



**Gambella Investment Limited v Registered Trustees of the Pentecostal
Assemblies of God (Environment and Land Case E312 of 2024)
[2025] KEELC 6142 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6142 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E312 OF 2024
JG KEMEI, J
SEPTEMBER 19, 2025**

BETWEEN

GAMBELLA INVESTMENT LIMITED PLAINTIFF

AND

**THE REGISTERED TRUSTEES OF THE PENTECOSTAL ASSEMBLIES OF
GOD DEFENDANT**

RULING

In respect of the Defendant's applications dated 28/10/2024 and 29/10/2024 respectively)

The Applicant's Notice of Motion dated 28/10/24 and 29/10/24

1. The Defendant/Applicant filed the above applications seeking the following orders;
 - a. Leave be granted to the firm of Wasilwa Makhakara & Company Advocates and Ochieng Oginga & Company Advocates to come on record for the Registered Trustees of the Pentecostal Assemblies of God (Kenya) Church, the Defendant in place of Oloo & Oloo Advocates LLP.
 - b. Pending the hearing and determination of the substantive application, the court to grant a temporary stay of execution of the judgment decree orders stopping further demolition of the Ngara PAG Kenya Church or eviction of the Ngara Church officials and their members.
 - c. The court to set aside the consent executed by Messrs Oloo & Oloo & Osundwa as well as set aside the decree dated the 3/10/2024, and subject to the discretion herein, leave be granted to the Applicants to file a defence and counterclaim.
 - d. The court to order Martin Oloo to present himself in court to be cross-examined on the veracity of the instructions to enter a consent and the matters related thereto.



2. The application is based on the fact that the consent was obtained without the knowledge, approval, authority, or instruction of the Defendant, rendering it illegal and fraudulent; the Respondents have begun the demolition and eviction of the members and officials of the church; the General Council of the church did not sign the deed of trust claiming to appoint the Trustees of the church, and the individuals who claimed to execute the joint venture Agreement (JVA) lacked the authority or capacity to do so; Moses Mogita and Nebert Mudaki did not actually sign the JVA nor appoint Martin Oloo Advocate to act on behalf of the church to enter into the impugned JVA and the consent judgment; as a result, members of the Ngara Church are likely to suffer irreparable loss concerning their place of worship; the appointment of the law firm Oloo & Oloo Advocates was void, given that Lihanda was not an official of the Applicant.

The supporting affidavits sworn by Nebert Misigo Mudaki and Kennedy Adiara

3. In his supporting affidavit sworn on 29/10/24, Nebert Misigo Mudaki introduced himself as an ordained cleric in the Defendant church.
4. Regarding the consent and the JVA agreement, the deponent stated that he did not appear before Oloo Advocate to, among other things, give instructions to represent him or the Applicant, nor to sign a consent on their behalf.
5. He added that he was informed by the Ngara church Pastor that, following the consent judgment, the Respondent started demolishing the church building, denying the congregants access to the church for worship and other services.
6. None of the trustees has any knowledge of who authorised the JVA agreement or the court's consent. Reverend Dr. Patrick Oyondi, the general administrator of the church, has filed a complaint with the police regarding the matter.
7. Based on his own knowledge and the church's records, the previous trustees included Bishop James Ogendi, Karingu, and Patrick Lihanda. However, in the recently concluded church elections, Rev Kennedy Adiara, Richard Obwogi, and John Rono were elected as General Superintendent, General Secretary, and General Treasurer, respectively. These officials do not support the sale of the church property at all.
8. Furthermore, he stated that the court in Petition No 6 of 2018 EKLK (2022) – Rev John Juma & 2 others Vs Rev Patrick Lihanda & Anor and 5 Interested Parties, ruled that Patrick Lihanda's term as General Superintendent of the church expired on 5/12/2018. Various court orders prevented Reverend Lihanda and Patrick Oyondi from holding any office within the church. As a result, Rev Lihanda had no authority to appoint counsel, give instructions to record consent, or enter into a JVA agreement on behalf of the church.
9. Finally, he stated that the acts of transferring the suit land were fraudulent, and that the Applicant did not receive any monies from the Respondent. The court was urged to allow the application.
10. In further support of the application, Rev Kennedy Mbaranya Adiara introduced himself as the General Superintendent of the Applicant and one of the registered trustees of the church, duly authorised to swear the affidavit.
11. He stated that the Applicant is the registered owner of the land where the church building is located. The Applicant learnt of the suit when the Respondent and his workers confronted him on the land, attempting to demolish the church building allegedly in fulfilment of a decree issued on 29/9/24. It



was then that the Applicant examined the court proceedings and records and discovered the existence of this suit, which alleges breach of the terms of the JVA and seeks orders for specific performance.

