REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc Appli. 1220 of 2003

REPUBLIC …….....……...….. APPLICANT

V E R S U S

THE REGISTRAR OF SOCIETIES …….. RESPONDENT

(EX PARTE: 1. ARCHDEACON WILSON MUCHAI

2. BISHOP DANIEL KIONGO)

JUDGEMENT

Before me is a Notice of Motion dated 29th October, 2003 filed by Ms. Nyakundi & Company advocates for the applicants **ARCHDEACON WILSON MUCHAI and BISHOP DANIEL KIONGO**. The Notice of Motion was brought under section 8 of the Law Reform Act (***Cap. 26***), Order 53 rules 2 and 3 of the Civil Procedure Rules, and section 3A of the Civil Procedure Act ***(Cap. 21).*** The orders sought are that-

1. This Honourable Court be pleased to grant the applicants orders in the nature of certiorari and prohibition to remove into this Honourable court for purposes of its being quashed the decision of the Registrar of societies as contained in his letter dated 11th September, 2003 to register a society by the name African Independent Pentecostal Church of Kenya to order the vesting of society property in the manner stated and incidental orders thereto and to prohibit the respondent from ever registering any society in any names similar to the African Independent Pentecostal Church of Africa.

2. The costs of and occasioned by this Notice of Motion be taxed and paid by the Applicant.

A number of grounds are listed on the face of the Notice of Motion. The application is supported by the **STATEMEN**T filed with the application for leave, which **STATEMENT** lists the reliefs sought and the grounds of seeking such reliefs. There is also filed an affidavit sworn on 13th October, 2003 by Bishop Daniel Kiongo as trustee of African Independent Pentecostal Church of Africa (***society)***. In the said affidavit, it is deponed, inter alia, that –

2.. That the society is an indigenous church and has enjoyed registration of over 70 years and runs its affairs through a Constitution a copy of which is annexed hereto and marked BDK2.

3. That the society has wide membership throughout the Republic of Kenya which stand currently at 2.8 million or more. The society has acquired land on which stand schools, churches etc which are run and managed by the Registered Trustees of the Society in accordance with its Constitution.

4. That the Society is managed by duly elected national and branch officials who are duly registered with the Department of Registrar-General.

5. That in or about 1995, certain personalities who had been the cause of friction and unnecessary squabbles within the society were expelled and excommunicated from its membership. Those members however unlawfully continued with the use of the society's name and have been a constant headache to it and its duly established organs. They have unlawfully and forcibly interfered with the smooth running of the society and its branches particularly-

(a) Gatura Church

(b) Huruma Church

(c) Naivasha Church

(d) Kaaga Church.

6. That legion are instances when the ex-communicated persons have engaged in acts of violence and assault resulting in numerous court cases across the length and breath of the country. I annex hereto a copy of a newspaper excerpt marked BDK3 and a copy of a ruling by His Lordship Mr. Justice Alnashir Visram marked BDK4.

7. That on or abour February, 2000, the said persons applied for Registration of a faction under the Societies Act Cap. 108, Laws of Kenya as the African Independent Pentecostal Church of Kenya.

8. That the applicant objected to the said Registration. A copy of the objection dated 10th August, 2000 is annexed hereto and marked BDK5 and a letter from the Attorney-General dated 10th February, 2000 marked BDK6.

9. That on 26th June, 2003, the Registrar General advised that the name suggested was unacceptable. A copy of the letter is annexed hereto and marked BDK 7.

10. That however and despite the foregoing vide letter dated 11th September 2003, the society through its Chairman were notified that the said persons had secured registration. A copy of the letter is annexed hereto and marked BDK8. In the letter, the Registrar General purported to determine how the property of the society would vest.

11. That if the decision of the Registrar General is not upset, the applicants and their society would suffer grave harm and prejudice.

In addition to this Notice of Motion, there seems to have been other proceedings filed in Nairobi High Court Civil Suit No. 985 of 2003, and the plaintiff was the African Independent Pentecostal Church of Africa. That suit was withdrawn vide a Notice of Withdrawal of Suit dated 6th July 2005 filed by Nyakundi & Company advocates on behalf of the plaintiffs.

