



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CONSTITUTIONAL PETITION NO. 14 OF 2014

**IN THE MATTER OF ARTICLE 22(1) AND ARTICLE 165(3) (B) AND (7) OF THE
CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOM)**

PRACTICE AND PROCEDURE RULES

BETWEEN

THE EAST AFRICA PENTECOSTAL CHURCHES REGISTERED TRUSTEES

AND

JOHN COLUMBUS GIKUNDA M'MWANJA

BERNARD NJIRU AROZON

SAMWEL CHIVATSI MUNGA

JAMES MARANGU M'MUKETHA & 1750 OTHERS.....-PETITIONERS

VERSUS

SAMWEL MUGUNA HENRY.....1ST RESPONDENT

JOHN JEMBE MUMBA.....2ND RESPONDENT

REV. JOHN MARO3RD RESPONDENT

GEOFREY MUTHINJA.....4TH RESPONDENT

ROBERT BANDA NGOMBE.....5TH RESPONDENT

JUDGMENT

THE PARTIES

1. The 1st, 2nd, 3rd and 4th and 1750 others describing themselves as the East Africa Pentecostal Churches registered trustees and others gave their address as care of M/S A. G. Riungu & Company Advocates. The petitioners describes the respondents as Samuel Muguna Henry and 4 others and that at all material times to this petition both parties were and still are members and officials of the congregation of the EAST AFRICA PENTECOSTAL CHURCH.

BACKGROUND

2. The facts of the case are that at all the times relevant to this petition both parties were governed in all operations by the written church constitution namely “The Constitution of the East Africa Pentecostal Churches Registered.”
3. That the congregation of the petitioner churches comprises of over 1.5 million adherents with churches studding over the 47 counties of Kenya with its Headquarters in Meru Town.
4. That on or about 19th August, 2010 the petitioner church held an Annual General Meeting(AGM) and on its Agenda was, among others, Election of churches National Officials.

PETITION

5. That after the Elections there arose some misunderstanding which generated to a plethora of law suits contrary to the spirit and letter of **Article 21 of the Churches Constitution.** Some of the case in various courts by the interested groups are follows:-
 - a. *Nkubu PMCC 40/2014 Rev John Jembe V Humprey Kirimi*
 - b. *Meru HCC 248 of 2013 Samwel Muguna V Douglas Muriungi Ikunyua & Daniel Kirogi Muturi*
 - c. *Maua CMCC 26 of 2014 Rev. John M. Jembe V Rev. Peter Kithare Kabira & 5 others.*
 - d. *Meru HCMISC 1 of 2011 Douglas Muriungi Ikiugu & Another V Samwel Muguna & 10 others*
 - e. *Maua SPMC 245 of 2011 Rev. Joseph Karuti & 3 others V Rev. John Jembe & 4 others.*
 - f. *Tigania PMCC 144 of 2012 – Rev. John Kiruja & 7 others V John Jembe & 2 others*
 - g. *Meru CMCC 330 of 2012 Rev. Andriano Mbwiria V John Guantai Mbogori & 5 others*
 - h. *Meru CMCC 365 of 2012 Geoffrey Muthinja M’Ruthiri & another V Rev. Samwel Muguna & 8 others*
 - i. *Meru HCCC 30 of 2012 East Africa Pentecostal Churches thro Registered Trustees V Rev. Peter Kithare Kabira & 5 others*
 - j. *Tigania PMCC 110 of 2013 Rev. Jacob Kithinji V John Jembe & 2 others*
 - k. *Meru CMCC 350 of 2010 Douglas Muriungi Ikunyua & Another V Samwel Muguna & 2 Others*
 - l. *Maua PMCC 40 of 2010 Rev Joseph Karuti & 2 others V Rev. Samwel Muguna & Others.*
6. The petitioners avers that **Article 21 of the churches constitution** provides as follows:-

“ARTICLE 21

1. *No dispute concerning the affairs of the Society shall be referred to or instituted in a court of law by a member or members of the society but shall be dealt with by the following church organs, namely, the board of elders, the parish council, the District Executive committee and the National committee.*
2. *A dispute shall be originated in the lowest church organ competent to deal with it. The decision made on such dispute shall be appealable by the aggrieved person to the next order of the church organs*
3. *The decision of the National Committee on any dispute referred to it, whether in the first*

- instance or an appeal, shall be final.*
4. *Every church organ to which a dispute is referred shall keep a proper record of its proceedings and decision and the person who had made the complaint and any person affected by the reference shall be entitled to a copy of such proceedings and decision.*
 7. The petitioners in view of **Article 21 of the Churches Constitution** contended that the various civil suits instituted in various courts were instituted in contravention of **Article 21(a) which** provides:-
 1. *No dispute concerning the affairs of the society shall be referred to or instituted in a court of Law by a member or members of the society but shall be dealt with by the following church organs, namely; the board of elders, the parish council, the district executive committee and the National Committee.*
 8. The petitioners therefore contend the effects of such suits the members of the churches' congregation have been denied rights to services through their elected leaders by injunctive orders stopping meetings, election and all the churches' activities the end effect being infringement and violation of the members' Constitutional rights and fundamental freedom of worship as guaranteed by **Article 32 of the Constitution of Kenya.**
 9. The petitioners aver that the nature of injury caused or likely to be caused to them include the following:-

