



Kamau v Kenya Assemblies of God (Sued Through Its Trustees and Officials) Philip Kitoto Sabwa, William Maika, Charles Owuor Otieno, Stephen Kuria Kiari & another (Civil Case E210 of 2022) [2025] KEHC 9626 (KLR) (Civ) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9626 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E210 OF 2022

JN MULWA, J

JULY 3, 2025

BETWEEN

REV. DAVID NJIRI KAMAU PLAINTIFF

AND

**KENYA ASSEMBLIES OF GOD (SUED THROUGH ITS TRUSTEES AND OFFICIALS) REV. PHILIP KITOTO SABWA REV. WILLIAM MAIKA REV. CHARLES OWUOR OTIENO REV. STEPHEN KURIA KIARI 1ST DEFENDANT
REGISTRAR OF SOCIETIES 2ND DEFENDANT**

RULING

1. Kenya Assemblies of God (hereafter the 1st Defendant/Applicant) by its motion dated 10/05/2023 filed against Rev. David Njiri Kamau (hereafter the Plaintiff/Respondent) and Registrar of Societies (hereafter the 2nd Defendant/Respondent) seeks inter alia: -
 - a. That the matter be marked as compromised and settled.
 - b. That the Plaintiff does bear the costs of the suit in any event.
2. The motion is brought pursuant to Section 3A, 59C of the *Civil Procedure Act* (CPA) & Order 25 Rule 5(1) of the Civil Procedure Rules (CPR), and is supported by an affidavit sworn by Rev. Charles Owuor Otieno dated 10/05/2023.

Applicant's/1st Defendant's case

3. In 2019 the 1st Defendant undertook an exercise to amend its constitution, in which the Plaintiff fully participated in the said exercise and did not at any time express any reservations in substance about



the constitutional amendments. That despite an objection by the Plaintiff to the 2nd Defendant, on grounds that the 1st Defendant's constitutional amendment process lacked public participation, the 2nd Defendant dismissed the said objection for want of merit and proceeded to approve and register the amendments.

4. The Applicant states that despite the existence of internal dispute resolution mechanisms within the 1st Defendant, the Plaintiff commenced Judicial Review (JR) No. E014 of 2022 against both Defendants and later parties agreed to mediate on the issues whereinafter a conclusion was reached. Despite the latter, the Plaintiff still agitated his cause before Court, which was later dismissed.
5. The Applicant thereafter undertook activities, which the 1st Defendant considered went against good order of its management thus necessitating disciplinary actions against the Plaintiff. Consequently, the Plaintiff likewise approached the Employment and Labour Relations Court (ELRC) in Petition No. E177 of 2022, whereafter the Court directed that the matter be reconciled through the 1st Defendant's internal reconciliation mechanisms. The internal dispute reconciliation committee convened on 07/03/2023 and reconciled the Plaintiff's dispute and since then he has since been paid and taken office as per the decision of 1st Defendant's internal dispute reconciliation committee.
6. The Applicant concludes that the constitutional amendment process was above board and the issues raised by the Plaintiff have since been adjudicated upon therefore litigation must come to an end.

Respondent's/Plaintiff's case

7. The Plaintiff/Respondent Rev. David Njiri Kamau opposes the motion by way of a replying affidavit dated 08/06/2023. He maintains that the constitutional amendment process of the 1st Respondent was flawed as JR No. E014 of 2022 was not determined on merit as it was dismissed preliminarily for failure to exhaust internal dispute resolution mechanisms. That the issues raised in ELRC Petition No. E177 of 2022 are substantially dissimilar to those raised in the instant matter, as the former relates to the unprocedural change of the 1st Defendant's constitution whilst the latter relates to his unprocedural suspension from the 1st Defendant. He goes on to state that the issue of his employment is not in dispute in the instant suit however he is yet to receive his denied remuneration.
8. The Respondent further states that the minutes attached to the 1st Defendant's motion are equally not a true reflection of what was discussed. In summation, he states that it is in the interest of justice that the motion is dismissed given that the issues raised in this suit have not been fully heard and determined.
9. The 2nd Defendant did not participate in the instant proceedings.
10. The 1st Defendant's motion was disposed of by way of written submissions, of which the Court has duly considered alongside the rival affidavit material.

Issues for determination

- a. Whether the suit ought to be marked as compromised and/or settled?
- b. Who bears the costs of the motion?

Whether the suit ought to be marked as compromised or settled?

11. In presenting the instant motion, the 1st Defendant relied on Section 3A of the CPA which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court", The Court's inherent powers was judiciously addressed



by the Court of Appeal in *Rose Njoki King'au & Another v Shaba Trustees Limited & Another* [2018] eKLR and requires no restatement.

12. Alongside the above provision, the 1st Defendant has equally relied on Section 59C (1) of the CPA which provides that “A suit may be referred to any other method of dispute resolution where the parties agree or the Court considers the case suitable for such referral” and Order 25 Rule 5(1) of the CPR which states -:

“Where it is proved to the satisfaction of the court, and the court after hearing the parties directs, that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall, on the application of any party, order that such agreement, compromise or satisfaction be recorded and enter judgment in accordance therewith.”

