



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Goren & 18 others v Juma & 14 others; Orera and Kimaiyo, The Registered Trustees Pentecostal Assemblies of God Kenya Church, The members of the PAG Appeals and Appeals Tribunal & 4 others (Interested Parties) (Petition 2 of 2023) [2025] KEHC 3494 (KLR) (24 February 2025) (Ruling)

Neutral citation: [2025] KEHC 3494 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT VIHIGA

PETITION 2 OF 2023

JN KAMAU, J

FEBRUARY 24, 2025

RULING

IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 1, 10, 19, 20, 21, 22, 23, 27, 28, 32, 33, 35, 36, 47, 73 & 232 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF CONTRAVENTION OF ARTICLES 10 AND 47 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE ANTICIPATED BREACH OF THE RIGHT TO PROTECTION OF PROPERTY AS PROVIDED FOR UNDER ARTICLE 40 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE PENTECOSTAL ASSEMBLIES OF GOD KENYA PROVIDENT FUND SCHEME

AND

IN THE MATTER OF AMENDMENT OF THE CHURCH CONSTITUTION, ELECTIONS AND APPOINTMENT OF TRANSITIONAL EXECUTIVE COMMITTEE

BETWEEN

REV HUNPHREY GOREN & 18 OTHERS & 18 OTHERS & 18 OTHERS PETITIONER

AND

REV JOHN JUMA 1ST RESPONDENT



REV SIMON ALOVI	2 ND RESPONDENT
REV TO OLENDU	3 RD RESPONDENT
REV NATHAN ONDEGO	4 TH RESPONDENT
REV JAMES OGENDI	5 TH RESPONDENT
THE BOARD OF TRUSTEES OF THE PENTECOSTAL ASSEMBLIES OF GOD, KENYA	6 TH RESPONDENT
THE PENTECOSTAL ASSEMBLIES OF GOD (KENYA) PROVIDENT FUNDS SCHEME	7 TH RESPONDENT
THE CARETAKER EXECUTIVE COMMITTEE OF THE PENTECOSTAL ASSEMBLIES OF GOD-KENYA	8 TH RESPONDENT
THE PENTECOSTAL ASSEMBLIES OF GOD KENYA	9 TH RESPONDENT
THE ATTORNEY GENERAL	10 TH RESPONDENT
THE RETIREMENT BENEFITS AUTHORITY	11 TH RESPONDENT
THE REGISTRAR SOCIETIES	12 TH RESPONDENT
THE INSPECTOR GENERAL	13 TH RESPONDENT
THE DIRECTOR OF CRIMINAL INVESTIGATIONS	14 TH RESPONDENT
THE DIRECTOR OF PUBLIC PROSECUTIONS	15 TH RESPONDENT

AND

REV ZEDEKIAH ORERA REV ELISHA KIMAIYO, THE REGISTERED TRUSTEES PENTECOSTAL ASSEMBLIES OF GOD KENYA CHURCH, THE MEMBERS OF THE PAG APPEALS AND APPEALS TRIBUNAL	INTERESTED PARTY
THE CABINET SECRETARY OF THE MINISTRY OF INTERIOR	INTERESTED PARTY
BANK OF BARODA	INTERESTED PARTY
COOPERATIVE BANK OF KENYA	INTERESTED PARTY
SMEP BANK	INTERESTED PARTY

RULING

Introduction

1. In their Petition dated 20th March 2020, the Petitioners herein sought the following orders:-
 - a. That conservatory orders be issued against the 1st, 2nd and 3rd Respondents from operating the Pentecostal Assemblies of God (Kenya) Provident Fund Scheme's Bank account number 9585100XXXXXX held at Bank of Baroda and account number 01122005XXXXXX held at Cooperative Bank of Kenya or any other bank accounts under the name Pentecostal Assemblies of God (Kenya) Provident Fund Scheme.