NATURE OF INJURY CAUSE OR LIKELY TO BE CAUSED TO THE PETITIONERS

- a. *The petitioners are not able to elect office bearers;*
 - b. *The petitioners are not able to employ new preachers and/or clergy;*
 - c. *The petitioners are not able to transfer their employees, or promote or demote their workers, preachers and their clergy;*
 - d. *The petitioners' development have come to a standstill;*
 - e. *The petitioners members' freedom of association has been interfered with;*
 - f. *Court orders barring members from holding meetings is tantamount to stopping the members from worship meetings which are cardinal to fundamental freedom of worship*
 - g. *Church ministers are unable to access marriage certificates from the registrar's office because of court injunctive orders.*
 - h. *Physical fighting has been experienced in some of the petitioners' churches caused by such wrangles as explained above.*
10. The petitioners are therefore seeking 5 reliefs on the face of the petition being as follows:-
- i. *A declaration that the above suits referred in paragraph 7 above were filed in violation of Article 21 of the churches constitution and are therefore null and void for all purposes.*
 - ii. *A declaration that the above suits referred in paragraph 7 above are an infringement of the petitioners right and fundamental freedoms of worship as enshrined in Article 32 of the Constitution of Kenya, 2010.*
 - iii. *An order to withdraw and transfer all the suits referred in paragraph 7 above pending before various subordinate courts and be consolidated with those mentioned suits pending before this court and all to be struck out on the grounds that they were filed in violation of Article 21 of the petitioners church constitution.*
 - iv. *A permanent injunction restraining any member, or members of leaders(s) or any person or person(s) acting on his behalf or on the behalf of the petitioners church shall refer a suit and/or dispute to any court of law in violation of the laid down machinery provided by the church constitution or any other written law permitting such a move.*
 - v. *Costs of this petition to be borne by the respondents in any event."*

THE RESPONDENTS RESPONSE

11. The 1st, 2nd, and 3rd respondents filed Notice of Appointment of Advocates through the firm of M/S Mbogo & Muriuki Advocates. The 2nd respondent had also notice of appointment by advocates filed on his behalf by L. Kimathi Kiara & Co. Advocates whereas M/S Mithega & Kariuki Advocates filed notice of appointment of Advocates for 4th and 5th respondents. M/s Makori Jackson, Senior Prosecution Counsel filed appearance as interested party on behalf of DPP. M/s Ndubi Ondubi & Associates Advocates filed notice of appointment for various interested parties. M/S. M. G. Kaume & Co. Advocates, M/s Murango Mwenda & Co. Advocates later filed Notice of appointment for 1st, 2nd and 3rd respondents.
12. The 5th respondent Robert Banda Ngome through a replying affidavit dated 21st July, 2014 on his behalf and 4th respondent contend that the various suits in courts seek to address 2 areas of concern namely the legitimacy of the National Office of the EAPC Church and the act of interference by the purported National Officials in various spheres of the church. That all disputes arise from the botched elections that were scheduled to take place on 19th August, 2010 to elect National Officials of EAPC church which elections could not take place after court orders were issued stopping the elections of 19th August, 2010. That 4th and 5th respondents complied with court's order but 1st, 2nd and 3rd respondents' defied court's order and vowed to proceed with the election in which they were purportedly elected as the National church officials of EAPC church. That the court later issued orders restraining the 1st, 2nd and 3rd respondents and other officials purportedly elected on 19/8/2010 from assuming office on account of violation of earlier orders stopping the elections and which orders were confirmed on 2/11/2010.
13. That in spite of the court's order of 2/11/2010 the 1st, 2nd and 3rd respondents continue to carry themselves as the National Officials of EAPC church and continues to interfere with the running of various parishes and church of EAPC. That it is according to 4th and 5th respondents the 1st, 2nd and 3rd respondents who have caused disharmony in church and leading to various suits being filed in court to seek protection against acts of interferences by 1st, 2nd and 3rd respondents. That each of the party to the suit has a right to a fair hearing and therefore ordering a stay of proceedings would be an impediment to party's right of access to justice and fair hearing.
14. The 5th respondents further contends that granting stay of the proceedings as sought in this petition would amount to condemning parties without hearing as parties who filed various suits subject of this petition have not been enjoined or made parties to the petition. The respondent further urged the petitioners have sought to stay criminal prosecution against private citizens for wrongs committed to private citizens which have no relationship whatsoever with the affairs of EAPC Church. The 4th and 5th respondents termed the petition as frivolous and not raising a Constitutional issue worth consideration.
15. The 5th and 4th respondents further contend whether or not the suits filed in various courts have violated Article 21 of the Constitution of EAPC church is not a Constitutional question to be addressed through a Constitutional petition but is an issue simply whether the courts will have jurisdiction to hear the matters in light of Article 21 of the EACPC Church Constitution. The respondents averred the issue had been raised before courts and disallowed. The respondents argue that parties before the various courts are seeking to protect their individual rights and interest and there are no ecclesiastical issues raised in the suits that would oust the court's jurisdiction urging further the petitioners have failed to demonstrate in what manner their rights under **Article 32 of the Constitution** have been violated as mere allegation that their rights has been violated cannot hold and further urged the petitioner's right under **Article 32 of the Constitution** is not absolute and must be weighed against the rights of others guaranteed under the same constitution.
16. The interested parties represented by M/S Ndubi Ondubi Associates associated themselves with replying affidavit by the 5th respondent.