12. He stated that three trustees signed the JVA. Lihanda was not a trustee of the church, while Mogita and Mudaki, although genuine trustees, have confirmed that the signatures on the agreement are forgeries. The Applicant is a complete stranger to the law firm of Oloo & Oloo Advocates. The Applicant and the actual registered trustees have never entered into any joint venture with the Respondent, have not been served with the summons to appear, nor been issued any authority to record or settle this matter by consent, and are concerned that the Respondent and others may have committed fraud throughout the transaction, thereby depriving the Applicant of its property rights. He stated that currently, the Respondent has assembled equipment and machinery ready to demolish and take over the suit land. Unless the court grants the orders sought, the Applicant and its congregants will suffer irreparable loss and a miscarriage of justice.

The Respondents' Grounds of opposition dated 11/11/24 & Preliminary objection dated 11/11/24

13. The Respondent opposed the applications dated 28/10/2024 and 29/10/2024 via the Grounds of Opposition dated 11/11/2024. The Respondent contends that the said application is incompetent, incurably defective, an abuse of the court process, and does not warrant the granting of the orders sought. It argues that the Applicant has failed to comply with mandatory legal provisions before filing the Application, rendering it grossly misconceived in law.
14. In its preliminary objection, the Respondent argued that the court is functus officio and therefore lacks jurisdiction to hear and determine the application, having recorded the consent judgment; the Applicant was accused of non-disclosure of material facts.

The Respondents' Replying affidavit, sworn on 12/11/24

15. Mohammed Sheikh Mohamed introduced himself as a director of the Respondent and duly authorised to swear the affidavit.
16. He stated that this suit was determined through a consent judgment on 23/9/24. The main points of the Applicant's application are that they are feigning ignorance of the JVA, as well as the advocates who represented them. It is evident from the suit – ELC No. E110 of 2024, where 30 members of the Ngara Church Assembly filed a suit against the Applicant and its officials over the JVA—that members of the Ngara PAG Church were aware of the project at all stages—its conception, negotiations, and conclusion. The fact that the Applicant's members wished to be involved in the project demonstrates their awareness. He contends that it is therefore false that the Applicant's officials only became aware of the project on 29/10/24. Furthermore, the Applicant's then lawyer, Oloo & Oloo, was widely credited with introducing the Respondent to the Applicant concerning the project.
17. The deponent states that in Nairobi ELCLC No. E110 of 2024, Beatrice Muhonja Lingana, purportedly acting on instructions from the Member of the Church, sued the Plaintiff. The said suit was supported by a Letter of Authority signed by 30 members to act on their behalf. The suit includes uncontroverted admissions that the Defendant and members of the Ngara PAG Assembly were aware of the Joint Venture Agreement from the beginning to the end, as evidenced in the Plaintiff dated 13/03/2024. In fact, the first two reliefs sought reflect a desire by the Defendant and its members to be included in all plans concerning the suit property. Clearly, the claim that the Defendants were strangers to the Joint Venture Agreement is not true.
18. To strengthen the argument further, he stated that the Defendant formally appointed Dr. Martin Oloo, Advocate, to represent them in the matter. Accordingly, Counsel entered an appearance. The



Notice of Appointment was also served on all the Officials of the Applicant. In accordance with Article 13.1 (d) of the PAG Constitution, 1997, the Administrator acts as the Chief Advisor of the Defendant on all technical matters. The Applicants have not submitted any objection from the Chief Administrator regarding the appointment of Dr. Martin Oloo, Advocate, to represent the Defendant in this suit or the current case.

