



REPUBLIC OF KENYA



KENYA LAW
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**Owour v Olang'o & 7 others (Constitutional Petition E002 of 2021)
[2025] KEHC 11279 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CONSTITUTIONAL PETITION E002 OF 2021**

RPV WENDOH, J

JULY 24, 2025

BETWEEN

MUSA MIGENDA OWOUR PETITIONER

AND

PASKAL OLANG'O 1ST RESPONDENT

PETERLIS ABICH ODIRA 2ND RESPONDENT

BERNADUS ODHUNO MAPOWA 3RD RESPONDENT

ODEGO OMOLO 4TH RESPONDENT

AGNES ADHIAMBO ODHUNO 5TH RESPONDENT

MARGARET AKINYI OSODO 6TH RESPONDENT

LUCAS OMORO 7TH RESPONDENT

ROBERT ODEGO OLOO 8TH RESPONDENT

JUDGMENT

1. The issues in this Petition appeal pits against two warring parties in a religious set up. Musa Migenda Owour (petitioner) filed this petition dated 1st March 2021 challenging the decision of Paskal Olang'o, Peterlis Abich Odira, Bernadus Odhuno Mapowa, Odego Omolo, Agnes Adhiambo Odhuno, Margaret Akinyi Osodo, Lucas Omoro and Robert Odego Oloo (the respondents) from denying him access to St. Peter's God Nyinyo or any other Legio Maria Church/Mission.
2. The petitioner prays for the following reliefs: -
 - i. A declaration that it is wrong and/or tortuous on the part of the respondents to deny the petitioner access to St. Peter's God Nyinyo or any other Legio Maria Church/Mission because



of his beliefs, conscience, stand, thought or opinion over any person teaching and/or practice, which may be contrary to Article 32 (1) (2) (3) & (4) of *the Constitution* of Kenya 2010;

- ii. There be an order that the pronouncement barring the petitioner from accessing the Mission, previous and particularly current church building and/or undertaking church activities, including attending mass be declared an illegality and the petitioner, a founder member of the Mission/Church of God Nyinyo be allowed to access and take part, as he has done for the last 50 years' service, fully and without any discrimination, intimidation, defamation or threat to life whatsoever and/or howsoever;
 - iii. There be an order that the Paskal Olang'o (1st respondent) has committed the offence of discrimination in a manner contrary to Article 27 (5) and 32 (1) (2), (3) & (4) of *the Constitution* of Kenya, 2010 and be compelled to abdicate being a priest of God Nyinyo Church in line with earlier directives given by Superior Padre Garbiel Winyo, Father Jeremiah and Paul Omolo, Bishop Janes Akuya of Nyasion Legio Maria Mission/Parish in Sakwa within Awendo Sub County;
 - iv. Costs of the petition be borne by the respondents.
3. The petition is supported by the petitioner's supporting affidavit deposed on 9th February 2021. The petitioner contended that he is a founding member of St. Peter's Legio Maria God Nyinyo Mission situated in North Kamwango Sub Location in North Kamagambo Location and one of the founding members of Mission/ Legio Maria Sect in 1964 ('hereinafter the church/congregation'). He stated that he joined the church in 1970 and found Bernadus Odhuno Mapowa and his wife Agnes Adhiambo Odhuno who had earlier joined the church in the year 1964.
 4. The petitioner further contended that he was among the pioneers who funded the construction of the church and he was the chairman of the church and construction project. He stated that the congregation built with a permanent wall around the church in between the years 2013 and 2017. The petitioner is aggrieved that the 1st respondent has indoctrinated the church members to disobey the church leadership including those of the parish and diocese.
 5. The petitioner is also aggrieved that the respondents have denied him access to the church because of his belief, conscience, stand, thought or opinion contrary to Article 32 (1), (2), (3) & (4) of *the Constitution* of Kenya.
 6. Opposing the petition, the 1st respondent filed a replying affidavit dated 13th April 2021. He denied every allegation raised in the petition. According to the 1st respondent, the petitioner is not an official member of the church where he is presently the presiding priest. To his knowledge, he has only seen the petitioner worshipping at the church three times; twice towards the end of the year 2020 and once on 24th January 2021.
 7. The 1st respondent deposed that the petitioner came to the church on 24th January 2021 and demanded for his removal as the presiding priest of the church. The 1st respondent stated that the decision to suspend or expel a church member from the church is a serious issue and such a decision can only be made by the Ecclesiastical Council chaired by his Holiness the Pope.
 8. The 1st respondent further deposed that the names of all the church members are entered in the church membership books and the member is also required to be a member of a cell group. The 1st respondent denied that the petitioner is a member of the church going by the records in his possession. The 1st respondent reiterated that a person cannot be a church member in the absence of being a member of a cell group.