17. The 1st respondent Samwel Muguna Henry through his replying affidavit dated 2nd October, 2014 contend that he is in full support of the petition citing Article 21 of the church Constitution which prohibits the filing of suits in courts if a dispute arises and gives the elaborate avenue to be followed to resolve any dispute. He urged all suits filed center around elections that elevated the 1st respondent to office in the year 2010. That the suits filed have not been finalized and all that is evident is grumbling, wrangling and infighting in the church. He urged the church has a laid down procedure for resolving disputes and prayed that the suits be struck out for failing to adhere to Article 21 of the Church constitution and by extension being an infringement of rights under Article 32 of the Constitution of Kenya.

THE PRE-TRIAL PROCESS

18. In a pre-trial conference the parties agreed to dispose of the hearing of the petition by way of written submissions and oral submissions.

PETITIONER'S CASE

19. The petitioners relied on the petition dated 30th May, 2014, written submissions dated 1st October, 2014 together with authorities annexed thereto and counsel's oral submissions.

THE RESPONDENTS CASE(1ST, 2ND AND 3RD)

20. The 1st, 2nd and 3rd respondents relied on their replying affidavit and mainly on written submissions dated 5th November, 2014 by M/S Murango Mwenda & Co. Advocates as well as oral submissions made before court.

THE 4TH AND 5TH RESPONDENT'S CASE

21. The 4th and 5th respondents relied on their replying affidavit, written submissions and oral submissions.

INTERESTED PARTIES.

22. The interested parties relied on their replying affidavits and their respective counsel oral submissions.

PETITIONERS' SUBMISSIONS

23. The petitioners' counsel Mr. A. G. Riungu, learned Advocate relied on his written submissions dated 1st October, 2014 together with annexures thereto. He also associated himself with submissions of the 1st, 2nd and 3rd respondents dated 5/11/2014. He urged all parties are members of petitioner's church and all are bound by the churches' constitution.

24. In support of the above proposition Mr. Riungu, learned advocate referred to the case of **HINGA & ANOTHER V PCEA thro' Rev. Dr. NJOYA & ANOTHER(1986) KLR 317:-** where it was held"-

"The PCEA is a church set up and formed by its own constitution. They make rules for their own governance. To my mind the church is the appropriate body to determine disputes such as this. I do not think it a matter for ordinary court of law"

25. The Counsel further urged all the suits listed in paragraph 7 of the petitioner's petition do not relate to justiciable dispute nor do the issue between the parties concern any right of property or any right of contract or legality but is purely the issue of disputed elections of church officials;

which the learned counsel submitted concerns a domestic matter which is not justiciable by the courts.

26. The counsel further submitted all cases filed as referred in paragraph 7 of the petitioner were filed in violation of Article 21 of the petitioner's constitution and therefore null and void for all purposes and intentions. That the suits constitutes a violation of infringement of the petitioners' right and fundamental freedom of worship as provided for under Article 32 of the Constitution of Kenya, 2010.

27. The counsel further urged the court to invoke the provisions **of Article 165 (3), (6) and (7) of the Constitution of Kenya, 2010** to save the church from collapsing on the weight of the legal proceedings. The counsel more specifically quoted **Article 165(6) and (7) of the Constitution of Kenya, 2010** which provides:

(6) The High Court has supervisory jurisdiction over the Subordinate courts and over any person, body or authority exercising a Judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

28. The counsel referred this court to **Article 22(1) of the Constitution of Kenya, 2010** which provides:-

“22. (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.”

He urged that **Article 22(1) of the Constitution of Kenya, 2010** is about expression for enforcement of Bill of Rights and needs no further explanation whatsoever.

29. Mr. A. G. Riungu urged that the petitioners claim is that their right of worship as provided by **Article 32 of the Constitution of Kenya, 2010** has been violated, infringed and/or eroded by the respondents through the arbitrary law suits filed by the respondents bypassing their churches constitution particularly Article 21 which provides for churches disputes resolution mechanism. **Article 32 of the Constitution of Kenya, 2010** provides:-

“32. (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Every person has the right, either individually or 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.

(3) A person may not be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion.

(4) A person shall not be compelled to act, or engage in any act, that is contrary to the person's belief or religion”.

Mr. Riungu further submitted under Articles 5,6,21 of the churches constitution and schedule 1,5 of the churches constitutions there is a complete set of the dispute resolution mechanism of the petitioners church and in such a situation any aggrieved party ought to follow the laid down dispute resolution mechanism. He prayed the petition be allowed as prayed.