19. The deponent states that the said Advocate, Dr. Martin Oloo, objected to the suit in ELC E110 of 2024 on behalf of the Applicant herein. This objection was upheld by the ruling delivered on 25/7/24, and the suit was dismissed for failing to exhaust the Defendant's internal dispute resolution mechanism before approaching the Court. That the Defendant's Trustees never objected to the counsel's representation, who, as far as he is aware, has been representing the Applicant in this matter as well as in ELC E110 of 2024. He also states that the dispute concerning the JVA and the ongoing development is still pending before its alternative dispute resolution mechanisms.
20. In further reply thereto, the deponent denies the allegation that the Respondent accosted the Defendant and sought to demolish the church. He asserts that the Respondent / Decree-Holder only aimed to enforce its rights as outlined in the Consent Judgment and the JVA. That, in accordance with the Agreement, the Respondent / Decree-Holder paid the Defendant a sum of Kshs. 6,000,000/= as the entire year's rent in advance, exceeding the amount specified in the Joint Venture Agreement, and all necessary approvals for the project were obtained. That the Plaintiff / Decree-Holder therefore entered the suit property with construction machinery to commence building works, as it is entitled to do.
21. The deponent states that, as expected of a project of such scale, the heavy constructions would inevitably affect church activities; therefore, the parties agreed on a monthly rental fee to permit the Applicant to relocate its activities elsewhere. The Applicant cannot, therefore, continue to occupy the suit property while also receiving or retaining the monthly rent.
22. He contends that once a Consent Judgment is issued, the court becomes functus officio and cannot make any further pronouncements on the matter. He states that an aggrieved party can only appeal the judgment. Furthermore, since a Consent is essentially a contract, its finality is binding and can only be challenged under the same conditions as a contract. He maintains that the officials who signed the JVA possessed the necessary legal capacity to do so, as evidenced by the Trust Deed dated 6/7/2022. He affirms that the Trust Deed and the authority to act have not been formally revoked, and consequently, the signatories remain the registered Trustees as outlined in the Deed of Trust dated 6/7/22.
23. He argues that the Applicant has not provided a sworn deposition from any of the named Trustees who signed the JVA, distancing themselves from the JVA and their signatures as they appear on the documents.
24. He reiterated his assertion that, concerning the law firm of Oloo & Oloo Advocates, the Applicant has not demonstrated any wrongdoing on their part.
25. The consent judgment does not introduce any new obligations but merely enacts the terms of the Joint Venture Agreement. He contends that allowing the application would amount to the court rewriting the parties' contract. Since the Applicant has failed to prove fraud, mistake, or misrepresentation, the consent judgment should not be set aside.
26. Lastly, the deponent states that the Applicant will not face any prejudice because the Respondent has paid the Applicant Kshs 6 million to rent an alternative place of worship for its members while the construction is ongoing.



The Replying affidavit of Reverend Patrick Lihanda, sworn on 12/11/24

27. He affirms that he is the registered trustee of the Applicant, having served as General Superintendent until 1/10/24, and that he has the authority to swear the affidavit on behalf of the Applicant. He attached the Deed of Trust marked as PL1.
28. He described the allegations made by Nebert Misigo Mudaki in his affidavit dated 28/10/24 as untruths intended to mislead the court. As the General Superintendent of the Applicant, he stated that he had full authority to instruct the law firm of Oloo & Oloo Advocates to represent the registered trustees. The said law firm appeared for him and the Church in Petition 6 of 2018 - Kakamega, as well as JR No 4 of 2022 - Vihiga, among other cases involving the church.
29. On 13/9/23, he received a joint venture proposal from the Respondent to develop residential apartments and other buildings on a 70:30 benefit-sharing basis with the Applicant. The Respondent was to provide funding, while the church was to make the land available for the suit. Additionally, the existing church would be rebuilt as a new structure. He immediately instructed the firm of Oloo & Oloo to represent the church in negotiations leading to the JVA and Special Project Vehicle (SPV), whereupon the firm conducted due diligence and, on its advice, executed the JVA.
30. When the Respondent sued the Applicant, he again instructed the law firm to enter an appearance for him, the registered trustees, and the church. The law firm had clear instructions from him and the other registered trustees to represent them, including entering the impugned consent. He stated that the internal wrangles within the church are spilling into the court case. He also averred that the Applicant has offered no competent evidence to warrant setting aside the consent judgment.

