



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Petition 444 of 2012**

BISHOP ABSOLOM NDUNGO.....1<sup>ST</sup> PETITIONER  
HUDSON KAMAU.....2<sup>ND</sup> PETITIONER  
WILSON KABUI WAMBUA.....3<sup>RD</sup> PETITIONER  
ESTHER METUMI.....4<sup>TH</sup> PETITIONER  
LYDIA WAIRIMU LUKOMIA..... 5<sup>TH</sup> PETITIONER  
SOPHIA NJAMBI.....6<sup>TH</sup> PETITIONER  
FRANCIS KIMANI.....7<sup>TH</sup> PETITIONER  
MARY WANJIKU.....8<sup>TH</sup> PETITIONER  
CHARLES MUGIRA.....9<sup>TH</sup> PETITIONER  
SUSAN NDUTA.....10<sup>TH</sup> PETITIONER  
FRYSSIAH GACURU.....11<sup>TH</sup> PETITIONER  
GERALD NDUNGU .....12<sup>TH</sup> PETITIONER  
SYMON MAINA GATIRI.....13<sup>TH</sup> PETITIONER  
SABINA WANJIKU.....14<sup>TH</sup> PETITIONER  
NANCY WANJIRU.....15<sup>TH</sup> PETITIONER  
JOSEPH WAINAINA KAMAU.....16<sup>TH</sup> PETITIONER  
GEORGE MUHINDI KURIA.....17<sup>TH</sup> PETITIONER  
GRACE NJERI KINGARU.....18<sup>TH</sup> PETITIONER  
JOSEPH NDUNGU KANUHI.....19<sup>TH</sup> PETITIONER

GEORGE THUO KIBUTHU.....20<sup>TH</sup> PETITIONER

JACINTA MUMBI NDUNGU.....21<sup>ST</sup> PETITIONER

ANDREW GITONGA.....22<sup>ND</sup> PETITIONER

JOSEPH KAGUONGO.....23<sup>RD</sup> PETITIONER

GIDEON KARIUKI.....24<sup>TH</sup> PETITIONER

HARRISON KIMANI.....25<sup>TH</sup> PETITIONER

JOSEPHINE WANJIRU.....26<sup>TH</sup> PETITIONER

JOYCE MUTHONI .....27<sup>TH</sup> PETITIONER

AND

HON ATTORNEY GENERAL .....1<sup>ST</sup> RESPONDENT

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

KENYA REDEEMED CHURCH.....3<sup>RD</sup> RESPONDENT

*(Sued through its officials*

BISHOP ALLAN NJERU  
JOHN NJENGA KAMAU  
CYRUS NJOGOO  
STEPHEN MWANGI  
ANDREW MURAGE  
JOSEPH MWANGI

## RULING

### Introduction

1. This ruling concerns a dispute between two factions of the Kenya Redeemed Church. The dispute comes to court through the avenue of a petition for the enforcement of fundamental rights and freedoms under **Article 22** of the Constitution. The applicants are the leaders of the western zone of Kenya Redeemed Church which is a church registered under the ***Societies Act (Chapter 108, Laws of Kenya)***.

### Applicants' Case

2. The application for consideration is the Chamber Summons dated 4<sup>th</sup> October 2012 where the petitioners seek the following substantive order;

*(3) That pending the hearing and determination of this Petition the Honourable Court be pleased to issue a conservatory order of injunction to restrain the 3<sup>rd</sup> respondent's officials, servants, agents from interfering with the ownership, occupation, operation and management of the churches built/run from the following land/locations within the Western Zone of the Kenya Redeemed Church:-*

- (i) Kenya Redeemed Church – Kayole
- (ii) Kenya Redeemed Church – Kitengela

- (iii) *Kenya Redeemed Church – Kabiria*
- (iv) *Kenya Redeemed Church – Kabati*
- (v) *Kenya Redeemed Church – Muigai-ini*
- (vi) *Kenya Redeemed Church – Kasarani*
- (vii) *Kenya Redeemed Church – Githiga*
- (viii) *Kenya Redeemed Church – Nginduri*
- (ix) *Kenya Redeemed Church – Kihiu-Mwiri*
- (x) *Kenya Redeemed Church – Muruka*
- (xi) *Kenya Redeemed Church – Mutati*
- (xii) *Kenya Redeemed Church – Nakuru*
- (xiii) *Kenya Redeemed Church – Ndaras*
- (xiv) *Kenya Redeemed Church – Kakamega*
- (xv) *Kenya Redeemed Church – Eastleigh*

3. The application is supported by the affidavit of Bishop Absolom Ndungo sworn on the 4<sup>th</sup> October 2012 and supplementary affidavit sworn on 11<sup>th</sup> October 2012. According to Bishop Ndungo, the dispute between the petitioners and the respondents revolves around a decision made in 1985, when Bishop Allan Njeru and other Church leaders resolved that in order to expand the reach of the church there should be created two geographical zones; the Eastern and Western Zones. The Eastern zone was placed under the leadership of Bishop Allan Njeru while the Western zone was placed under the stewardship of Bishop Absolom Ndungo.