9. The allegations that the petitioner was expelled, was termed as paradoxical and mischievous since the petitioner has not annexed minutes of the meeting in which he was expelled from the church and any letter communicating to him the same. Further, the 1st respondent deposed that the instant petition weighted against the petitioner's conduct on 24th January 2021 interrupting a peaceful service, renders the petition scandalous and a mockery of the due process of the law.
10. In urging this court to dismiss the petition, the 1st respondent stated that this court is devoid of jurisdiction for reasons that the petitioner has not exhausted all the church's internal mechanisms of resolving such a dispute. The 1st respondent further stated that this petition does not disclose any reasonable cause of action and it is non - suited.
11. This petition proceeded by way of viva voce evidence. PW1, the petitioner testified that he had no position in the church. After he was expelled from the church, he tried to seek audience with the 1st respondent through various leaders of different dioceses; that even after the appointment of Bernadus Odhuno and Walter Kiarie to assist in solving the dispute, he was sent away.
12. On cross examination, the petitioner stated that although he used to be the Chairman of the church, he did not have a letter of appointment. He stated that he was sent away from the church because of his old age. The petitioner could not substantiate the complaints he made to the Parish Leader, Mr Owinyo since he did not have evidence of the complaint. He testified that he left the cell group after resigning from the leadership. He stated that it was not mandatory for one to be a member of a cell group in order to be a member of the church. He testified that he was not allowed to attend any of the Legio Maria Churches.
13. DW1, Paskal Olang'o Agoyo testified in support of the respondents' case. He stated that he is the current Priest of the church having been posted there in November 2020. DW1 produced his letter of appointment dated 8th April 2021 (DEXH - 1). He recalled seeing the petitioner in the year 2021. He testified that to be a member of the church, a person must be part of a cell group but the petitioner is not part of any cell group. He testified that he has never been summoned in any forum to try and resolve an issue of removal of the Petitioner from the church.
14. On the process of removing a congregant from the church, DW1 testified that a committee sits and sends a letter to the headquarters which has the final say on membership, expulsion or transfer of a member. It was his testimony that they did not set up any committee in relation to the petitioner since he is not a member of his church. DW1 further produced the authority to plead dated 13th April 2021 (DEXH - 2).
15. On cross examination, he testified that he could not tell who started the church. He also stated that he did not have the record of the church members since 1970. DW1 denied that when the petitioner came to the church in 2021, he was discriminated on account of his age or he was denied an opportunity to pray. He stated that any person is welcomed to the church to pray.
16. DW2 Bernadus Odhuno testified that he has been a member the church since 1964. He reiterated that the petitioner is not a member of the church, as one must be a member of a cell group to be considered a member of the church. The petitioner did not belong in any cell group. It was his testimony that he has never witnessed DW1 threaten the petitioner.
17. On cross examination, DW2 testified that he did not see the petitioner's father in church in 1970. He did not have the list of members since 1970. He testified that on the material day, 24th January 2021 when the petitioner came to church, there were discussions on how money was used during the burial of a member. He stated that the petitioner started saying that DW1 ought to be expelled from the



church. He stated that DW1 was brought to the church by the headquarters and they are the only ones who can remove him.

