of Nyamu J were in any way directed against any other person than those mentioned therein. How then can this Court truly know that the Intended Interested Parties were affected by the orders as alleged? Evidence would for example have included letters of protest to the 1st – 3rd Respondents or the Officers commanding the named Police Divisions but none exist. In any event, the orders were also to be enforced against **“servants, agents, employees and or followers”** of the listed persons, and the Intended Interested Parties have failed to show that they fitted that category of persons and were therefore affected as such.

16. I also note that while the orders in question were issued on 18th May 2007, the instant Application was filed on 28th September 2012. Why was there such a delay and why did the Intended Interested Parties not see it fit to respond to the Petitioners’ submission that such a delay is so inordinate as not to warrant the exercise of discretion in favour of the former. On my part, that delay is inexcusable and more seriously, the orders were issued close to ten years ago and I do not see any value in revisiting them either by way of setting aside, review or variation.

17. In addition to the above, I have seen documents attached to the Replying Affidavit of Ephraim

Waiganyo Karianjahi showing that Ezekiel Leting, the 4th Intended Interested Party is associated with Worldwide Full Gospel Missions of Kenya, a splinter church from Full Gospel Churches of Kenya. If that be so, and the fact has not been controverted, what is his interest in the affairs of a church that he left many years ago even if involuntarily so?

18. I have also seen documents indicating that the 1st Intended Interested Party is associated with World Wide Gospel Church. What then is his interest in Full Gospel Churches of Kenya? The same question can be asked of the 2nd and 3rd Intended Interested Parties. Setting aside or variation of Court orders can be made *ex debito justitiae* where the order sought to be rectified is glaring and has caused an obvious injustice – See **Donald Mugau vs Constance Mtoto [2003] eKLR**. That right cannot be granted to the Intended Interested Parties for obvious reasons.

19. At another level, in exercise of discretion, the Court may grant the orders because the party seeking them is deserving of the exercise of judicial discretion – see **Mbogo vs Shah [1969] E.A 93**. In the instant case, I have shown that where a party is in the first place undeserving of the right to join proceedings, the discretion to grant it any other order cannot exist.

Conclusion

20. I have given reasons why the Intended Interested Parties are underserving of the right to join these proceedings neither are they deserving of any other orders in exercise of judicial discretion. If any advice is needed, let them pursue their spiritual aspirations and interests elsewhere than in the proceedings before me.

Disposition

21. The Application dated 13th August 2012 is frivolous and an abuse of Court process and is hereby dismissed. Let each Party however bear its own costs.

22. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF FEBRUARY, 2016

ISAAC LENAOLA

JUDGE

In the presence of:

Muriuki – Court clerk

Mr. Ngatia holding for Dr. Khaminwa for Petitioners

Mr. Mbithi holding brief for Mr. Witey for 4th and 5th Applicants

Order

Ruling duly delivered.

ISAAC LENAOLA

JUDGE

19/2/2016

Further Order

Mention on 24/5/2016. Parties to file Submissions before that date.

ISAAC LENAOLA

JUDGE

19/2/2016