4. In a nutshell, Bishop Ndungo depones that he has presided over the expansion of the Western Zone which has seen phenomenal growth and acquisition of properties while the Eastern Zone under Bishop Allan Njeru has not recorded any significant growth. As a result, the petitioners allege, Bishop Njeru began interfering directly with the management of churches in the Western zone.

5. Between 2004 and 2007 efforts were made to resolve disputes between the petitioners and respondents. Matters came to a head in April 2011 when Bishop Ndungo was suspended. This led to cancellation of his licence to celebrate marriages under the ***Africa Christian Marriage and Divorce Act (Chapter 151 of the Laws of Kenya)***. This issue is the subject of ***Nairobi HC Misc. No. 287 of 2011***.

6. Subsequently on 22<sup>nd</sup> December 2011, Bishop Njeru and his supporters purported to hold an Annual General Meeting which confirmed his expulsion. According to the petitioners, matters have deteriorated to the extent that the respondents have written to the Registrar of Societies to confirm office bearers who are in office illegally.

7. According to the petition, the petitioner seeks to enforce the right to enjoy and exercise the freedom of conscience, religion, belief and opinion enshrined in **Article 32**. Mr K. Mungai submitted that this right is connected and inextricably linked with the right of the Western zone of the church to own properties which are the places where the petitioners exercise freedom of worship. The petitioners also assert property rights under **Article 40** by seeking declarations that the members of the Kenya Redeemed Church – Western Zone are the beneficial owners of the land parcels subject of this suit.

### 3<sup>rd</sup> Respondent's Case

8. The 3<sup>rd</sup> respondents are the registered officials of the church. They did not file any deposition in response to the application and the petition but instead, their counsel filed a Notice of Preliminary objection dated 9<sup>th</sup> October 2012 to which were attached various rulings by the courts in disputes relating to the subject matter of the suit. The Notice stated as follows;

- (1) *The Petitioners have no capacity to sue the 3<sup>rd</sup> respondent under the Society's Act since they are not the registered officials of the society.*
- (2) *The petitioners have no capacity to lay any claim on any property that is registered in the name of the 3<sup>rd</sup> respondent at all.*
- (3) *The petitioners have a constitutional right to enjoy their freedom of worship as they wish but that must not be necessarily under the 3<sup>rd</sup> respondent – Nobody therefore is infringing on their constitutional right at all.*
- (4) *The 1<sup>st</sup> petitioner is simply a deflocked preacher who is being followed by the rest of the petitioners. They need not continue to cause any more chaos at any branch of the 3<sup>rd</sup> respondent – They can have themselves registered as a church under the Societies Act just like the 3<sup>rd</sup> respondent & go on with life without making themselves fixtures of chaos in the 3<sup>rd</sup> respondent as a church.*
- (5) *The 1<sup>st</sup> petitioner is simply abusing the process of our courts and using blind followers interchangeably in different cases as human shields against the law. The following previous cases are still pending all instituted by the petitioners.*
  - (i) *Milimani CMCC No. 881 of 2011*
  - (ii) *HCCA No. 219 of 2011*
  - (iii) *Milimani CMCC No. 1565 of 2011*
  - (iv) *HCCA No. 441 of 2011*
  - (v) *Milimani CMCC No. 3129 of 2011*
  - (vi) *HCCA No. 510 of 2011*
  - (vii) *JR Misc. Appl. No. 287 of 2011*

9. Mr Kariuki, counsel for the respondents relied on the skeleton submissions dated 10<sup>th</sup> October 2012 and the preliminary objection. Mr Kariuki submitted that the matter is a dispute about a church, Kenya Redeemed Church. It is one church and that the church has its own dispute resolution system. He further submitted that the “Western Zone” is not recognised and does not own any property.

10. The respondents further averred that the petitioners are authors of a problem by coming to court to perpetuate chaos and referred the court to the letter dated 6<sup>th</sup> February, 2012 from Registrar of Societies that confirmed the officials. He further contended that the petitioners' claim insinuates that there is a “church within a church” and submitted that the petitioners are not officials. He urged the court not to grant a conservatory orders.

11. Counsel relied on the case of ***Reverend Bishop Silas Yego and Others v The Minister of State for Provincial Administration and Others Nairobi Petition No. 395 of 2012 (Unreported)*** where held that the court's assistance may be invoked in situations where there is a serious allegation of breach of the

Church's constitution. In this case it was urged that it is the petitioners who are in breach of the Church constitution and the court should not assist them by issuing the conservatory orders.

