



**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**JUDICIAL REVIEW DIVISION**

**MISC. APPL. NO. 77 OF 2013**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**REGISTRAR OF COMPANIES ..... 1<sup>ST</sup> RESPONDENT**

**REGISTRAR OF SOCIETIES ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**REDEEMED GOSPEL**

**CHURCH INC ..... 1<sup>ST</sup> INTERESTED PARTY**

**BISHOP ARTHUR KITONGA ..... 2<sup>ND</sup> INTERESTED PARTY**

**EXPARTE**

**BISHOP DR. MORRIS MWARANDU**

**JUDGMENT**

**The Application**

1. The *ex-parte* applicant (“the applicant”) has filed the Notice of Motion dated 11<sup>th</sup> April 2013 seeking the following orders;
  - a. *An order of certiorari do issue to remove into this court to quash the decision of the 1<sup>st</sup> Respondents to register the 1<sup>st</sup> interested party under the provisions of the Companies Act Cap 486 at the instance of the 2<sup>nd</sup> Interested Party.*
  - b. *The honourable Court be pleased to issue an order compelling the 1<sup>st</sup> respondent to cancel the*

- Certificate of incorporation of the Redeemed Gospel Church Inc. issued in the name of the 1<sup>st</sup> interested party.*
- c. *An order do issue compelling the Respondents to make available the Constitution and particulars of Incorporation of the 1<sup>st</sup> interested party for public scrutiny.*
  - d. *Costs of this application.*
2. The application is supported by the applicant's own affidavit sworn on 22<sup>nd</sup> February 2013. The application is opposed by the respondents and the interested parties. The respondents rely on the affidavit sworn on 20<sup>th</sup> February 2013 by Joseph Onyango, a Deputy Registrar General and Senior Principal State Counsel. The interested parties rely on the affidavit sworn on 19<sup>th</sup> February 2014 by Dr Kepha Ombae who is the Overseer or Presiding Bishop of the 1<sup>st</sup> interested party ("the Church").

### **Background**

3. Before I consider whether the applicant is entitled to the relief sought in the motion, it is important to understand the background of the relationship between the parties and the history of the Church.
4. It is not disputed that the Church was first registered by the Registrar of Societies ("the Registrar") on 19<sup>th</sup> November 1975 as the Redeemed Evangelistic Association. It thereafter changed its name to Redeemed Evangelistic Inc. (Incorporated) on 26<sup>th</sup> January 1977. On 21<sup>st</sup> February 1978, the Church adopted the name Redeemed Evangelistic Church Inc. On 11<sup>th</sup> March 1980, it adopted its current name Redeemed Gospel Church Inc. All the changes were approved by the Registrar who issued certificates certifying the change of name in accordance with the ***Societies Act (Chapter 108 of the Laws of Kenya)***.
5. The 2<sup>nd</sup> interested party is one of the founders of the Church. The applicant was a member of the Church and later became an ordained minister. By a letter dated 8<sup>th</sup> February 2013 he was expelled from the Church. The facts, circumstances and consequences thereof are subject of other pending cases; ***Nairobi High Court ELC No. 255 of 2013*** and ***Nairobi HC Petition No. 107 of 2013***. In light of these cases, I shall therefore exercise circumspection in commenting on the contested matters unless they are absolutely necessary for determination of the case.

### **Applicant's Case**

6. The gravamen of the applicant's case is set out in the statutory statement as follows;

*[4] THAT unknown to the Applicant, some individuals now directors of Redeemed Gospel Church Inc., without permission or knowledge of the Applicant and members of the Redeemed Gospel Church proceeded to incorporate the Redeemed Gospel Church Inc and unlawfully appointed themselves as directors of the said Redeemed Gospel Church contrary to the provisions of Societies Act which the Church was initially established.*

*[5] THAT neither was the consent of the registrar of societies obtained nor the members of the Redeemed Gospel church obtained to enable the interested parties change the constitution or by-laws of the Redeemed Gospel Church into Redeemed Gospel Church Inc.*

7. The applicant case as urged by Dr Khaminwa is that the registration of the Church as Redeemed Gospel Church Inc. was unlawful because the Registrar could not register a company as a society. He submitted that only limited liability companies are incorporated under the ***Companies Act (Chapter 486 of the Laws of Kenya)*** and as such the use of the word "Inc" which means incorporated was misleading and inconsistent with the objects of a society registered under the

**Societies Act.** Counsel argued that the use of the word “Inc” connotes that the Church is a profit making concern unmoored from its spiritual foundations and therefore intended to deceive.