Further Affidavit by Rev. Patrick Lihanda dated 22/11/24

31. Rev. Patrick Lihanda filed a Replying Affidavit sworn on 22/11/2024 in further response to the application dated 28/10/2024. He stated that he served as a registered trustee and General Superintendent for a period of 10 years until 10 January 2024. He reiterated the contents of his earlier affidavit. He added that Mudaki and Mogita executed the JVA in his presence and refuted their claims that they did not sign the document.
32. The deponent accuses the Applicant of approaching the court with unclean hands by concealing material facts. He reiterates that, in his role as General Superintendent, he had the authority to instruct the firm of Oloo & Oloo Advocates to represent the Registered Trustees in the Joint Venture Agreement with the Plaintiff on a 70:30 sharing basis.
33. He deposes that the Advocate forwarded the duly signed Joint Venture Agreement via the Letter dated 15/12/2023 for signing and execution by the Registered Trustees. He states that the other two Registered Trustees signed the Agreement in his presence, and it was then sent back to the Advocate via Parcel KIS-WIL No. 0397 for his signature. He argues that the signatures on Nerbert's Affidavit are identical to those on the registered Trust Deed. Furthermore, he claims that Mr. Nerbert Misigo and Moses Mogita have not provided any evidence to show that they were unaware of the execution of the Joint Venture Agreement. He therefore accuses the Applicants of perjury and urges the court to make such a finding. He maintains that the actions of one trustee are legally binding on the other trustees, hence, Mr. Nerbert Misigo and Moses Mogita cannot claim otherwise.



Grounds of opposition dated 22/11/24 filed on behalf of the registered trustees of the Pentecostal Assemblies of God.

34. The grounds cited include that the application lacks merit; the Applicant has intentionally misrepresented the facts of the case before the court; Dr. Martin Oloo was properly instructed by Patrick Lihanda, the former General Superintendent and registered Trustees, to act for the trustees in the JVA as well as in ELC E110 of 2024. Interestingly, the Applicant has never been a party to the suit and has no authority to seek orders to set aside the Consent Order of 29/8/24. Allowing the application will not prejudice the Applicant.

The written submissions

35. I have had the opportunity to read and consider two sets of written submissions filed on behalf of the Applicants; one by the law firm of Wasilwa Makhakara & Co, Advocates, and Bryan Khaemba Kamau Kamau & Co, Advocates, which I have read and considered. The Respondent, however, failed to file any written submissions.

Analysis and determination

36. Having read and considered the application, the grounds of opposition, the Preliminary objection and the written submissions I find the key issues are as follows;
- a. Whether this Court is functus officio, having adopted a Consent by the parties
 - b. Whether the Defendant/Applicants have met the threshold for setting aside a consent order/ judgement so as to be discharged from the obligations arising therefrom.
 - c. Whether leave should be granted to the Applicant to cross-examine Dr. Martin Oloo Advocate on the veracity of his instructions to represent the Defendant.

Whether this Court is functus officio having adopted a Consent by the parties

37. The Plaintiff argued that the Court, having entered a Consent Judgment, became functus officio and could not pronounce itself further in the matter. That an aggrieved party by the Judgment can only appeal.
38. It is generally recognised that a consent order is an agreement between the parties. It is binding on all parties involved in the proceedings or action and on those claiming under them.
39. Under section 80 of the [Civil Procedure Act](#) the court has power to review its own judgements and orders. It states as follows;
- Any person who considers himself aggrieved—
- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
40. According to Section 67(2) of the [Civil Procedure Act](#), no appeal lies from a decree passed by the court with the consent of parties. See the case of Benard Mwove Nzyuko –vs- Patrick Kaloki & Lilian Kamanthe (2021) eKLR.



41. It is to be noted that this court has power to set aside a consent judgment if it was obtained through fraud, misrepresentation, collusion, or mistake.
42. Furthermore, the court has the discretion to set aside consent orders and judgments if it is in the interests of justice. The court possesses inherent power to do so, provided the discretion is exercised judiciously.
43. For the above reasons, therefore, I disagree with the Respondent that the court is functus officio.