Following the filing of the Notice of Motion herein and its service, responses were filed. A replying affidavit sworn by **SIMON KIMANI MBIRITU** as Chairman of the African Independent Pentecostal

Church of Kenya on 28th January, 2004 was filed. Grounds of opposition to the Motion were also filed in the name of one **SIMON KIMANI MBIRITU**, who described himself as an interested party. These grounds of opposition were dated 26th January, 2004 and were filed by **JESSEE KARIUKI & CO. advocates.** They state that-

1. The application is bad in law, misconceived and incompetent.

2. The application is an abuse of the court process as already numerous proceedings seeking orders of a similar nature have been filed by the applicant.

3. The Registration of African Independent Pentecostal Church of Kenya *(AIPCK)* ***does not in any way deceive the public as claimed nor prejudice the applicants as this is an organization that has excited*** *(existed)* ***and duly registered since 1965.***

4. AIPCK does not in any way intend to acquire any property belonging to any other organization but shall run its numerous churches within Kenya according to its Constitution.

5. The orders sought cannot be granted as they shall be orders in vain.

6. The application should be dismissed.

A replying affidavit was also filed by an **ARCHBISHOP J.B. MUGECHA** sworn on 30th January, 2004. He avers that he is one of the trustees of the interested party – ***AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF KENYA***. The thrust of the averments in the affidavit are that Archdeacon Wilson Muchai has not disclosed who he is; that the proceedings did not disclose crucial matters pertaining to the church; the name "***African Independent Pentecostal***" is not exclusive or patented; that the churches were not commercial institutions; that no abstract of titles were filed by the applicants to show which properties they have a claim in; that the Registrar acted in accordance with what the parties agreed; that the application was an abuse of the court process as there was pending Nairobi HCCC No. 985 of 2003 which sought similar orders; that no loss or damage had been occasioned to the applicant as moral and spiritual matters cannot be quantified.

In response to the above objection to the Motion, the applicant filed a further affidavit sworn by Bishop Daniel Kiongo on 10th March, 2004. The thrust of the affidavit is that the African Independent Pentecostal Church of Africa started operating as African Independent Pentecostal Church of East Africa. After independence, on or about 13th February, 1964 it was registered as African Independent Pentecostal Church of Kenya; and that it later changed its name to African Independent Pentecostal Church of Africa. It is also deponed that at one time the people who later registered African Independent Church of Kenya were trustees of the former, and that due to leadership endeavours, maliciously obtained registration of African Independent Church of Kenya. It is deponed that some of the people looking for leadership even forged documents purporting to be officials of African Independent Pentecostal Church of Africa which led to criminal prosecution in Nyeri. It is also deponed that the then Provincial Commissioner Central, Mr. Victor Musoga, convened a meeting on 20th December, 1990 to resolve the infighting within the church. It was also deponed that a certain group made mostly of expelled members from the Central Committee consistently interfered with affairs of the church, and the Attorney-General showed an intent to register the faction under a different name.

I observe that, on 6th July, 2005, a notice was filed for the withdrawal of Nairobi High Court Civil Suit No. 985 of 2003, which case was pending when these Judicial Review proceedings were filed.

The applicant's counsel filed skeleton arguments herein dated 22nd September, 2006. The gist of the skeleton arguments is that the registration by the respondent ***(Registrar of Societies)*** of the name African Independent Pentecostal Church of Kenya was unlawful because, firstly, the Registrar exceeded his powers under section 11(2) (d) (iii) of the Societies Act ***(Cap. 108)*** as the name was similar to that of an existing society; that the applicant was not given a hearing or consulted before the said registration

contrary to the principles of natural justice; that the Registrar acted in bad faith and against the legitimate expectations of the applicant, in that earlier on in June, 2003, the Registrar had declined to register the name "***Africa Independent Pentecostal Church of Kenya"*** as it was similar to the name of the applicant; that the Registrar who did not have powers or jurisdiction to determine proprietary interest wrongly determined proprietary interest on property belonging to the applicant by deciding that "***each faction should now retain assets currently under their control."***

Ms. Jessee Kariuki & Company advocates, who also describe themselves to be acting for the respondents ***(but may be acting for an interested party)*** filed skeleton arguments dated 16th October, 2006. The gist of the said skeleton arguments was that it was within the rights of the Registrar to register the church **(AIPCK)** following the long running disputes from 1979. It is contended that since the registration, there had been relative calm. It is contended that the Registrar acted within the provisions of section 11(2) (f) (iii) of the Societies Act. It is also contended that the Registrar did not confer any assets or properties.

