



**REPUBLIC OF KENYA**

**High Court at Kisumu**

**Civil Application 99 of 2013**

**REV. ISAAC MURWON.....APPLICANT  
VERSUS**

**REV. SIMON ALOVI.....RESPONDENT**

**J U D G M E N T**

The applicant's application dated 12-5-2012 prays for the following reliefs:-

**(a)The court be pleased to set aside the arbitral award orders therein made on 15-3-2013.**

**(b)The applicant's privileges which include the elected office of the General Treasurer unpaid salaries and other incidentals due to the applications which were curtailed by the arbitral award of the PAG Kenya tribunal on 15-3-2013 be restored to the applicant.**

The application is supported by the affidavit of Isaac Murwon sworn on 12-4-2013. The award which is being impugned is dated 15-3-2013 in which the respondent ordered that:-

- 1) That the complaint filed by PAG (K) Council against the respondent Isaac Kiptunge Murwon succeeds.**
- 2) We order that each party bear own costs.**
- 3) We order that the respondent be and is hereby suspended from the fellowship of PAG Kenya for a period of one year from the date of this award. We also order the removal of the privileges he has hitherto been enjoying.**

The genesis of the issue arose from a complaint received by one Rev. Simon Alovi pertaining to the conduct of the applicant. On 12-9-2012 he wrote a letter to the chairman in respect of the same.

On 6-9-2012 a meeting was held by the respondent in which they resolved that more time was needed for investigation to be undertaken. On 21-9-2012 the PAG Kenya Appeals and Arbitration Tribunal ordered the complainant Rev. Simon Alovi to file his complaint and statements and any other supporting evidence by 5-10-2012. The defendant now the appellant was to file his report by 11-10-2012.

On 8-10-2012 H.M. Wasilwa advocate acting on behalf of the respondent framed the issues for determination as follows:-

- (1)Whether the conduct on the part of Rev. Isaac Murwon violated the tenets of the faith.**
- (2)Rev. Isaac Murwon should continue to be in office as General Treasurer PAG (K).**

**(3)The Rev. Isaac Murwon should be suspended from the membership of the PAG (K) for a period in the discretion of the Tribunal.**

**(4)Who should bear the cost of the parties herein.**

However on 10-10-2012 the complainant, the respondent herein withdrew the complaints against the appellant citing several reasons. On 10-10-2012 one Rev. Zedekiah M. Orera the General Secretary of PAG (K) wrote a letter disputing the withdrawal. Apparently the matter proceeded which culminated into the award of 15-3-2013. In light of the above withdrawal was there any claim against the appellant?

The respondent Rev. Simon Alovi's affidavit sworn on 18-4-2013 clearly explains the above position. But who was the complainant in this case. From the proceedings before me it appears that Simon Alovi was the complainant all along in the Arbitration case No. 2 of 2012. If therefore he withdrew his complaint against the applicant then what was the arbitration panel arbitrating against?

Further, there is no evidence to show that the PAG (K) Church was complaining. The answer to both affidavits by the applicant as well as the respondent clearly shows who the parties were.

Of great significance also is that Simon Alovi was never called to testify. At least being the originator of the complaint he ought to have shed light on why he deemed it fit to withdraw the complaint. Perhaps this would have aided the tribunal to come to an informed finding.

I further note that from the issues quoted above as framed by H.M. Wasilwa advocate the issue of the complainant's integrity does not feature. Respectfully therefore the tribunal ought not to have considered or conversly it would have framed it separately and permitted the applicant to respond.

In light of the above findings and specifically that the complaint had been withdrawn the tribunal went beyond its mandate. There was no complainant to adjudicate upon.

I shall therefore allow the application date 12-3-2013 as prayed with cost to the applicant.

**Dated, signed and delivered at Kisumu this 25th day of April, 2013**

**H.K. CHEMITEI  
JUDGE**

In the presence of:

.....for the applicant

.....for the respondent

*HKC/va*