1ST, 2ND AND 3RD RESPONDENTS SUBMISSIONS

30. Mr. Murango Mwenda, learned Advocate filed submissions on behalf of 1st, 2nd and 3rd respondents dated 5th November, 2014. Mr. K. Muriuki, learned advocate for same respondents fully associated himself with the said submissions. Mr. Murango Mwenda, learned Advocate submitted that the 1st, 2nd and 3rd respondents are in support of the petition in so far as it concerns HCCC 30 of 2013 setting out 3 fundamental questions raised in the petition that is; whether the issues to be addressed or sought to be addressed in all cases cited are common, whether the proliferation of court case since the elections of the church held on 19/8/2010 has infringed the petitioners rights to worship, or likely to infringe the rights and lastly whether the filing, the pendency and the manner in which the cases have been handled can be termed as an abuse of the court process, and whether this abuse of the court process has resulted or likely to result in hindering the petitioners right of worship and assembly.
31. Mr. Murango Mwenda's argument is that on perusal of all pending pleadings in this case cited under paragraph 7 of the petition except HCCC 30 of 2013 particularly the complaints, all relate to and have a specific reference to the church elections held on 19/8/2010. All reliefs sought he submitted have a bearing to the disputed elections of 19/8/2010. He submitted upon resolving of the issue of the validity or otherwise of the elections all cases come to an end. He submitted such cases were either filed by the losers of the elections or their supporters and sympathizers except for HCCC 30 of 2013.
32. On the second issue Mr. Murango Mwenda, learned Counsel submitted that there is no doubt that the cases involving the church and some of its members has proliferated. That there are prithora of cases scattered over courts in Meru County. The cases have sucked the whole membership of EAPC. The court file he submitted would indicate exparte orders have been issued in favour of the plaintiffs by various courts, many of which have lapsed and others vacated by courts. That none of the cases have been concluded since filing going beyond 4 years. He therefore urged, the nature, extent and effect of most of the orders given renders it impossible for the petitioners to freely exercise their right to worship and assembly. He urged that in view of the foregoing the petitioner's constitutional rights have been infringed by the existence of these cases before the Court of law. On the issue of obeying of the court's order Mr. M. Mwenda learned Advocate urged that the right forum for 4th and 5th respondents is not before this court but the court which issued such orders.
33. Mr. M. Mwenda further submitted that filing of so many cases in different courts seeking similar reliefs, based on the same cause of action is an abuse of the court process, which he submitted has resulted in the curtailing the petitioners right of worship. He urged the whole church is polarized as there are many interruptions of church services, church activities including the mandatory Annual General Meetings.
34. The 1st, 2nd and 3rd respondents counsel further submitted that all suits were filed in contravention of Article 21 of the Churches' constitution that specifically bars any members of the society from filing in courts of law, a dispute concerning officers of the church. He urged all the cases cited in the petition concerns affairs of the church without exception. He urged it matters not what a subordinate court in one of the cases found it had jurisdiction, if it is clear that was done in error of the law. He referred to **Article 165(7) of the Constitution of Kenya, 2010** which clearly mandates the High Court to make any order or give any directions it considers as appropriate to ensure fair administration of justice. On HCCC 30 of 2013 he urged the suit is of different class and its cause of action is totally different and has no bearing with the elections of 19/8/2010. He was of the view the suit as it involves 6 former members of EAPC who have registered another church and are officials but have continued to pretend to serve as members of the EAPC, notwithstanding they have ceased to be members of EAPC and there for the dispute is not within provisions of Article 21 of the church constitution. Thus HCCC 30 of 2013 should be exempted from the axe.

THE 4TH AND 5TH RESPONDENTS SUBMISSIONS.