- b. That a conservatory order be issued against the 1st, 2nd, 3rd and 4th Defendants surrender all certified copies of the scheme bank statements, all scheme meetings, proceedings, appointments since inception in 2002, resolutions, contracts, decisions, deliberations, purchase, agreements, Audit and financial reports and a list of all members who submitted their PPF contributions.
- c. That a conservatory order be issued against the 1st to 4th Respondents either by themselves their employees whomsoever from carrying out the management, control and conduct of the affairs and business of the 5th Respondent and the Pentecostal Assemblies of God (Kenya) Provident Fund Scheme Administrator, Chairman and the Board of Trustees and/or calling, attending any meeting convened by them, or by anyone else pending the hearing and determination of the Petition.
- d. That a conservatory order be issued against the 7th Respondent to release to the Petitioners a certified copy of the recommendations given by the Roberts Insurance Brokers Limited in their inspection Report dated July, 2016.
- e. That a conservatory order be issued against the 1st Respondent to under oath surrender all certified copies of his academic and professional certificates.
- f. A declaration be issued against the 7th Respondent to appoint an Interim Administrator according to Section 45 of the *Retirement Benefits Act* to assume management control and conduct of the affairs and business of the Trustees, Manager, the Custodian, Administrator, or any other Service Provider at the exclusion of the 1st to 4th Respondents removing from office or disqualifying all the Trustees, Managers, Custodian, Administrator.
- g. That a declaration be issued against the 1st to 4th Respondents to produce under oath a list of all the Pentecostal Assemblies of God (Kenya) Provident Fund Scheme assets, beneficiaries and/or properties since inception.
- h. That a declaration be issued compelling the 9th Respondent to direct the 10th Respondent to investigate unauthorized, unpermitted persons writing confusing and disturbing messages via Celcom, PAG Scheme, Infotext and JuaMobile.
- i. That a declaration be issued against the 1st and 4th Respondents to release to the Petitioners their personal financial statements with respect of the Pentecostal Assemblies of God (Kenya) Provident Fund Scheme.
- j. That a declaration be issued that the term granted to the 4th Respondent has expired and that the 4th Respondent be dissolved.
- k. That a declaration be issued that the 1st, 2nd and 3rd Respondent be barred from operating the Pentecostal Assemblies of God (Kenya) Provident Fund Scheme's Bank account number 9585100XXXXXX held at Bank of Baroda and account number 01122005XXXXXX held at Cooperative Bank of Kenya or any other bank accounts under the name Pentecostal Assemblies of God (Kenya) Provident Fund Scheme.
- l. That conservatory orders be issued against the 1st, 2nd, 3rd and 4th Respondents from proceeding to appoint other Administrators or Trustees for the Pentecostal Assemblies of God (Kenya) Provident Fund Scheme.



- m. That a declaration be issued that by their acts and omissions the 1st, 2nd, 3rd and 4th Respondents have breached and/or are in the process of breaching the Petitioners' Right to Fair Labour practice as provided for in Article 41(1) of *the Constitution*.
- n. That a declaration be issued that by their omissions the 1st, 2nd, 3rd and 4th Respondents have breached and/or are in the process of breaching the Petitioners' Right to property as provided for in Article 40(2)(a) of *the Constitution*.
- o. That a declaration be issued directing the 6th Respondent to introduce fresh legislation to cater for the administration and management of churches.
- p. That a declaration be issued against the 1st to 5th Respondents barring them from appointing or using H.N Wasilwa Advocates to act for the Pentecostal Assemblies of God (Kenya) Provident Fund Scheme, the 5th Respondent in any judicial proceedings or Tribunal.
- q. That a declaration be issued directing the 11th Respondent to direct the 9th and 10th Respondents to investigate H.N Wasilwa for acts of forgery.
- r. That a declaration be issued that the Pentecostal Assemblies of God (Kenya) Provident Fund Scheme's Office be removed from Kisumu Town Church or any other place to the 5th Respondent's Headquarters at Nyang'ori.
- s. That a declaration be issued that the Petitioners be allowed to appoint an external auditor to audit the accounts of the Pentecostal Assemblies of God (Kenya) Provident Fund Scheme.
- t. That the 1st Respondent and his Kisumu Town Church be barred from receiving the monthly sum of Kshs 7000/= being the rent for the Pentecostal Assemblies of God (Kenya) Provident Fund Scheme's Office.
- u. That a declaration be issued revoking the appointment of H.M Wasilwa Advocate as the advocate for the Scheme and the 5th Respondent and from representing the Scheme and the 5th Respondent.
- v. That a declaration be issued that Rev Elkanah Salamba and the herein 2nd Respondent do surrender to the Petitioners all the property belonging to the 5th Respondent Kibera Assembly and the 5th Respondent's Nyamira Pentecostal Church.
- w. That a declaration be issued that Rev Elkanah Salamba and the herein 2nd Respondent be barred from entering into the 5th Respondent's Kibera Assembly and the 5th Respondent's Nyamira Pentecostal Church.
- x. That a declaration be issued that the herein 4th Interested Party be directed to order fresh elections in the 5th Respondent's Nyarumba District.
- y. That a declaration be issued that the 9th Respondent do proceed and investigate the complaints made against the 1st, 2nd and members of the 3rd and 4th Respondents with a view of commencing criminal proceedings 1st, 2nd and members of the 3rd and 4th Respondents.
- z. That a declaration be issued that by its acts and/or omissions the 7th and 9th Respondents have failed in their statutory duties to the Petitioners.
- aa. That the Petitioners are deserving of costs.