Ms. Githiga Mwangi & Company advocates, describing themselves as acting for the respondents, (***but possibly for an interested party)*** filed skeleton arguments dated 23rd October, 2006. The gist of the skeleton submissions are that the Registrar of Societies acted within the Societies Act **(Cap. 108)** in registering the African Independent Pentecostal Church of Kenya (**AIPCK).** It was submitted that section 11 of the Societies Act did not apply in the present situation, as there was a distinct difference between the initials of the two institutions, that is **AIPCA** and **AIPCK,** such that no rational individual would be misled by any of the two names. Counsel made an analogy with the situation of Kenyan political parties **FORD KENYA, FORD ASILI, NARC and NARC-KENYA**. Counsel sought to rely on the case of **SUBA –VS- EGERTON UNIVERSITY EALR (1995-1998)** 303 to support his argument that the Respondent did not breach his legal powers in making the decision to register AIPCK, and therefore orders of certiorari could not be issued.

On whether the respondent breached the principles of natural justice, counsel submitted that there was no legal duty for the respondent to inform the applicants of the intended registration as the interested parties were exercising their constitutional rights enshrined in section 78 of the Constitution for the enjoyment of their freedom of conscience, thought and religion – where religion should include denominations. It was also contended that since the interested parties had formed a splinter group, they no longer wanted to be members of the mother church in terms of section 3B (2) of the AIPCA constitution – therefore the respondent did not have any duty to call the applicants before registering the splinter group. It was also submitted that the applicants would not suffer any prejudice due to the respondent's action in registering the splinter group.

It is also submitted that the application offended the rule of subjudice as there was another case Nairobi HCCC No. 985 of 2003 pending in court. It is submitted therefore that the present application is improperly before the court, as it had not stated what proprietary rights were determined, how, when and in which case. It was also argued that all land was owned by the Local community who contributed to its development. It is emphasized that the issue of church buildings was canvassed and agreed between all parties prior to registration and that the attempt by the applicants to excommunicate the members was an attempt to take their property by force.

ARCHBISHOP J.B. MUGECHA, describing himself as an interested party filed a further replying affidavit sworn by himself on 7th November, 2006. In the affidavit it was deponed that the respective congregations and churches built their own places of worship. These are for both African Independent Pentecostal Church of Africa or African Independent Pentecostal Church of Kenya. It is deponed that over many decades now, there had been spirited efforts to bring the spirit of the church to its knees with many court cases filed, such as CMCC NO. 598 of 2006 which was dismissed, Nyeri HCCC No. 40 of 2003 dismissed by Justice Okwengu, Thika CMCC No. 1203 of 1998, Nyeri H.C.C.C. 72 of 2001 still pending, Nairobi HC Miscellaneous Application No. 230 of 1999, Nairobi HCCC No. 4486 of 1994 still pending, Nairobi HCCC No. 198 of 1998 involving the same issues, Nairobi HCCC No. 177 of 2006 still pending, Naivasha SPMCC No. 390 of 2002, Nyeri HCCC No. 332 of 1994 still in existence, Nairobi HCCC No. 1991 of 1979 where a referendum was conducted and all members requested to hold their properties in line with the judgment by Muli J, that there is in existence Nyeri HCCC No. 167 of 1994,

and that there were myriad cases in Mombasa, Nyahururu, Kerugoya, Thika and elsewhere, and lastly that the Registrar's action conclusively extinguished the fire in this Christian congregation and that no properties were distributed by the Registrar.

A replying affidavit sworn by Hellen Koki an Assistant Registrar-General on 27th February, 2007 was also filed. It was deponed in the affidavit that AIPCA has had leadership disputes for a long time and various court battles. It is deponed that it was within that background that the Registrar registered AIPCK following developments in political parties registration which was done for promoting public interest, that AIPCA and AIPCK were two distinct bodies, that there was no provision under the Societies Act which barred the Registrar from registering a Society in a name he had previously declined registration, that since registration of AICPK there had been relative calm among followers of the two entities which decision of the Registrar served its intended purpose. It is also deponed that since the Registrar exercised discretionary powers judiciously, under the Act, the court had no jurisdiction to intervene, and that the Registrar was not in any way determining the proprietary interest of the parties.