Whether the Defendant/Applicants have met the threshold for setting aside a consent order/judgement to be discharged from the obligations arising therefrom

44. A definition of a consent judgment was succinctly captured in an old English case of *Wildung v Sanderson* [1897] 2 CL 534 where the court held that;

“A consent Judgment or order is meant to be the formal result and expression of an agreement already arrived at by the parties to the proceedings embodied in an order of the Court. The fact of its being so expressed puts the parties in a different position from the position of those who have simply entered into an ordinary agreement. It is, of course, enforceable while it stands, and a party affected by it cannot, if he concludes he is entitled to relief, simply wait until it is sought to be enforced against him, and then raise it by way of defence. The matters in respect of which he desires to be relieved. He must, when he has completed obeying it, unless and until he can get it set aside in proceedings duly constituted for this purpose.”

45. The purpose of the consent judgement is for the parties to inform the court that they have settled their differences in a manner suitable to themselves without asking the court to make any further decision. The principle is akin to the freedom to contract in contract law generally. By entering into the consent judgment, the parties exercise their free will to reach a contractual agreement to their satisfaction.
46. It is well established that a court cannot interfere with a consent judgment of the parties unless there are circumstances that would provide a valid ground for modifying or rescinding a contract between them.
47. When an Applicant approaches the court with a prayer for setting aside a consent order, the burden of proof rests on him to establish the grounds on which he seeks to vitiate the consent judgment.
48. The circumstances that a consent judgement may be set aside are enunciated in a number of precedents. I will cite a few. In the case of *Brookbond Liebig (T) Ltd Vs Mallya* (1975) EA 266 where the Court of Appeal for East Africa stated as follows: -

“The circumstances in which a consent judgment may be interfered with were considered by this court in *Hirani V Kassam* (1952) 19 EACA 131 where the following passage from *Seton on Judgements and orders*, 7th Edition Vol 1, P.124 was approved:

Prima facie any order made in the presence and with the Consent of Counsel is binding on all parties to the proceedings or action and or those doing under them and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the Court, or if the consent was given without sufficient material facts or in general for a reason which would enable the Court to set aside an agreement”.

“As Windham J said in the introduction to the passage quoted above from *Hiran’s* case, a court cannot interfere with a consent judgement except in such



circumstances as would afford good ground for varying or rescinding a contract between the parties”.

49. In its decision in *S M N vs Z M S & 3 Others* [2017] eKLR, the Court of Appeal stated as follows:
- “ 17. There is no dearth of authorities on the law governing the setting aside of consent judgments or orders.... Generally, a court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties.”
50. In the case of the *Board of Trustees National Social Security Fund versus Micheal Mwalo* [2015] eKLR the court held as follows:
- “The judgment arose from a consent of the parties to the suit. The law pertaining to the setting aside of consent judgments or consent orders has been clearly stated. A Court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. To impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of the Court.”
51. In the case of *Kenya Commercial Bank Ltd v Specialized Engineering Company Ltd* [1982] KLR at page 485, Harris J put it this way:
- “ 1. A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.
2. A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.”
52. The Court of Appeal went on to cite with approval various cases on grounds for setting aside consent judgment and orders such as *Flora N. Wasike vs Destimo Wamboko* [1988] eKLR, *Board of Trustees National Social Security Fund -vs- Micheal Mwalo* [2015] eKLR amongst other authorities.
53. From the above decisions, the grounds on which a consent judgment may be set aside include: fraud; mistake; collusion; an agreement being contrary to the public policy of the court; lack of sufficient material; ignorance of material facts; and any sufficient reason that may permit an agreement to be set aside.
54. The Applicant contends that the consent was given without its approval or knowledge; it did not instruct the advocate who obtained the consent; one of the trustees who purportedly gave instructions to the counsel was not authorised to do so, since he was not a trustee and, furthermore, he had been prohibited by court order from managing the Applicant's affairs.
55. The Respondent contends that the Applicant was fully aware of the JVA, the proceedings, and the consent ultimately agreed upon by the parties.