2. On 22nd February 2024, the 2nd and 3rd Respondents lodged their Notice of Preliminary Objection dated 20th February 2024 in opposition to the said Petition.
3. The 2nd and 3rd Respondents' Written Submissions were dated 20th February 2024 and filed on 22nd February 2024. Although the Petitioners were given ample time to file their Written Submissions, they did not do so. This Ruling is therefore based on the said 2nd and 3rd Respondents' Written Submissions only.

Legal Analysis

4. The 2nd and 3rd Respondents pointed out that the Petitioners and the 4th and 5th Interested Parties herein obtained orders from this court on 26th March 2020 and on 27th March 2020, they proceeded to the PAG-K Church headquarters Nyangori, Kisumu where broke into the premises, vandalised Church property and chased away the staff and security personnel in-charge of the PAG-K Church and its offices. The incident was reported at Gambogi Police Station through OB Number 13/27/3/2020 reported at 1700hrs.
5. They asserted when this matter was still at Nairobi Milimani High Court Constitutional and Human Rights Division, Makau J granted orders preventing the PAG pastors and Members Provident Fund Scheme access of the PAG K- Church bank accounts with monies amounting to about Kshs 278,000,000/= being the value of the subject matter herein with the various properties belonging to the PAG-K Church.
6. They pointed out that the Petitioners then filed this suit and fraudulently misled this court by failing to disclose the above said and other material facts and as a result obtained ex parte orders from this court, which orders were adverse to the orders that had already been issued by a court of competent jurisdiction being Kakamega Petition No 6 of 2018 and Petition No 8 of 2018 and Kakamega Civil Appeal No 7 of 2020. They added that the said cases were still pending and that there were orders barring the 4th and 5th Interested Parties and the Petitioners herein from accessing the PAG-K Church headquarters and offices and from holding themselves out as PAG-K Church officials and/or affiliates.
7. They further submitted that there were valid court orders that were issued in Nyamira HCCA No 60 of 2019 Rev Enock Nyaanga vs Rev James Ogendi & Others, permitting and allowing the 2nd Respondent herein and others including the Respondents herein to lawfully access, operate and undertake any such PAG- K Church activities at the Assembly in PAG Nyaramba District. They added that the 4th Interested Party herein had filed a similar suit in Kisumu HCCC No 19 of 2020 Rev Patrick Lihanda vs Anthony Kenyakisa & Others challenging the management of the PAG Pastors and Members Provident Fund Scheme.
8. They submitted that Cherere J declined to grant any such interim orders at the ex parte stage and directed that the matter be heard together with the other pending suits in Kakamega High Court. They were emphatic that the matter was still pending before a court of competent and concurrent jurisdiction.
9. They asserted that in that regard, they filed a Notice of Motion Application dated 8th April 2020 seeking to stay the orders of the court, a review of the same and the ultimate striking out of the instant suit on various grounds. They pointed out that Makau J as he then was, delivered the Ruling dated 29th May 2020 in which he discharged the interim orders that had been granted and transferred the instant matter to Kakamega High Court for hearing and determination on the pending Application and Petition.