BISHOP DANIEL KIONGO swore a further affidavit on 7th March, 2007. He described himself as one of the registered Trustees of the AIPCA. The affidavit was filed on the same date. What is deponed in this affidavit gives the history of the AIPCA and avers that the AIPCK had adopted the Constitution of AIPCA. It is also deponed that the symbols used by the AIPCK are same as those of AIPCA which causes confusion to church members and the public. It was deponed that the decision of the Registrar that each faction should retain assets currently under its control was a recipe for chaos, as for instance 263 churches exhibited in the affidavit sworn by **ARCHBISHOP J.B. MUGECHA** on 7th November, 2006 belonged to AIPCA. It was deponed that no public interest would be promoted by registering AIPCK as it was merely likely to cause confusion and that the situation of political parties should be viewed in their context as there was no objection raised for the registration of political parties with almost identical names.

The respondent also filed skeleton arguments on 12th March, 2007 filed by F.M. Mwikia, a State Counsel. The thrust of the skeleton arguments was that the application was misconceived, frivolous and vexatious. It is contended that the respondent acted in good faith and within the law in order to end longstanding leadership disputes in AIPCA by registering AIPCK and the said wrangles thereby came to an end. Analogy was drawn to the registration of political parties such as Form Kenya, Ford People, and Ford Asili. It is contended that the AIPCA and AIPCK were distinct and clear and there was no possibility of confusing one for the other. In addition, no prejudice would be occasioned by the registration. It is also contended that the fact that the respondent had earlier refused to register AIPCK did not mean that the registrar ***(respondent)*** could not later register the same name. It is further contended that no proprietary interests were determined as the respondent was merely bringing the matter to a peaceful end by stating that each faction was to retain what was within its control, in other words the status quo was to be maintained.

It is contended that there was an overriding public interest in this matter, and the respondent acted in good faith and within his powers, therefore the orders sought are not sustainable.

At the hearing of the application Mr. Nyakundi appeared for the ex-parte applicant, Mrs Mwikia appeared for the respondent, Mr. Mwangi for the 1st interested party, while Mr. Jessee Kariuki appeared for the 2nd interested party.

Mr. Nyakundi submitted that it was an application for orders of certiorari and prohibition, and that in addition to the written submissions, the applicant relied on the affidavit sworn by Bishop Daniel Kiongo on 13/10/2003 and further affidavit sworn on 10/3/2004. Counsel submitted that the applicant was a registered society (church), which had changed its name from African Independent Pentecostal Church of Kenya (AIPCK) and registration of the change effected in 1964. The Church had acquired a lot of properties under its name, therefore registration of another church under same name created confusion.

Counsel submitted that due to misunderstandings some members sought registration under the previous

name, which was objected to, and the Registrar wrote a letter on 26/6/2003 that he was not able to register the same. Counsel contended that this was correct under Section 11(2) & (i) of the Societies Act (Cap. 108) for the Registrar to refuse to register a society in a name of a society which has previously existed. However, on 11/9/2003, the Registrar without any prompting, wrote a letter reversing his earlier decision. Counsel submitted that the wrangling in the church is a matter in the public domain.

Counsel submitted that the applicant had no objection to the respondent registering the other group in any other name. Counsel contended that the affidavits sworn by the other parties in fact gave highlights of what the applicant was complaining about. The affidavits clearly showed that AIPCK did exist sometime back. On the grounds of objection filed by Kariuki advocate, Counsel submitted that the Registrar having made a decision under Section 11 of the Societies Act, his powers were spent and could not later purport to change is mind. The change of mind disregarded relevant facts, and was capricious and invited the Judicial Review jurisdiction of this court.

Counsel sought to rely on several cases, copies of which were filed. Counsel especially emphasized the decision in the case of **REPUBLIC –VS- JUDICIAL COMMISSION OF INQUIRY INTO THE GOLDENBERG AFFIAR – EX PARTE PROFESSOR** GEORGE SAITOTI – H.C. Misc. Civil Application No. 102 of 2006. Counsel also cited the case of **PETER KADAMA –VS- MUNICIPALITY OF KISUMU (1982-1985) I KAR, and the case of DAVID OLOO ONYANGO – Vs- THE ATTORNEY GENERAL** – Civil Appeal No. 152 of 1986 – and submitted that the applicant had a legitimate expectation that they would be informed of any intended change, and an expectation that once a decision was made it would not be changed (***secretly).*** **Reliance was also placed on the case of BEIERDORF –VS- EMIGCHEM PRODUCTS – Milimani HCCC No. 559 of 2002** *(NIVEA Case),* ***and the case of ASSOCIATED PROVINCIAL PICTURE HOUSES -Vs-WEDNESBURY CORPORATION (1948) KB.***

In response to the contention that similar registrations had been effected with regard to political parties, Counsel submitted that the law did not permit such registration of names that could confuse people, and therefore such action flied in the face of statute. Secondly, Counsel argued, there was no challenge to the registration of the splinter political parties with similar names.