### **Determination and Disposition**

12. I have considered the pleadings, dispositions and submission made for and on behalf of the parties and as I stated at the core of this matter is a church dispute. A church is an organised society governed by a Constitution by which members of that society agree to be bound by. Therefore, the first responsibility of the court in matters such as this is to go to the constitutive document to discern the governance structure of the society.

13. Being a member is not necessarily inconsistent with the freedom to practice one's religion. It only means that by subscribing to certain belief in community, one gives up his or her own freedoms to the extent that he or she belongs to that society or church.

14. In this case, it is not contested that Kenya Redeemed Church is an established society registered under the **Societies Act** with a Constitution that governs relationship between members of the church.

15. In light of this background, the issue then is whether a conservatory order should be issued in respect of the suit properties. I am aware that the petition before the Court is one for the enforcement of fundamental rights and freedoms. A conservatory order is one of the reliefs the court is entitled to grant under **Article 23(2)** of the Constitution. The powers to grant a conservatory order is discretionary dependent on the circumstances of the case.

16. It is clear to me that the parties have been engaged in constant litigation in our courts in one form or another but none of the cases has substantively resolved the core dispute. This case adds another layer of litigation that is already in existence which deals with the Western-Eastern Zone contention that is the basis of the petitioners' claim.

17. In **Milimani CMCC No. 881 of 2011**, members of church sued the Trustees of the Kenya Redeemed Church and Bishop Allan Njeru. The question in the suit was for a declaration that the two zones of the Kenya Redeemed Church be declared autonomous. The defendants raised a preliminary objection as to the status and capacity of the plaintiffs to agitate the suit. The preliminary objection was dismissed. This precipitated **Nairobi High Court Civil Appeal No. 219 of 2011**. By a ruling dated 20<sup>th</sup> July 2012, Hon. Justice Waweru ordered a stay of the subordinate court proceedings.

18. In **Milimani CMCC No. 1565 of 2011**, Bishop Absolom Ndungo sued the Executive Board of the Kenya Redeemed Church and Bishop Allan Njeru. A preliminary objection was once again raised on the ground that the plaintiffs lacked the capacity to agitate and the same was dismissed. This precipitated another appeal **Nairobi High Court Civil Appeal No. 441 of 2011** where Justice Ang'awa granted an order of stay on 30<sup>th</sup> September 2011.

19. There is also **Milimani CMCC No. 3129 of 2011**, where some church members have sued Bishop Allan Njeru and the Kenya Redeemed Church Executive Board. The issue of *res-judicata* and *sub-judice* was raised and in the cause of proceeding the learned magistrate permitted withdrawal of one of the suits that formed the basis of the objections. An appeal was lodged against that order. On 6<sup>th</sup> March 2012, Hon. Justice Onyancha stayed proceedings of the lower court in **Nairobi Civil Appeal No. 510 of 2011**.

20. In all these cases the common denominator between the plaintiffs and the defendants as it is between the petitioners and respondents is that the petitioners and plaintiffs seek to enforce the "Western Zone/Eastern Zone divide." The three suits in the subordinate court have now been stayed pending appeal and this matter has weighed heavily on my mind. On my part, I will not add another layer of court orders in the matter.

21. I am not satisfied that granting a conservatory order will meet the ends of justice for both parties in

the particular circumstances as the respondent remains a registered society. I have read the Constitution and I am not persuaded that there is provision for the Western Zone/Eastern Zone divide and this court will not, at this stage of the proceedings, divide the church by a conservatory order in the manner suggested. As I stated in in **Rev Peter Gachara and Others v Attorney General and Others Nairobi Petition No. 299 of 2011 (Unreported)**, *“The [Church] is a place of worship for members of the public, but as a church it functions within an organisational structure. In my view therefore, that organisation and the persons who serve in it are subject to internal rules and regulations which they agree to abide by when they agree to join that church. Freedom of worship or religious activity does not operate in a void or vacuum.”*

22. For the reasons given, I am unable to grant the orders sought in the chamber summons dated 4<sup>th</sup> October 2012 and the application is therefore dismissed with costs to the respondents.

**DATED** and **DELIVERED** at **NAIROBI** this 17<sup>th</sup> day of October 2012.

**D.S. MAJANJA**  
**JUDGE**

Mr K. Mungai instructed by Kinoti & Kibe Advocates for the petitioner.

Ms Kamande, Litigation Counsel, instructed by the State Law Office for the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

Mr Kariuki instructed by Wambugu Kariuki & Associates Advocates for the 3<sup>rd</sup> respondent.