10. They contended that upon the transfer of the matter to Kakamega, in his Ruling dated 24th March 2023, Musyoka J dismissed the Petitioners' Notice of Motion application dated 20th March 2020 on the ground that the court lacked jurisdiction to entertain the same. He then transferred the file to this court as the subject matter fell within the territorial jurisdiction of this court.
11. They opposed the Petition herein dated 20th March 2020 on the basis that this court lacked jurisdiction to entertain the same by virtue of the provisions of Articles 162(2) and 165(5)(b) of the Constitution of Kenya, 2010.
12. They argued that the instant suit was fundamentally defective as the issues raised herein revolved around the questions of properties, monies and assets belonging to the PAG-K Church, the Pastors and staff of the PAG-K Church Pastors and Staff Provident Fund Scheme and their management therein.
13. They invoked Articles 162, 165 and 260 and Section 13 of the Environment and Land Court Act and contended that the Petitioners primarily sought declaratory orders (Prayers (m) and (n)) hinged on Articles 40 and 41 of the Constitution which related to the right to property and labour rights. In this regard, they placed reliance on the case of KO Holdings Limited vs County Government of Kiambu; Red Hill Kentmere Residents Association (Interested Party)[2019]eKLR where it was held that it was only the Environment and Land Court (ELC) that had the jurisdiction to entertain disputes relating to land and/or the environment even when commenced by way of a constitutional petition and that the High Court and the ELC could not have concurrent jurisdiction in such matters because they were two (2) distinct courts.
14. They further argued that the disputes relating to Church properties ought to be addressed by the ELC while those relating to the Pastors Provident Fund Scheme pertains to various pension payments and remittances by pastors and any challenges on the same ought to be addressed at the Employment and Labour Relations Court (ELRC) which was vested with the jurisdiction over such pension issues.
15. To buttress their point, they invoked Section 35(5) and 35(6) of the Employment Act, 2007 and Section 12 of the Employment and Labour Relations Court Act and placed reliance on the cases of Abdullahi Ali Mohammed vs Kenya Ports Authority & Another[2016]eKLR and Albert Chaurembo Mumba & 7 Others vs Maurice M. Munyao & 148 Others[2016]eKLR where the common thread was that pension was a subject which was at the heart of social security law, an offshoot of the employment and labour relations law and thus the pension disputes were at the core mandate of the ELRC.
16. They further submitted that this court lacked jurisdiction to hear and determine the instant Petition by virtue of the provisions of Section 46 and 48 of the Retirement Benefits Act for having bypassed the dispute resolution mechanisms therein.
17. They were emphatic that the Petitioners' grievances regarding the various affairs of the PAG-K Church Pastors and Staff Provident Fund Scheme and the decisions and actions ought to have been addressed and dealt with by the Retirement Benefits Authority (RBA). They added that if they were dissatisfied by the decision of the RBA, they could appeal to the Chief Executive Officer or the Retirements Benefits Appeal Tribunal (RBAT).
18. They further contended that the present proceedings were fundamentally defective and offended the provisions of Section 6 of the Arbitration Act by failing to pursue Arbitration as provided for under Article 42 of the Amended Trust Deed and Rules dated 5th February 2018 between the PAG-K Church and Rev James Ogendi, Rev George Okello, Rev Albert Asigo, Rev Arthur Amiga and Rev Job Kigen in resolving the church disputes and the pension issues. In this regard, they relied on the case of



- KO Holdings Ltd vs County Government of Kiambu & Another (Supra) where the court upheld a preliminary objection on the grounds of exhaustion of alternative remedies available.
19. They were emphatic that the Petitioners had invoked the jurisdiction of this court prematurely. They also referred to the case of Bethwel Omondi Okal vs Board of Trustee Telposta Pension & 2 Others [2017] eKLR where it was held that pension schemes were not ordinary bodies to be sued in the ordinary courts because their membership was limited to a particular group of persons and that any disputes had to be resolved in accordance to the constituting instruments and not otherwise.
 20. They further placed reliance on the cases of Anne Wangui Ngugi vs Edward Odundo, CEO Retirements Benefits Authority, Petition No 57 of 2014(eKLR citation not given) and Staff Pension Fund & Kenya Commercial Bank Staff Retirement (DC) Scheme 2006 & Another vs Ann Wangui Ngugi & 5246 Others [2018]eKLR where the courts therein underscored the importance of exhausting internal dispute mechanisms for pension schemes and the appellate process under the Retirement Benefits Scheme Act.
 21. They further pointed out that the Petition herein was defective on grounds that the Petitioners failed to exhaust the remedies under the Access to Information Act in regard to the remedies concerning access and request to information. They were categorical that the Petitioners had not demonstrated that they attempted to exhaust or utilise the avenues under the Access to Information Act and the Fair Administrative Action Act to warrant the invocation of this court's jurisdiction.
 22. They urged this court to down its tools and strike out the entire Petition herein with costs to them as the court could not give any such orders and/or directions and/or transfer the Petition as it had no power to entertain it in the first instance.
 23. The 2nd and 3rd Respondents' Preliminary Objection was premised on the grounds that this court lacked jurisdiction to hear and determine the present Petition by virtue of the provisions of Articles 162(2) and 165 (5) (b) of the Constitution of Kenya, 2010 as read with the provisions of Section 46 and 48 of the Retirement Benefits Act, the Access to Information Act and the Fair Administrative Action Act.
 24. The other ground was that this court lacked the jurisdiction to hear and determine the Petition by virtue of Section 6 of the Arbitration Act of Kenya as a result of the failure by the Petitioners to pursue Arbitration as provided for under Article 42 of the Amended Trust Deed and Rules dated 5th February 2018 between the Pentecostal Assemblies of God (Kenya) Church (hereinafter referred to as the "PAG-K Church") and Rev James Ogendi, Rev George Okello, Rev Albert Asigo, Rev Arthur Amiga and Rev John Kigen.
 25. Notably, Article 162(2) of the Constitution of Kenya, 2010 provides that:-"Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to
 - a. employment and labour relations; and
 - b. the environment and the use and occupation of, and title to, land."
 26. Article 165(5)(b) of the Constitution of Kenya further states that:-