Mrs. Mwikia for the respondent ***(Registrar)*** opposed the application, and relied on the affidavit sworn by Hellen Koki as well as the written submission filed. Counsel submitted that orders of prohibition could not issue as same were overtaken by events and spent. On certiorari, Counsel submitted that such orders could not issue as the registrar was satisfied that the two names were not similar and section 1A of the Societies Act gave the Registrar unfettered discretion to register or refuse registration of a society. On the case of **NIVEA** (*supra)* Counsel submitted that the said case was distinguishable from the present case as in that case, there was risk of loss of business while the objectives of churches was merely to serve worshipers. In any case, Counsel argued, with the recent development of registration of political parties with almost similar names, the Registrar would be acting in bad faith if he refused to register AIPCK.

With regard to property, Counsel argued that the applicant should have changed the property titles. Otherwise once the name of the church was changed, the previous name was free for registration, as there were no monopoly of names. Counsel also submitted that no symbols were submitted to the Registrar. Counsel emphasized that the purpose of registration of AIPCK was to promote harmony and co-existence, and the Act actually gave guidelines on promotion of peace and good order in Kenya.

Mr. Mwangi for the 1st interested party opposed the application and relied on the replying affidavit of **BISHOP MUGECHA**, as well as the skeleton submissions dated 23/10/2006. Counsel submitted that the applicant had not suffered any prejudice by the registration of the faction, because the two factions had been in dispute since the 1970's and that, in fact, the registration of the faction brought the war to an end. Counsel submitted that the registration letter dated 11/9/2003 did not create any proprietary rights; and the said letter had no connection with properties. The Registrar told them to retain the status quo as each faction had built churches. The Registrar therefore merely formalized the position on the ground.

Counsel contended that the applicants having abandoned the former name, they would not come back and

claim the said name. Counsel emphasized that the two organizations were non-profit making organizations and that the registration of the faction actually promoted peace and harmony in the church.

Counsel contended that the court had to decide whether the public body acted in breach of its legal powers in order to invoke its judicial review jurisdiction. Counsel stated that the Registrar did not breach his legal powers. Counsel also submitted that the applicants had in fact filed HCCC No. 985 of 2003 on the same subject and later withdrew the same.

Mr. Jessee Kariuki for the 2nd Interested Party submitted that his client was the Chairman of the church. He relied on the grounds of opposition filed as well as skeleton arguments filed. Counsel associated himself with the submissions of Mrs. Mwikia and Mr. Mwangi. He added that the applicant abandoned the name in which the other faction was registered with, in 1965 and that name ceased to exist. The court had not been told that that name was a preserve of the applicant, and the Registrar was correct in registering the same.

Counsel contended that the letter dated 11/9/2003, was not the registration document, as the faction had been registered earlier. If the letter is quashed it will be in vain, as registration had already been done.

Counsel submitted that correspondences filed showed that the Provincial Administration, the Attorney-General's office and the parties lawyers had tried to resolve the conflicts. The Registrar made this reasonable decision in the spirit of reasonableness as shown in the ***WEDNESBURY Case (supra).*** Counsel submitted that the Registrar took into account public interest dimensions, and that since the decision was made there were no fights. Counsel sought to distinguish the **NIVEA** case, which he submitted related to issues of copyright. Counsel asked me to dismiss the application with costs.

Mr. Nyakundi, in response, submitted that there was a letter dated 26/6/2003 which indicated that the name in dispute was deceptively similar. Also under section 11(f) of the Act, there was prohibition of registration of previous names. He submitted that his clients were not attacking the letter, but the decision. Counsel submitted that they had exhibited a Constitution of the applicant which showed how property was owned. Counsel contended that it was not true that violence had stopped due to the registration. In fact, Counsel submitted, that argument appeared to demonstrated who was responsible for the violence.