18. DW3 Samwel Onyango Ouma testified as the church secretary having taken the position in the year 2016. As the custodian of all the church documents, he stated that the petitioner is not a church member. He first saw the petitioner in December 2020 and he saw him again on 24th January 2021 as a visitor. He reiterated that to become a church member, one must belong to a cell group. DW3 testified that there are 6 cell groups being St. Barnabas, St. Michael, St. Teresa, St. Julian, St. Catherine and St. Joseph Cell groups. He further stated that church members have to make contributions and he has no records of the contributions made by the petitioner. He produced the records of the contributions made between 12th July 2020, December 2020 and January 2021 (DEXH 4). DW3 further produced the copies of the cell group records as (DEXH 3).
19. DW3 further testified that it is the petitioner who came to the church when they were discussing a funeral which had taken place. The petitioner demanded that the 1st respondent leaves the church with no particular course. He denied ever hearing the 1st respondent deny the petitioner an opportunity to attend church nor has he ever seen him being thrown out. He then produced the rules of the church as (DEXH -5).
20. On cross examination, he testified that he could not tell when the church started, since in 1980 he was not yet born. He became a member of the church in 2016 and he had the register from the year 2016. He denied that the church takes advantage of old people. He stated that the old people are allowed to sit during worship and the petitioner is not the only old person in church. He stated that he also found the rules in place from the headquarters.
21. DW4, Lucas Omolo testified that he is the head of St. Teresa home cell group and he has been a church member since 2013. He testified that the testimonies of the 2nd, 6th and 7th respondents be deemed to be his statement. In his adopted written statement dated 13th April 2021, DW4 stated that there are 6 cell groups which comprise of church members. He stated that the petitioner does not belong to any of the cell groups. He saw the petitioner twice in the year 2020 and once in the year 2021. The petitioner came to the church on 24th January 2021 demanding the resignation of the 1st respondent but he failed to give any reasons.
22. On cross examination, he testified that in the year 1970 he was young and he could not tell if the petitioner was one of the persons who constructed the church in 1970. He started going to the church in the year 2011; that it was not wrong for the petitioner to demand that the 1st respondent goes, but he did not follow the due process. He denied that the church discriminates against old people.
23. DW5 John Rapemo is a member of the church and the cell group leader of St. Catherine. He adopted his testimony of 13th April 2021. He testified that the petitioner does not appear as a member of his cell group and neither does he also appear in any of the records of the other cell groups. He saw the petitioner twice in the year 2020 and once in 2021 when he was demanding expulsion of the 1st respondent but he failed since he did not have reasons.
24. On cross examination, he stated that he started attending church in the year 1992. He could not recall seeing any exchange of words between the petitioner and the 1st respondent on 24th January 2021. The petitioner came when the church was discussing about a funeral but he demanded that the 1st respondent in his absence, be sent away. He stated that they asked the petitioner for the reason, but he could not tell them.



25. DW6 Joseph Odhiambo adopted his witness statement dated 13th April 2021. He testified that he was the group leader of Juliana one of the cell groups. In his cell group, the petitioner's name does not appear in the documents he was given prior to or after his appointment as the cell leader. DW6 testified that it meant that the petitioner did not participate in any of the cell group activities which is by extension the church's activities. He testified that the only time he saw the petitioner in church is when he was demanding expulsion of the 1st respondent. On cross examination, he stated that he was not yet born in the year 1970.
26. Both parties supported their cases by filing written submissions. The petitioner filed undated written submissions which were received in court on 13th June 2022. In his undated written submissions, he raised 4 issues for determination. On whether the petitioner was denied access from the church contrary to his belief and/or religion of many years. He submitted that when he attended a special mass, the 1st respondent sent him away based on his old age and asked him to pray at his home since he could not kneel.
27. The petitioner believes that he had the right to worship since he has been a member of the church since 1970 and he was one of the pioneers who provided the funds to build the initial and modern church at the mission. He submitted that the church elders discussed the matter and promised to return him to church. After two weeks, he was chased away from the church and he reported the matter to the Parish Superior and Organizer who came to the church and tried to arbitrate over the matter. The conclusion was that the 1st respondent would be returned to the headquarters but together with the other respondents, they refused.
28. The petitioner submitted that the 1st respondent contravened Article 27 (4) and (5) of *the Constitution* of Kenya 2010 in which he was discriminated directly based on his health status, age and disability.
29. On whether the respondents committed the offence of discrimination contrary to Article 27 (5) of *the Constitution* of Kenya 2010, he submitted that discrimination is an offence outlawed by Article 27 (5) whether done directly or indirectly against a person, the petitioner included on any ground specified in Article 27 (4) of *the Constitution* of Kenya 2010. He submitted that the respondents threatened to attack him if he did not leave the church premises contrary to Article 28 of *the Constitution* of Kenya 2010.
30. The petitioner urged that he is deserving of the orders sought in the petition according to Articles 27 (6) and (7) of *the Constitution* of Kenya 2010, the respondents should bear the costs of the petition.
31. In conclusion, the petitioner submitted that religion once embraced, becomes a way of life; that he had been in the church for more than 50 years and compelling him to act differently interferes with his established way of life, He reiterated that the discrimination was contrary to Article 27 (4), (5), 32 (1), (2), (3) and 4 of *the Constitution* of Kenya 2010.
32. The respondents filed written submissions dated 7th July 2023. They submitted that the petitioner did not prove his allegations by way of tendering evidence nor was his testimony corroborated. They submitted that the petitioner did not call-in evidence the persons he had mentioned as trying to mediate in the matter such as Bishop and Cardinal Haggai. The respondents submitted that when the petitioner came to the church in January 2021 to demand removal of the 1st respondent, he did not give tangible reasons.
33. The respondents further submitted that the 3rd and 5th respondents who had been in the church since 1964 have no recollection of seeing the petitioner join the church in 1970. They submitted that the 3rd respondent was categorical that he knew the petitioner as his village mate but not a member of the