"The High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2)."
 27. In addition, Article 260 of the Constitution of Kenya stipulates that:-

"property includes any vested or contingent right to, or interest in or arising from



- a. land, or permanent fixtures on, or improvements to, land;
- b. goods or personal property;
- c. intellectual property; or
- d. money, choses in action or negotiable instruments”

28. Section 13(1) of the [Environment and Land Court Act](#) No 19 of 2011 also provides as follows:-

“The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of [the Constitution](#) and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.”

29. Going further, Section 12 of the [Employment and Labour Relations Court Act](#) provides:-

“The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of [the Constitution](#) and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—

- a. disputes relating to or arising out of employment between an employer and an employee;
- b. disputes between an employer and a trade union;
- c. disputes between an employers’ organisation and a trade union’s organisation;
- d. disputes between trade unions;
- e. disputes between employer organisations;
- f. disputes between an employers’ organisation and a trade union;
- g. disputes between a trade union and a member thereof;
- h. disputes between an employer’s organisation or a federation and a member thereof;
- i. disputes concerning the registration and election of trade union officials; and
- j. disputes relating to the registration and enforcement of collective agreements.”

30. A perusal of the Petition indicated that the Petitioners alluded to Article 40 and 41 of [the Constitution](#) of Kenya which related to protection of property and labour relations which were a preserve of the ELC and ELRC respectively.

31. Section 46, 47 and 48 of the Retirements and Benefits Act further provides that:-

“46. Any member of a scheme who is dissatisfied with a decision of the manager, administrator, custodian or trustees of the scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer with a view to ensuring that such decision is made in accordance with the provisions of the relevant scheme rules or the Act under which the scheme is established.



47. Establishment of Appeals Tribunal (1) The Minister shall, by order published in the Gazette establish an Appeals Tribunal for the purpose of hearing appeals under this Act. (2) The Tribunal shall consist of a chairman and four other members who shall be appointed by the Minister and who shall hold office for a period of three years upon such terms and conditions as may be prescribed. (3) The chairman of the Tribunal shall be an advocate of the High Court of Kenya of not less than seven years standing. (3A) The quorum of the Tribunal for the purposes of a hearing under this section shall be the chairman and any two members. (4) Subject to subsection (3A), all matters before the Tribunal shall, in the event of a difference of opinion, be decided by the votes of the majority of the members thereof.
48. Appeals to the Tribunal (1) Any person aggrieved by a decision of the Authority or of the Chief Executive Officer under the provisions of this Act or any regulations made thereunder may appeal to the Tribunal within thirty days of the receipt of the decision. (2) Where any dispute arises between any person and the Authority as to the exercise of the powers conferred upon the Authority by this Act, either party may appeal to the Tribunal in such manner as may be prescribed.”