I have considered the application, documents filed and submissions of all counsel who appeared before me as well as the authorities cited to me.

The facts do not appear to be in dispute. The applicant was at one time known by the name **AFRICAN INDEPENDENT PETECOSTAL CHURCH OF EAST AFRICA,** then it changed its name again to **AFRICAN INDEPENDENT PETECOSTAL CHURCH OF KENYA (AIPCK).** It was so registered as a society. In about 1964 or 1965 it changed its name again to **AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF AFRICA (AIPCA**). This registration was formalized through registration by the Kenyan Registrar of Societies.

There followed some leadership wrangles in the church which necessitated the involvement of the Provincial Administration, the Attorney-General's office. The groupings in the church led to the other contending faction applying for registration of a separate church with the Registrar of Societies, in the name of **AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF KENYA (AIPCK)**

Indeed the Registrar in her letter dated 26th June, 2003, filed as "***BDK7"*** to the applicants verifying affidavit rejected the registration of **AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF KENYA** in the following words-

' I regret that the Registrar is unable to accept the above name for registration as the said name so nearly resembles the name of the already registered "*AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF AFRICA"* ***as to be likely to deceive the public and/or members of either society."***

However, by another letter dated "**BDK8"** 11th September, 2003 the Registrar wrote acknowledging that African Independent Pentecostal Church of Kenya had been registered, in the following terms-

"***Following the registration of African Independent Pentecostal Church of Kenya, each faction should now retain the assets currently under its control."***

The later letter dated 11th September 2003 is the one that precipitated these proceedings**.** I will deal with preliminary issues first.

It has been argued that because the applicants herein had already filed another civil suit in the same matter, these proceedings are an abuse of the court process and this application should therefore be dismissed. Indeed, the applicants filed another suit and they so admit. However, they appear to have decided that they might not have succeeded in that suit. They therefore withdrew the suit I find no abuse of the court process arising. I dismiss that ground.

It has been argued that because the Registrar had stated in the first letter dated 26th June, 2003, that he could not register the name, therefore the Registrar lost the right to change his or her mind. My examination of the law does not convince me that that is the legal position. There is nothing in the written law that states that the Registrar, for any reason, cannot change his mind. It really turns on the reasons for the change of mind. Those are the reasons to be considered, whether they are justifiable or not justifiable. Otherwise I hold that the Registrar, may in appropriate circumstances, change his mind on a decision previously made declining to register, as that decision is an administrative decision of exercise of discretion.

The third preliminary point I want to address is the interested parties herein. The way they have come on record with their counsel is confusing. In my view, interested parties should appear specifically as interested parties. They should not come under the wings of other parties as in this case.

I now turn to the fundamental issues raised by parties in this application. The first is the similarity of name.

1. SIMILARITY OF NAME.

It is argued that the names are so similar that they could confuse the followers, that is the worshippers.

With regard to confusing the worshippers reliance was placed on the case of **BEIERSDORF AG – VS- EMURCHEM PRODUCTS LIMITED –** High Court Milimani Commercial Case No. 559 of 2002 (the **NIVEA** case). Indeed in that case Mbaluto J. issued an injunction against the use of a product called **NEVELIN PETROLEUM JELLY**. The court held as follows-

"…….***..NIVELIN Petroleum Jelly is cylindrical while NIVEA is in a rectangular jar container, there is in my view sufficient similarity in the two packages as to probably cause confusion to consumers particularly when it is appreciated that the defendant a new entrant in the market had the freedom to choose any other name that it may have fancied."***

In my view, our present case can be distinguished from the **NIVIEA** case. Firstly, "**NIVEA**" and "**NIVELIN"** crèmes were registered trademarks. In our present case neither AIPCK nor AIPCA are registered trade marks. They are all names of societies under the Societies Act. The change of name meant that the previous name could actually be used, unless there were specific reasons not to use it, which the applicant has not demonstrated to this court.

Secondly, the registration of these two societies or churches could not possibly confuse members of the public as the membership is not for the public but those who have consciously chosen to be members or adherents of one faction as against the other. And, in fact they can choose to move to the other if their attitude changes at any time. The two churches are not strictly speaking commercial entities, though they can also earn some income. None of the adherence of the two denominations has come to testify that he

has been confirmed by the similarity of the names. I dismiss this contention.