35. Mr. M. Kariuki, learned advocate for the 4th and 5th respondents filed submissions dated 29th October, 2014. He listed the issues for consideration as follows:-
- i. *Whether Article 21 of the EAPC constitution ousts the jurisdiction of the courts to entertain disputes between members of the church?*
 - ii. *Whether the plaintiffs in the various suits before the court have legally legitimate claims worth protection of the law?*
 - iii. *Whether the petitioner raises any legitimate constitutional questions to be addressed by this court?*
36. On first issue Mr. M. Kariuki, learned advocate submits that Article 21 of EAPC constitution does not oust the court's jurisdiction. He urged at the time of the election of 19/8/2010, there was a court's order barring the election nevertheless the 1st, 2nd and 3rd respondents were purportedly elected and further continues to be in office notwithstanding a court's order barring them. He urged it is the unlawful activities of the 1st, 2nd and 3rd respondents which has resulted to filing of multiplicity of cases in courts due to their unlawful acts. The suits he submitted briefly challenge legitimacy of the elections of 19/8/2010. The plaintiff's he urged have cited procedural irregularities as well as malpractices which divest the said election. The crucial elements of freeness and fairness. He further urged Article 21 of the EAPC Constitution does not cater for disputes arising from disputed elections. He urged that the issue was dealt with by lower court while dealing with Meru CMCC No. 250 of 2010. He urged the court ruled it had jurisdiction and no appeal was preferred against the decision of the trial Magistrate.
37. Mr. M. Kariuki, learned advocate further submitted the churches have orders restraining 1st, 2nd and 3rd respondents from interfering with the churches. He urged further the violation of the court's order is not an issue that can be addressed within the ambit of Article 21 of EAPC constitution. In regard of the above proposition the counsel relied on the case of **GATHIMA V AFRICAN ORTHODOX CHURCH OF KENYA(1982) KLR 358** in which case it was held in a case with mixed spiritual and temporal characters where matters affecting legal rights are in issue, the court can properly determine those issues.
38. Mr. M. Kariuki urged that legal rights of the plaintiffs in the various suit have been trampled upon and only the courts can adjudicate on the plaintiff's claims. He further relied on the case of **PETER MUIRURI KABIRU & 2 OTHERS V PAUL WANDATI KABUE CIVIL CASE NO. 319 OF 2009(MILIMANI)** in which court held it had jurisdiction in a matter involving member of a church.
39. Mr. Kariuki on issue of whether in the various suits the plaintiffs have legally legitimate claims with protection of the law urged that the plaintiffs have legally justiciable claim before the courts. He urged justice can only be seen to be done if the plaintiffs are left to ventilate their claims and a determination thereof be done by courts on merits.
40. On the other issue submitted upon by Mr. M. Kariuki is whether the petition raises any legitimate constitutional question worthy consideration by the court. He urged that there is none as the petition does not cite with particularity any breach of the provisions of the Constitution of Kenya, 2010. He submitted Article 21 of the church cited is not a constitutional question but an issue which has already been addressed by the lower court.
41. Mr. M. Kariuki, learned advocate in support of that proposition referred to **Anarita Karimi Njeru V AG(NO1) (1979) KLR 154** where the court held that a petitioner who seeks to enforce the bill of rights must set out with some level of particularity the specific right and how it is violated. He further urged that EAPC is not a party in this petition and is fully operational and disputes are only between some members of this church and the church as an entity is not involved. He urged no member of the church is denied the right to worship and the petitioners would wish that the status

quo be maintained until the next annual general meeting. He urged the petition is an abuse of the court process and does not meet the basic character of a constitutional reference. He urged further even if there was a breach of the petitioners right of worship, it is worth noting that this right is not absolute under the Constitution. He referred in support of that proposition to the case of **NYAKAMBA GAKARA V THE ATTORNEY GENERAL & BOG KENYA HIGH SCHOOL & OTHERS CONSTITUTIONAL AND HUMAN RIGHTS DIVISON PETITION NO. 82 OF 2012** where the court held that Article 32 of the Constitution must be read together with Article 24 of the same Constitution. Article 24 qualifies the rights under Article 32 of the Constitution. Mr. M. Kariuki urged whereas the petitioners may have a right of worship, the plaintiff in various instituted suits have a right of access to justice under **Article 48 and a right to a fair hearing under Article 50 of the Constitution of Kenya, 2010**. He urged it would be wrong by dint of Article 24(1),(2),of the Constitution to allow the petitioners to enjoy their right while impeding the rights of the plaintiffs that are equally guaranteed under the same constitution. He urged that the striking of suits will be an impediment to the plaintiff's right under Article 48 and 50 of the constitution of Kenya, 2010.

ISSUES FOR DETERMINATION

42. Having considered each parties pleadings, submissions and their suggested issues for determination, I am of the view that the issues for consideration can be narrowed down as follows:-

- i. *Whether the petition is fatally defective?*
- ii. *Whether Article 21 of East Africa Pentecostal Church(EAPC) Constitution ousts the jurisdiction of the courts to entertain disputes between members of the church?*
- iii. *Whether the petitioner has a laid down mechanism of dispute resolution and whether the plaintiffs in various suits set out in paragraph 7 of the petition pursued their disputes through the said mechanism before filing their respective suits?*
- iv. *Whether the plaintiffs in various suits before the court have legally legitimate claims worth protection by law?*

WHETHER THE PETITION IS FATALLY DEFECTIVE

43. The 4th and 5th respondent's case is that this petition is defective for failure to cite with particularity any breach of the provisions of the constitution. That the breach cited is with regard to Article 21 of the Church constitution which is not a constitutional question. The petitioner and 1st, 2nd and 3rd respondents urged that the petitioner's constitutional rights have been infringed by existence of various cases before courts of law. They urged further that filing so many cases in different courts seeking similar reliefs, based on same cause of action is an abuse of court process which resulted in the curtailment of petitioner's right of worship.

44. A quick perusal of the petition dated 30th May, 2014 reveal that the Article of the Constitution of Kenya, 2010 under which the petition is brought are pursuant to Article 22(1), and Article 165(3), (b), (6) and (7). The said articles are stated at the tile of the petition. The only Articles stated in the body of the petition are Article of the church constitution save Article 32 of the Constitution of Kenya in which the petitioners aver that the effects of such suits the members of the churches' congregation have been denied right to services through their elected leaders by injunctive orders stopping meetings, elections, and all the churches' activities to the effect being infringement and violation of the members' constitutional rights and fundamental freedom of worship as guaranteed by Article 32 of the Constitution of Kenya, 2010.