8. In his oral submission Dr Khaminwa submitted that registered societies differ from incorporated bodies and the fact of incorporation is inconsistent with the Church’s statement of faith. He urged the court to allow the Motion on this basis.

### **Respondents’ Case**

9. The respondent resisted the application on the basis that Church was lawfully registered society under the **Societies Act** and that it was not a limited liability company incorporated under the **Companies Act**. Counsel for the respondents, Ms Lutta, argued that the Court could not grant the orders sought for several reasons. Firstly, the applicant seeks to quash the Church’s registration as a company while it was not so registered. In the circumstances the order of certiorari could not issue as the Court could not quash something that did not exist. Secondly, the respondents’ position is that the Church is registered under the **Societies Act** and has been so registered under that name since 1980 and therefore the orders sought cannot be issued.

### **Interested parties Case**

10. The interested parties support the respondents’ arguments. Mr Adere assisted by Ms Barasa submit that there is no case against the 2<sup>nd</sup> interested party on the grounds that no allegation have been made against him of the nature that would be amenable to orders of judicial review. Counsel urged that the 2<sup>nd</sup> interested party did not effect the decision to register the Church or the company as alleged hence the order of certiorari could not be issued against him. Further that an order of mandamus could not be issued against him as he had not failed to perform a public duty which he was required to do.
11. The interested parties contend that the applicant having been a member of the Church and having held an office in the Church could not turn around and accuse the Church was not lawfully registered. They also submit that the orders sought should be denied as the applicant had failed to make full disclosure of material facts namely that at the time he filed the application, he was no longer a member of the Church hence he had no locus to agitate the application. They also accuse the applicant of failing to disclose that his membership of a parallel society, the Redeemed International Society.

### **Determination**

12. As the prayers (a) and (b) show, the motion is grounded on the incorporation of the Church as Company hence the orders are directed at the Registrar of Companies. The applicant seeks to quash the registration of the Church as Company. All the parties cited the case of **Kenya National Examination Council v Republic ex-parte Geoffrey Gathenji Njoroge and Others CA Civil Appeal No. 266 of 1996 [2011]eKLR** where the Court of Appeal dealt with the scope of orders of judicial review. As regards the order of certiorari the Court of Appeal stated that, *“Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reason.”*
13. The prayer seeking to quash the decision to register the Church as a Company cannot lie in the circumstances of the facts I have outlined above. The applicant has not shown that the applicant was incorporated under the **Companies Act**. The mere fact of the use of the word “Inc” does not mean that the company is so incorporated. The applicant did not provide a certificate of incorporation issued under **section 16** of the **Companies Act** to prove that the Church is in fact incorporated as a company.
14. The word “Inc” is merely part of the name of the Church. The Registrar affirmatively proved that

the Church was and is still registered as a society under the **Societies Act**. The applicant has not demonstrated that the Society is a Company and no grounds have been established to attract the orders of certiorari sought. As the Church is not incorporated as a company under the **Companies Act**, prayers (a) and (b) of the Motion cannot be granted.

15. Prayer (c) of the motion seeks an order compelling the respondents to make available the Constitution and particulars of incorporation of the Church for public scrutiny. I agree with counsel for the respondents that under **section 48** of the **Societies Act** the registration and constitutive documents of the Church are available from the Registrar upon application and payment of a fee. I also hold that the applicant is at liberty to conduct a search at the Companies registry to confirm whether the Church is incorporated as a company. I find and hold that the applicant has not demonstrated that he applied for perusal of the Church constitutive documents, paid the requisite fee and the application was rejected. In the circumstances, an order in the nature of mandamus cannot be granted.

### **Disposition**

16. I find and hold that the Church is registered under the **Societies Act** as Redeemed Gospel Church Inc. It is not incorporated under the **Companies Act**.

17. The Notice of Motion dated 11<sup>th</sup> April 2013 is therefore dismissed with costs to the respondents and the interested parties.

**DATED and DELIVERED at NAIROBI this 16<sup>th</sup> day of April 2014.**

**D.S. MAJANJA**

### **JUDGE**

Dr Khaminwa with him Ms Mengo instructed by Khaminwa and Khaminwa Advocates for the ex-parte applicant.

Ms Lutta, State Counsel, instructed by the State Law Office, for the respondents.

Mr Adere with him Ms Barasa instructed by Violet Barasa and Company Advocates for the interested party.