Thirdly, we cannot say that any of the factions is a new entrant into the market or into the worship. It is quite clear that it is the same people who are worshippers and leaders in the same church who have split. None of the faction has been formed by strangers to the faith, and the ones who wish follow one faction surely know the reason why they will do so. I find no merits in the argument that the names are similar and will therefore cause confusion. I find that there is no possibility of the registration of AIPCK confusing followers of AIPCA or vise versa.

2. LEGITIMATE EXPECTATION

It has been argued that once the respondent, at one time, declined to register the other faction in the name that he has now registered the same, then that decision created a legitimate expectation on the applicant that the respondent would not turn and register the faction in the same name. Reliance was placed on the case of **ANIMISTIC** (supra) and the case of **SAITOTI** (supra).

Indeed, the way legitimate expectation can arise was clearly stated in the English case of **Civil Service Union –Vs- Minister for Civil Service [1985] AC 374** – that it may arise-

"***from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue."***

In the above case, the court had to reconcile the targeted bodies continuing need to initiate or respond to change with legitimate interests or expectations of citizens or strangers; make sure that the power to make and alter policy has not been abused by unfairly frustrating legitimate individual expectations; and whether through unfairness or arbitrariness, the change of mind amounts to abuse of power.

It is clear to me from the above that change or alteration of mind ***per se*** does not necessarily amount breach of legitimate expectation. In our present case, the respondent **(Registrar)** states that he changed his mind because, there had been a long standing feud and, in view of developments in political parties names in Kenya, this was the only way out. It is of course clear that the applicants were not involved before the new registration was effected. From the facts before me, I find no frustration of the applicant by the change of mind of the Registrar. There was also no abuse of power because there is nothing that the applicant has suffered any frustration of prejudice. I find no breach of legitimate expectation.

3. NON-COMPLIANCE WITH NATURAL JUSTICE.

The applicant complains that he was not called or given audience before the decision to register the other faction was done, especially after the letter of the Registrar dated 26th June, 2003 wherein the Registrar declined to register the other faction in the name of **AIPCK** because such name was likely to deceive the public and/or members of either society.

Indeed, where a person is likely to be affected adversely or prejudiced, the principles of natural justice would require that that person be given a chance to put his or her side of the story, which ought also to be considered. In view however, of what I have found above, that there was no prejudice to be suffered by the applicant, or members of the public or followers of either faction, I find no basis for holding that there was any need for giving the applicant a hearing before the decision was made.

4. RIGHTS TO PROPERTY

The letter complained of dated 11th September, 2003, stated that each of the factions will hold the assets it held at that time. In my view, that letter did not confer rights to property on any of the factions. It merely stated a certain status quo, at that time. It did not state that any particular property owned by any of the parties. I have not been told that the said letter created confusion with in respect to any particular property. If it was demonstrated to me that the said letter created confusion with respect to any property of the applicant or the other faction, I would have no hesitation in quashing the same. In the

present case however, no such evidence has been put before me. In fact one of the documents filed herein is a trust registered on 6th July, 1970 registered under the Land ***(Perpetual Succession***) Act. Cap 286 and dated 30th June, 1970 evidencing that the properties of AIPCA would be held by trustees in the name of AIPCA. Therefore there cannot be confusion with AIPCK. Judicial Review reliefs are discretionary, and I find no compelling reason that would make me exercise my discretion to quash the said letter. If any of the factions want to contest any ownership of any property, they are free to do so and the court will decide on the evidence that will be tendered. Otherwise my finding is that the letter did not confer any property on any of the parties.

For the foregoing reasons, I find no merits in this application and have to dismiss the same. This is a matter relating to spiritual institutions and their leaders and is a matter that has had a long history of wrangles, apparently for the control of church institutions by different leaders. For that reason, I will not award costs against any of the parties who appeared before me. Each of the parties will bear their own costs of the proceedings.

Consequently, I find no merits in the application and dismiss it. I order that each party will bear their respective costs of the proceedings.

Dated and delivered at Nairobi this 8th day of October, 2008.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Nyakundi for applicant

Mrs. Mwikia for respondent – Mr. Gachie holding brief

Mr. Mwangi for 1st interested party – Mr. Mwangi holding brief.

Mr. Jesee Kariuki for 2nd interested party.