45. Article 22 of the constitution of Kenya provides for enforcement of Bill of rights. It requires strict interpretation of the Article. Article 22(3) of the Constitution provides that the Chief Justice shall make rules providing for the court proceedings referred to in that Article, which shall satisfy the criteria, set out thereunder. That pursuant to the aforesaid provisions the Honourable the Chief Justice gazetted the constitution of Kenya(Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 vide legal notice No.17 of 2012 on 28th June, 2013.

46. Rule 4(1) of the said Rules provides that where any rights or fundamental freedom provided for in the constitution is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected may make an application to the High Court in accordance to the rules.

47. Rule 10(2) of the said Rules further states that a petition shall contain the following:-

- a. ***The petitioner's name and address***
- b. ***The facts relied upon***
- c. ***The constitutional provision violated***
- d. ***The nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit, or a public interest case to the public, class or community.***
- e.
- f. ***The relief sought by the petitioner.***
- g.

48. Once again the requirements in a recent **ANARITAS CASE V AMOS KIUMO & 19 OTHERS V THE CABINET SECRETARY MINISTRY OF INTERIM AND CORDIANCTION OF NATIONAL GOVERNMENT PETITION NO. 16 OF 2013**(Meru) Hon. Lesiit, Makau and Bwononga JJ quoted with approval from **ANARITA KARIMI NJERU V AG(No.1) 1979 klr 154** where it was held:-.

“ we would however again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the constitution, it is important(if only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed”

49. The three Judge bench in the above-mentioned case referred to the case of **MUMO MATEMU V TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE & 5 OTHERS(2013)**eKlr in which case the Court of Appeal held:-

It was the High Court's observation that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting.” Yet the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective principle under section 1A and 1B of the Civil Procedure Act (Cap 21) and section 3A and 3B of the Appellate Jurisdiction Act (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

50. I have carefully looked at the petition before me. The petitioner at paragraph 10 of the petition aver that the members of the churches' congregation have been denied rights to services through their elected leaders by injunction orders, stopping members elections and all churches' activities the end effect being infringement and violation of members' constitutional and fundamental freedom of worship as guaranteed by Article 32 of the Constitution. The suits in question are well set out under paragraph 7 of the petition.

51. I therefore do not agree with the counsel for the 4th and 5th respondent that the petition does not cite with particularity the breach of the provision of the constitution of Kenya, 2010. The petitioners have cited Article 32 of the constitution of Kenya which they allege has been breached and some level of particularity have been set out and the specific right allegedly infringed or violated. The manner in which the petitioner's right of worship has specifically been violated or breached has also been demonstrated with particularity and or in what manner.
52. The assertion by 4th and 5th respondent that church is not a party in any of the suits before court do not in anyway affect the petition as any party under **Article 22(1),2(a),(b),(c) and (d) of the Constitution of Kenya, 2010** has right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened on his behalf or on behalf of other persons who cannot act in their name or a person acting as a member of or in the interest of, a group or class of persons or a person acting in public interest or an association acting in the interest of one or more of its members. I therefore find in matters dealing with enforcement of Bill of Rights a petitioner need not be affected or be a party to file a petition to have a decision or an order made.
53. I therefore do find that the petition is in accordance with the requirements of Rule 10 (2) of Article 22(3) Constitution of Kenya (Protection of Rights and Fundamental Freedoms) practice and procedure rules 2013 and is not as submitted by 4th and 5th respondents on abuse of the court process.
54. That whereas I am in agreement with 4th and 5th respondents counsel that even if there was a breach of the petitioners right of worship, that such right is not an absolute as Article 24 of the Constitution creates limitations to enjoyment of rights and one of those limitations is that the enjoyment thereof by an individual should not prejudice the rights and fundamental freedoms of others, that does not in itself mean that the present petition is an abuse of the court process. I want to point out that each case must case must be considered on its facts.
55. In view of the foregoing I am satisfied that the petition before this court is not defective and is properly before this court.

WHETHER ARTICLE 51 OF EAST AFRICA PENTECOSTAL CHURCH(EAPC) CONSTITUTION OUTS THE JURISDICTION OF COURTS TO ENTERTAIN DISPUTES BETWEEN MEMBERS OF THE CHURCH?

56. The petitioners jointly with the 1st, 2nd and 3rd respondents' position is that Article 21 of the EAPC Constitution outs the jurisdiction of courts to entertain disputes between members of the church. Their position is that the reliefs sought in all cases save HCC 30 of 2013 have a bearing to the disputed elections of 19/8/2010 and as such all the cases are common and the issue is on the validity or otherwise of the election held on 19/8/2010. That there is no dispute that all cases involve the church and some of its members. That the cases have sucked the whole membership of the EAPC and that for the last 4 years none of the matters have been concluded.
57. The petitioners and 1st, 2nd and 3rd respondents urge that all suits were filed in contravention of Article 21 of the church's constitution that specifically bars any member of the society from filing in court of law, a dispute concerning officers of the church. The petitioners and 1st, 2nd and 3rd respondent urge all the disputes in all cases save HCCC 30 of 2013 concern the officers of the church without exception.
58. The petitioners urge that EAPC Constitution has a complete set of the dispute resolution mechanism of the disputes of the church and that the best resolution of this dispute culminating to the plethora of law suits by and against the members and management of the petitioner will better be settled if prayers sought are granted in terms of Article 21 of EAPC Constitution.