32. Notably, the *Retirement Benefits Act* provided for the regulation and supervision of retirement benefits schemes by the RBA. It also empowered the RBA to inspect the records and operations of schemes, either impromptu and as a matter of course, or where directed by the Board on need basis, to satisfy itself that the scheme was being run and administered in accordance with the relevant laws and regulations, and to take remedial steps whenever it established that there were problems.
33. In extreme cases of maladministration and mismanagement, the RBA could appoint interim administrators to take over the administration and management of the scheme. The *Retirement Benefits Act* also provided for the handling complaints by members of the scheme, who were dissatisfied with decisions or actions of the scheme managers, administrators or trustees. The Chief Executive Officer of the RBA had the power to review the said decisions.
34. The RBAT was established under the *Retirement Benefits Act* and had similar powers to those of a subordinate court, to handle appeals from decisions of the RBA or the Chief Executive Officer, including on review of decisions of scheme managers, administrators or trustees.
35. It was evident that the issues that were raised in the Petition related to matters that were within the jurisdiction of the Chief Executive Officer of the RBA, and the RBAT. If there were any disputes with relation to the way the 4th Respondent was being run, the recourse was to seek reliefs within the structures that had already been created under the *Retirement Benefits Act*.
36. If the Petitioners, as members of the retirement benefits scheme, were unhappy with the decisions of the managers of the scheme or its trustees or in the management and administration of the scheme, the issue ought to have been raised with the Chief Executive Officer of the RBA for review, and if dissatisfied, approach the RBT on appeal, and thereafter to the High Court by way of review as was held in the case of *Jimmy R. Kavilu & 16 Others vs Stanbic Bank Kenya Ltd & 7 Others*[2019] eKLR.
37. This court had due regard to the case of *Albert Chaurembo Mumba & 7 Others vs Maurice M. Munyao & 148 Others* (Supra) where the Supreme Court held that that the *Retirement Benefits Act* mechanism fell within the constitutional ambit of Article 165(5)(b) of *the Constitution* of Kenya for which the



High Court could not usurp the jurisdiction of a specialised mechanism provided for by statute and *the Constitution*.

38. This court took the firm view that where there was a prescribed resolution mechanism, parties were required to first exhaust it before approaching the court. This was known as the doctrine of exhaustion.

39. Notably, Section 6 of the *Arbitration Act*, Cap 49 (Laws of Kenya) provides that:-

1. A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or otherwise acknowledges the claim against which the stay of proceedings is sought, stay the proceedings and refer the parties to arbitration unless it finds—
 - a. that the arbitration agreement is null and void, inoperative or incapable of being performed; or
 - b. that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.
2. Proceedings before the court shall not be continued after an application under subsection (1) has been made and the matter remains undetermined.
3. If the court declines to stay legal proceedings, any provision of the arbitration agreement to the effect that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.

40. Article 42 of the Amended Trust Deed and Rules dated 5th February 2018 between the PAG-K Church and Rev James Ogendi, Rev George Okello, Rev Albert Asigo, Rev Arthur Amiga and Rev Job Kigen provided as follows:-

“.....Any dispute or question not resolved by way of negotiation shall be referred to arbitration...

Such arbitration shall be conducted in Kenya in accordance with the provisions of the *Arbitration Act*, 1995 or any other succeeding legislation.”

41. In the case of William Odhiambo Ramogi & 3 others vs Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR, it was held that the question of exhaustion of administrative remedies arose when a litigant, aggrieved by an agency’s action, sought redress from a court of law on an action without pursuing available remedies before the agency itself.

42. The doctrine of exhaustion ensured that matters could not be considered in court until an aggrieved party had first exhausted the dispute resolution mechanisms that were outside the court system to protect his or her interests, where he or she had consented to such dispute resolution mechanisms.

43. This court agreed with the 2nd and 3rd Respondents that the Petitioners had also approached this court prematurely by failing to first pursue arbitration in regard to their claim against the 3rd and 4th Respondents herein.

44. It was the finding of this court that the Petitioners ought to have exhausted all other available remedies to them before invoking the jurisdiction of this court. As this court had no jurisdiction in this matter, it had to down its tools forthwith. In the case of Owners of Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Limited (1989), it was held that jurisdiction was everything and without it a court had no power to take one more step. Jurisdiction was conferred by statute and was not assumed without any legal basis.



Disposition

45. For the foregoing reasons, the upshot of this court's decision was that the 2nd and 3rd Respondents' Preliminary Objection dated 20th February 2024 and filed on 22nd February 2024 was merited and the same be and is hereby allowed. The effect of this order is that the Petitioners' Petition dated 20th March 2020 had no limb to stand on and consequently, the same stands as automatically struck out.
46. In view of animosity that costs would cause to the parties herein and to preserve an already strained relationship between the parties herein caused by long standing litigation in different matters, this court hereby deviates from the general principle that costs follow the event and directs that each party will bear its own costs of the Petition and Preliminary Objection.
47. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 24TH DAY OF FEBRUARY 2025

J. KAMAU

JUDGE