- church. The respondents submitted that DW3, the church secretary produced the church membership records, the church records as well as the group records but they did not show that the petitioner was a member of the church nor did he participate in the construction of the church as he had claimed in his testimony; that the petitioner did not belong to nor was he aware of the existence of the said cell groups.
34. The respondents further contend that the petitioner did not feature in any of the lists showing the regular contributors to the church welfare kitty for the local priest as well as development programmes. As to the claim of discrimination on account of old age, it was submitted that DW2 testified that he is older than the petitioner and he has never been discriminated against.
 35. The respondents submitted that the petition was based on non-existent laws, They submitted that Sections 1A, 1B & 3A of the Civil Procedure Rules 2010 does not exist. They also submitted that Articles 32 (1) (2) & (4) of *the Constitution* of Kenya 2010 does not exist. The respondents submitted that the petitioner did not seek leave to amend his petition and it is settled principle of law that every party must make clear his case and not depart from his pleadings as it was held by this court in Jael A. Omolo vs South Nyanza Sugar Co. Ltd (2019) KEHC 1461 (KLR). The respondents urged that the petition be found to be defective, hopeless and it should be struck out/dismissed with costs.
 36. On whether the petitioner had proved his case. It was submitted that it was not enough to come to court and allege issues with no evidence or proof. It was contended that the respondents testified and produced church rules governing the church which provides under Rule 3 that for one to be a member of the said church, he had to be a member of the cell group first Rule 6 provides that all members' name must be in the three books that is mission, development and bereavement lest the church does not recognise you. The respondents submitted that all the church records produced did not bear the petitioner's name. It was submitted that the petitioner having claimed that he was a member of the church and that he was wrongfully and maliciously stopped from attending the church services, he ought to have tabled proof of membership since one cannot be banned from the church to which he is not a member.
 37. The respondents submitted that Section 107 of the *Evidence Act* Cap 80 places the burden of proof on the person who alleges as it was held by the Court of Appeal in the decisions of Mbuthia Macharia vs Annah Mutua Ndwigwa & another (2017) KECA 290 (KLR). The respondents further submitted that submissions cannot be evidence as it was held by the Court of Appeal in Daniel Toroitich Arap Moi vs Mwangi Stephen Muriithi & another (2014) KECA 642 (KLR). The respondents further submitted that the level of proof in civil matters is on a balance of probabilities as it was held in D.T. Dobie & Company (K) Limited vs Wanyonyi Wafula Chebukati (2009) KEHC 3221 (KLR) and Zakayo Wanzala Makomere vs West Kenya Sugar Co. Ltd (2013) KEHC 1609 (KLR) but the petitioner from his pleadings and statements has not proved his case and his claims cannot be allowed.
 38. The respondents urged that the petition lacks merit, it is brought in bad faith and is a waste of the court's time. They asked that it be dismissed with costs.
 39. This court has considered that petition, the affidavit in support thereof, the response, the submissions and the law. The issue for consideration is whether the petitioner has proved the alleged discrimination and/or infringement of his Constitutional rights against him by the respondents.
 40. This court has understood the petitioner's case to be the alleged decision to expel him from being a member of God Nyinyo Legion Maria Church despite him being a founder member in the 1970s. The petitioner stated that he was chased from the church congregation due to his old age, Despite the effort to seek reconciliation and mediation, the respondents and in particular the 1st respondent did not welcome the idea.