59. The 4th and 5th respondent's position is that Article 21 of EAPC Constitution do not oust the jurisdiction of the court urging a look at various claims before various courts reveal that the plaintiffs have raised legitimate legal issues worth a determination by the court. The claims range from challenging the legitimacy of the elections held on 19/8/2010 in which the plaintiffs have cited procedural irregularities as well as malpractices. The election is alleged not to have been free and fair.
60. The 4th and 5th respondents contend that Article 21 of the EAPC Constitution does not cater for disputes arising from disputed elections. The counsel submitted that the issue was dealt with by the lower court and held that court had jurisdiction to deal with the matter and no appeal was preferred urging that the petitioner cannot revisit that issue through this petition.
61. Having perused various pleadings in respect of matters mentioned in paragraph 7 of the petition I am satisfied the suits arose out of an election held on 19/8/2010 when there was an order of this court barring the conduct of the election. That subsequent order was issued barring the allegedly elected officials from assuming office but the same was ignored by the purportedly elected officials of the church leading it to their continuing to conduct activities of the church in blatantly disregard of the court orders.
62. The issues raised in the various suits though spiritual cannot in anyway be said to be purely of spiritual nature only. There may be in some instances a mixture of spiritual and temporal matters. I find that where matters affecting legal rights are in issue or matters are affecting Bill of Rights as is the case herein, the courts cannot shut their eyes on such matters and declare as there is one element of spiritual character the court has no jurisdiction. In doing so court shall subject the aggrieved party to an injustice system especially where the petitioner is the judge, jury and prosecutor.
63. The petitioners in the petition did not refer to a particular dispute resolution mechanism in regard to dispute relating to an election but I believe the church affairs include election of church officials as well. Election are strongly contested issues even in churches and if the church it to be fair and be seen to be fair to all parties it must have elaborate mechanism of resolving election disputes wherever they arise barring of filing of dispute concerning the officers of the society in a court of law by a member or members of society but instead follow the church organizational system do not oust the jurisdiction of court in matters concerning breach whether a right or fundamental freedom in the Bill of Rights has been denied, violated, or infringed or threatened.
64. I am entirely in agreement with the submissions by Mr. M. Kariuki for the 4th and 5th respondents that justice can only be seen to be done if the parties are left to ventilate their claims and a determination be made by courts on merits but subject to society's constitution.
65. I hold the position that matters raised in various courts by various parties are matters of mixed spiritual and temporal characters whereas in others there is no spiritual character. I further find that since the election on 19th August, 2010 a period of 4 years down the line the church organization has been unable to offer any resolution to its member's grievances, the members had no alternative but to seek redress outside the church organization. The only place the members could think of and hope to have a fair determination of the claims to get a fair determination of the claims is at the court of law as the petitioner failed to initiate the dispute resolution mechanism as per its constitution.
66. I am satisfied that as the matters in various cases before various courts are not concerned with ecclesiastical law only as there are no ecclesiastical courts as such the various respondents were perfectly in order to seek redress in courts of law.
67. In view of the foregoing I find and hold that Article 21 of EAPC Constitution cannot oust the jurisdiction of the courts to entertain disputes between members of the church.

WHETHER THE PETITIONER(EAPC) HAS A LAID DOWN MECHANISM OF DISPUTE RESOLUTION AND WHETHER THE PLAINTIFFS IN VARIOUS SUITS SET OUT IN PARAGRAPH 7 OF THE PETITION SHOULD PURSUE THEIR DISPUTES THROUGH THAT SAID MECHANISM BEFORE FILING THEIR RESPECTIVE SUITS

68. The petitioners contend that they have a well-established and complete set of the dispute resolution mechanism of the petitioner's society or church. Article 21 of EAPC constitution clearly states that no dispute concerning the officers of the society shall be referred to or instituted in court of law by a member or members of society but shall be dealt with by the church organs being the Board of Elders, the Parish Council, the District Executive Committee and National Committee. The Article sets out how a dispute shall be commenced through the church ranks and provides for an appeal by any aggrieved person to the next order of the church organs. It provides that the decision of the National Committee on any dispute referred to it, to be final. It provides for keeping of a proper record of proceedings and decision and provision of the proceedings to complaints and person affected by the referee.
69. In the instant petition there is no dispute from any of the respondents that the petitioner's constitution provides for a dispute resolution mechanism in respect of a dispute involving its members and the petitioners or amongst the members under Article 21 of EAPC Constitution.
70. The plaintiffs' claims in various suits is mainly a complaint against the manner in which the election of 19/8/2010 was conducted alleging the same was conducted unprocedurally and was not free and fair as there were malpractices.
71. There must have been and there must be a procedure that the petitioner's church follows in conducting fair and free election and the failure to do so lead to various suits. In view of the petitioner's constitution, it is most appropriate that the established mechanism be followed in resolving the dispute arising out of the election. The established petitioner's constitution should be given room to work as contemplated.
72. It is trite law where a statute establishes a dispute resolution procedure, then the procedure must be strictly followed in resolving the dispute.
73. In the case of **SPEAKER OF THE NATIONAL ASSEMBLY V KARUME(1992) and in the case of FRANCIS GITARU PERSIMERI ALLIANCE PARTY & 4 OTHERS(2012)** Eklr it was stated:-
- “ where a dispute resolution mechanism is provided for in a statute, and where there is a clear procedure for the redress of any particular grievance by the constitution or statute that provision ought to be strictly followed”***
74. In the instant petition the plaintiff's cases concern the church election process, which the plaintiffs' challenge on various grounds, the principle 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 confirm a license to 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.
75. That though the court has jurisdiction to deal with plaintiff's complaints it is premature as they did not strictly follow the church constitution providing for dispute resolution mechanism. The plaintiffs having failed to pursue their grievance as provided in the church constitution they should be allowed to proceed with their dispute resolution mechanism as members of church before pursuing claim before a court of law. I find the plaintiff's acted in violation of the laid down procedure in dispute resolution procedure by the constitution of the petitioner's church and as such I am satisfied all civil suits filed concerning the petitioner church affairs to be improperly