Analysis and Determination

13. The purport of the above provision is self-elaborate, as it calls upon the Court to determine whether the parties herein have duly compromised the suit and if so whether such compromise was recorded by the court. To contextualize the issues, the Court must revisit the Plaintiff's pleadings in order to establish where a compromise has been reached in the matter. By his plaint the Plaintiff has averred that the 1st Defendant has since 2019 acted in breach of its duties and contrary to its constitution, to wit, breach of the 1st Defendant's by-laws, trust and unlawful conduct have been pleaded.
14. The Plaintiff has equally contended that the 2nd Defendant acted improperly by permitting the amendments of the 1st Defendant constitution and as a consequence, he has gone ahead to itemized particulars of the 2nd Defendant irregular and unlawful conduct.
15. In the end, the Plaintiff sought a raft of orders as against both the 1st and 2nd Defendant of which I find it useful to reproduce herein verbatim for the benefit of both the Court and parties' herein. The Plaintiff in his suit has sought judgment as against the Defendants jointly and severally for -:
- i. A permanent injunction does issue restraining the 1st Defendant, its agents, servants or any other person acting for and or on their behalf from further implementing, adopting or in any way dealing with *the Constitution* and By-laws of the Kenya Assemblies of God (Constitution Revision by General Council 2020)
 - ii. A permanent injunction does issue to restrain the 1st Defendant, its agent, servants or any other person acting for and or on their behalf from taking any action against the Plaintiff in any manner whatsoever including retaliation, reprisal or victimization on account of filing the suit.
 - iii. An order directing the 2nd Defendant to cancel the amended Constitution and By-laws of the Kenya Assemblies of God (Constitution Revision by General Council 2020)
 - iv. An order directing the 1st and 2nd Defendant to pay general damages to the Plaintiffs for wrongful and unlawful change of *the Constitution* and By-laws of Kenya Assemblies of God (Constitution Revision by General Council 2007) and extension of terms of office.



- v. A declaration that the decision of the 2nd Defendant envisaged in the letter dated 5th November 2021 and confirmed on 27th January, 2022 approving the amended Constitution and By-laws of the Kenya Assemblies of God (Constitution Revision by General Council 2020) was unlawful, illegal null and void.
 - vi. A declaration that the terms of office of all office holders of the 1st Defendant has come to an end and that the officers be deemed to hold office only in an acting capacity hence are unable to make any policy adjustments.
 - vii. A declaration that elections of the 1st Defendant should be held within three (3) months of the decision of the Court.
 - viii.
 - ix.
 - x.”
16. Ex facie, by its motion, the 1st Defendant contends that the minutes of the 1st Defendant’s Dispute Resolution Committee held on 07/03/2023 (Annexure AG-1) essentially compromised the issues canvassed in the Plaintiff’s suit. In riposte, the Plaintiff has contended that -: firstly, the issues canvassed in JR No. E014 of 2022 and ELRC Petition No. E177 of 2022, are substantially different from the instant suit; secondly that JR No. E014 of 2022 was not determined on its merits; and thirdly the minutes evinced by the 1st Defendant are not a true reflection of what was discussed.
 17. By (Annexure DKN-1), the Plaintiff vehemently contends that no compromise has been reached in respect of the issues canvassed in his plaint and equally disputes the minutes that the 1st Defendant relies on towards the assertion that the instant suit has since been compromised.
 18. As earlier captured in this ruling, the provision of Order 25 Rule 5(1) of the CPR is self-elaborate. Further, it is palpably apparent from the Plaintiff’s pleadings, that his cause of action raises a myriad of issues concerning amendment of the 1st Defendant’s Constitution and By-laws of through (Constitution Revision by General Council 2020), and the propriety of the 2nd Defendants actions towards registration and or actualization of the said amendments.
 19. Notwithstanding, the disputation concerning the veracity of the 1st Defendant’s Dispute Resolution Committee Minutes, presumably if the same were true and accurate reflection of the issues canvassed therein, it does not in totality canvass the issues in the Plaintiff’s suit before this Court. It would appear that the minutes were a result of directions by the Court in ELRC Petition No. E177 of 2022 meanwhile the issues discussed therein orbited around the Plaintiff’s suspension from ministry with the 1st Defendant; suspension from his role as secretary -treasurer of Thome section; suspension of his credentials; and payment of Plaintiff’s back allowances, among others.
 20. While Order 25 Rule 5 of the CPR, spells out that any agreement entered between parties on subject being litigated by way of suit is capable of compromising the said proceedings, here it is evident that no such compromise has ever been arrived at, and the Applicant did not offer and or provide the court with any such compromise with respect to the totality of issues being canvassed in the Plaintiff’s suit.
 21. The above finding is buttressed by the Parties conduct. Since filing of the application under review by the application dated 10/5/2023, counsel for both parties have progressed the case in court by taking numerous mentions, urging for more time to negotiate a settlement, even attempting mediation



process, as at 6/2/2024 when more time was granted to the parties, and lastly by September 2024 when counsel reported to the court that mediation had collapsed and therefore sought for a 25/9/2024, this court settled directions on the hearing of the suit and scheduled the suit for hearing on 30/10/2024.

22. It is at this point in time that the applicant woke up from his sleep, and remembered having filed the instant application in October 2023 and urged the court to have it heard first in the hope that he would eventually forestall the full hearing and determination of the suit on merit, the court thus has heard parties and here below has pronounced itself on the application.
23. It is therefore evident to the court that no settlement of the case by compromise or otherwise was ever made as between the parties.

Consequently, the court finds and holds that the 1st Defendant's application dated 10/5/2023 is baseless and devoid of merit. It is accordingly dismissed with attendant costs in favor of the Plaintiff.

24. The case shall be listed for mention for taking a hearing date on 21/7/2025.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 3RD DAY OF JULY, 2025

.....

JANET MULWA.

JUDGE