56. The question is whether the Applicant has presented evidence to the court to impugn the consent judgment.
57. Rev Kennedy Mbaranya Adiar, the General Superintendent of the Applicant, informed the court that Mogita and Mudaki were registered trustees of the Applicant but did not execute the JVA nor instruct the counsel to record consent. That Rev Lihanda had no authority to instruct the counsel. Rev Mogita and Rev Mudaki claimed that their signatures were forged; however, no evidence of forgery was presented before the court.
58. According to the Deed of Trust dated 6/7/2022 and registered on 7/7/2022, the General Council of the Pentecostal Assemblies of God Kenya appointed six named Trustees whose duty was to hold trust property on behalf of the Applicant. The six included Lihanda Mogita and Mudaki. The Applicant has not submitted any evidence to the court showing that the said Trust Deed had been revoked at the time the consent judgment was entered. Rev Adiar has confirmed that Mogita and Mudaki were Trustees of the Applicant, which aligns with the Trust Deed. The Applicant has not presented any subsequent document before this Court to challenge the validity of the duly registered Trust Deed. If the Trust Deed is indeed fraudulent, what steps have the alleged officials taken against it?
59. It has been argued that Rev Lihanda lacked authority as he was barred by the court's order. I have examined the ruling presented to the court dated 18/6/2021. It is clear that Rev Lihanda was restrained from performing managerial and administrative duties concerning the affairs of the church. Although the court found him guilty of disobeying the orders and convicted him of contempt of court, it is not clear whether the orders prohibited him from being a registered trustee. It was the responsibility of the Applicant to specify to the court who the trustees were at the time the consent judgment was filed. The Applicant failed to do so.
60. The Applicant has argued that it was unaware of the transaction and the consent judgment. The court was informed that the members of the church filed a suit challenging the JVA, and the counsel representing the Applicant was Mess Oloo & Oloo Advocates. It is unreasonable for the members to have filed a suit challenging the transaction, and the Applicant claims to be unaware. I find this hard to believe. The officials are feigning ignorance of the transaction and, by extension, the consent judgment. It is also unlikely for the Applicant to claim that it did not know the counsel but still acted for it in ELC 110 OF 2023.
61. It is undisputed that the law firm of Oloo & Oloo appeared on behalf of the Applicant and compromised the suit, resulting in the impugned consent. The Applicant claims that the action of compromising the case was not authorised.
62. In the absence of any evidence indicating any of the vitiating factors, it is then presumed that the counsel had the authority to settle the suit by consent.
63. Regarding the assertion that Rev. Patrick Lihanda was declared unfit by Magistrates' Court in Kakamega Civil Suit No. 100 of 2019 to hold any office within the church after his term expired and barred from purporting to represent the church or act as its bona fide official, the said orders were interim. They were ex parte and issued during the pendency of the hearing and determination of the application. No evidence has been presented showing whether the said orders were extended and/or confirmed by the Court inter partes.
64. The Applicant has also failed to provide evidence indicating who the trustees were when the consent was entered/recorded. All they keep claiming is that he was not authorised. Who was the authority in place? It has not been specified. There is no evidence of searches from the Registrar of Societies or Registrar of Documents identifying the trustees at the time the consent was granted.



65. Further, pursuant to the *Trustees (Perpetual Succession) Act*, Cap. 164 Laws of Kenya, the Defendant is a legally recognized entity with perpetual succession, a common seal, and the capacity to sue and be sued in its own corporate name. The corporation established under this Act acts through its registered Trustees. In the absence of revocation of the Trust Deed, the Court has no basis to find that Rev. Patrick Lihanda lacked the capacity to instruct Counsel to act for the Defendant.
66. In any event, this Court lacks the jurisdiction to determine who the legitimate officials, office bearers, or registered Trustees of the Defendant are. Section 14(1) of the *Trustees (Perpetual Succession) Act* stipulates that when any question arises regarding whether a person is a member of a body incorporated under this Act, any interested party may apply by Petition to the High Court for its opinion on the matter. The Applicant has not sought such an opinion from the High Court.
67. The Court has been referred to the orders issued in High Court Petition No. 6 of 2018 at Kakamega. I have reviewed the Ruling delivered by Justice Musyoka on 18/06/2021, which in Paragraphs 20 and 21 refers to the Orders of 8/11/2018 and 5/12/2018 respectively. The orders of 8/11/2018 were injunctive orders restraining Rev. Patrick Lihanda from receiving names of pastors in relation to the election of church officials, as well as from convening any meeting in preparation for the other national conference. Conversely, the orders of 5/12/2018 suspended the elections scheduled for 5th and 6th December 2018 until further Court orders. The Court, in its discretion, found that Rev. Patrick Lihanda was guilty of contempt of Court for disobeying the said orders and proceeded to convict him accordingly.
68. Evidently, Justice Musyoka did not prohibit Rev. Patrick Lihanda from acting as a Trustee of the Defendant. The impugned orders of 11/2018 and 5/12/2018 related to the upcoming elections. The orders were issued on 18/06/2021, whereas the Deed of Trust dated 6/7/2022 was registered on 7/7/2022. It has not been explained what happened to these orders—were they vacated or appealed? I also note that there is no explanation of what transpired after Rev. Patrick Lihanda was held in contempt; whether there was a gap in the church's leadership. It is also unclear what became of the caretaker committee that was appointed. As noted earlier, it is not within this Court's jurisdiction to determine the leadership issue, as it is pending before the High Court. The leadership wrangles are informing the filing of diametrically opposite pleadings ostensibly by the same applicant.
69. The variation of a consent judgment at the instance of counsel's conduct can only succeed due to the general factors that would vary an agreement. The Court of Appeal in the case of Samuel Mbugua Ikumbu –vs- Barclays Bank of Kenya Limited [2015] KECA 390 (KLR) stated that;