before courts.

WHETHER THE PLAINTIFFS IN VARIOUS SUITS BEFORE THE COURT HAVE LEGALLY CLAIMS WORTH PROTECTING BY LAW.

76. I have to start by pointing out that in determining this issue the court is not considering the merits of the plaintiffs claim or whether their claims are likely to succeed but whether the same raises triable issues. The court's consideration is not whether the issues raised will succeed or not is a basis for finding that issues raised are justiciable.
77. In order for an issue to be justiciable it must constitute a cause of action in law and it must be an issue concerning a right to property, contract or any other legal right. It must not be a domestic matter that can be dealt with the law and regulations concerning a particular body or organization.
78. The issue complained of in various suits instituted by the petitioner's members concern legitimacy of the election held on 19/8/2010 in accordance with the petitioner's church constitution. They challenge procedural irregularities as well as malpractices which divest the said election the crucial elements of freeness and fairness. The issues raised in various suits excluding HCC 30 of 2013 and a criminal case NO. 1012 of 2014 pending before court are matters which do fall within the domestic matters that can be dealt with by regulations of the petitioner's organization. The EAPC constitution has made sufficient provisions for dealing with complaints such as the ones raised by plaintiffs.
79. In view of the foregoing, I find the issues in various suits before various courts to be not justiciable.
80. Having come to the conclusion on all issues raised in this petition, I find as follows:-
- i. ***That the petition as filed did meet the threshold in Anarita's case and was therefore proper in form.***
 - ii. ***That Article 21 of the East Africa Pentecostal Church(EAPC) constitution do not oust the jurisdiction of the courts to entertain disputes between members of the church after the laid down dispute procedure has been followed strictly and more in case of a dispute thereafter.***
 - iii. ***That the plaintiffs' suits in various courts have some issues pending before such courts which are not justiciable but Article 21 of the petitioner's constitution must be applied first in dispute resolution mechanism before a party can invoke the jurisdiction of courts of law. on issues related to breach of rules of natural justice being violated.***
 - iv. ***The plaintiff's suits in various courts are not justiciable as EAPC constitution has made sufficient provisions for dealing with plaintiff's complaints.***
81. I therefore order as follows:-
- i. ***That the suits mentioned in paragraph 7 of the petition with an exception of HCCC 30 of 2013 and Meru Criminal case No. 1012 of 2014 were filed in violation of Article 21 of the churches constitution and are therefore null and void for all purposes.***
 - ii. ***That the suits referred to in paragraph 7 of the petition save HCCC 30 of 2013 and Meru criminal case No.1012/2014 are an infringement of the petitioner's right and fundamental freedoms of worship as enshrined in Article 32 of the Constitution of Kenya, 2010.***
 - iii. ***That I order withdrawal and transfer of all suits referred to in paragraph 7 of the petition pending before various subordinate courts and are consolidated with those pending suits before this court and all are struck out on the grounds that they were filed in violation of Article 21 of the petitioners' church constitution.***
 - iv. ***A permanent injunction restraining every member, or members or leaders or any person or persons acting on behalf of the petitioners church to prefer a suit and/or any dispute to any court of law in violation of the laid down machinery provided by the church constitution or any other written law permitting such a move is hereby refused.***
 - v. ***The plaintiffs and/or any person or member or members of the petitioners church who***

were aggrieved by the election of 19/8/2010 or in any way as per various suits already struck out are at liberty within 30 days from today to refer their dispute or disputes to appropriate petitioners church body and if the dispute referred for determination is not registered for a determination as per petitioners constitution the aggrieved party shall be at liberty to file appropriate suit at the High Court or appropriate court for redress.

vi. That as this is a constitutional reference involving members of the same church and which attracts a lot of public interest each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 26TH FEBRUARY, 2015.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN THE PRESENCE OF

- 1. Mr. Riungu for the petitioner**
- 2. Mr. Murango Mwenda jointly with Mr. K. Muriuki for 1st, and 2nd and 3rd respondents**
- 3. Mr. M. Kariuki for the 4th respondent**
- 4. C/clerk Penina/Mwenda**

J. A. MAKAU

JUDGE