41. I have considered the petition as pleaded by the petitioner. As it was pointed out by the respondents, the petitioner brought the petition through the provisions of Sections 1A, 1B & 3A of the Civil Procedure Rules 2010 and Articles 32 (1) (2) (3) & (4) of *the Constitution* of Kenya. This court has considered the Civil Procedure Rules 2010. The Rules do not have provisions for Sections 1A, 1B & 3A. In fact, the Civil Procedure Rules are divided into ‘Rules’ instead of ‘Sections.’ Assuming for argument’s sake that the petitioner was intent on referring to the aforesaid sections in *Civil Procedure Act* Cap 21, the said sections refer to the principles that the court should look into in solving civil disputes as opposed to constitutional petitions.
42. As for Articles 32 (1) (2) (3) & (4) of *the Constitution* of Kenya, contrary to the assertions of the respondents, the said provisions do exist and refer to the fundamental rights of freedom of conscience, religion belief and opinion. This is the main issue which the petitioner is challenging before this court. Article 32 (1), (2), (3) & (4) Constitution provides: -
- Freedom of conscience, religion, belief and opinion.
- (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.
 - (2) Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship.
 - (3) A person may not be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person’s belief or religion.
 - (4) A person shall not be compelled to act, or engage in any act, that is contrary to the person’s belief or religion.
43. It is not without a doubt that for a party to prove violation of their rights under the various Bills of Rights under *the Constitution*, they must not only state the provisions of *the Constitution* allegedly breached, but also the manner of infringement, the nature and extent of injury suffered. A party who alleges violation of his rights must plead his or her case with precision as was held in the case of Anarita Karimi Njeru vs Republic (1979) KECA 12 (KLR).
44. In *Mumo Matemtu vs Trusted Society of Human Rights Alliance & 5 others* (2013) KECA 445 (KLR) the Court of Appeal had this to say: -
- “...The principle in *Anarita Karimi Njeru* (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of *Thorp v Holdsworth* (1876) 3 Ch. D. 637 at 639 holds true today: -
- “The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”
45. A cursory glance at the petition does not outline the particular manner in which the respondents infringed the petitioner’s rights under Articles 27 (5) and Articles 32 (1), (2), (3) & (4) of *the Constitution* of Kenya 2010. The petitioner pleaded a blanket statement that his rights under



the aforesaid Constitutional Articles have been infringed. It is the finding of this court that no infringement of Constitutional rights at all can be founded from the said petition.

46. Further to the foregoing, it is trite law that Section 107 (1) of the *Evidence Act* Cap 80 provides that the burden of proof always lies on the person who alleges and wants the court to believe the existence of certain facts. The petitioner's claim was that he was one of the founding members since the 1970s.
47. I have considered the document produced as (DEXH - 5) being the laws governing the church. Among other things which a person claiming to be a member of the church must do is to belong to a church estate without which one cannot be a member, one must contribute money for food for the 'Padre' without which the church will not recognise them, contribution of money during bereavement. A member's name has to appear in the 3 church books, one for mission, second for development and third for bereavement. The petitioner did not attempt to show that he was compliant in terms of adhering to the rules and regulations of the church. His only assertion was that he was one of the founding members of the church but he did not lead evidence to demonstrate that by virtue of being a founding member, he is automatically entitled to being a decision maker within the church.
48. This court is not convinced that the petitioner has discharged his burden of proof on the alleged violation of his rights, the nature and extent of the injury suffered (if any). I find that there is no violation of the constitutional rights when a member of a particular congregation has not fulfilled the conditions pre-set by a particular congregation as he is required to, in order to be considered a member. The denial thereof cannot metamorphose into infringement of rights.
49. The result thereof is that the petition does not raise constitutional issues. Secondly, the petitioner has failed to prove the alleged infringement of his constitutional rights to the required standards.
50. I find that the petition lacks merit, and hereby dismiss it with no orders as to costs.
51. Orders accordingly.

DATED, DELIVERED AND SIGNED AT KAPENGURIA THIS 24TH DAY OF JULY, 2025

R. WENDOHO

JUDGE

Judgement delivered virtually in the presence of:-

Mr. Sagwe for the Petitioner.

Mr. Adawo for the Respondents.

Juma- Court Assistant