“.....In a situation where the Advocate has no authority at all to enter a consent judgment, the consent judgment will be a nullity. See *Kafuma v. Kimbowa Contractors* 1974 EA (U) 91. This, however, cannot be construed to mean that the general authority given to an Advocate to act on behalf of his client in a matter allows for his conduct in all matters with an exception to entering consents. As adopted from common law, an Advocate who is duly instructed to act on behalf of his client has authority to act in every single thing that pertains to that matter even, enter consents on his or her behalf.....

This Court adopted the judgment of Harris J. R in the case of *Kenya Commercial Bank Ltd v. Specialised Engineering Co. Ltd* (1982) KLR P. 485 and held that:

“A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or by an agreement contrary to the Policy of the court or where the consent was given without



sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.

70. In the same case the Court further held that:

“An advocate has general authority to compromise on behalf of his client as long as he is acting bona fide and not contrary to express negative direction. In the absence of proof of any express negative direction, the order shall be binding”.

71. The Applicant has alleged fraud as a ground for seeking to set aside the consent agreement. Fraud is a quasi-criminal charge which must be proved on a standard below a reasonable doubt, but above a balance of probabilities. The Applicant has not provided evidence to suggest that the advocate committed fraud. An advocate is presumed to have received instructions, including settling a matter for their client. Therefore, I find no reason to conclude that the counsel was involved in any fraud so far. Rev Lihanda has 71. The Applicant has alleged fraud as a ground for seeking to set aside the consent agreement. Fraud is a quasi-criminal offence which must be proved on a standard that is below beyond reasonable doubt but above the balance of probabilities. The Applicant has not provided evidence to suggest that the advocate committed fraud. An advocate is presumed to have received instructions, including settling a matter for their client. Therefore, I find no reason to conclude that the counsel was involved in any fraud so far. Rev Lihanda has admitted to instructing the said advocate on the basis that he was the General Superintendent.

72. It has not been demonstrated that the firm of Oloo & Oloo Advocates had no authority to enter into the recorded consent. No basis has been shown in the application on which the Court could set aside the consent judgment as prayed. The prayer is declined.

Whether leave should be granted to the Applicant to cross-examine Dr. Martin Oloo Advocate on the veracity of his instructions to represent the Defendant.

73. Having found that the Applicant failed to prove the grounds upon which the consent could be set aside, I find no merit in determining this issue.

74. Final orders for disposal

- a. Based on the foregoing, the court finds that the applications dated 28/10/2024 and 29/10/2024 are not merited.
- b. They are dismissed with costs

75. It is so ordered

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF SEPTEMBER, 2025 VIA MICROSOFT TEAMS

J G KEMEI

JUDGE

Delivered Online in the presence of:

Ms. Sheunda HB for Mr. Osundwa for the Plaintiff

Ms. Namukuru HB for Mr. Brian Khaemba for the Defendant

Mr. Ochieng Odinga HB for Wasilwa for the Defendant

N/A for the Interested Party



C/A- Ms. Yvette

PETE312.2024-NBI 7R of 7

