



**Republic v Registrar of Societies & another; East African Pentecostal Churches (Exparte Applicant); Muthinja & 2 others (Applicant) (Judicial Review E005 of 2022) [2024] KEHC 6183 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6183 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
JUDICIAL REVIEW E005 OF 2022  
TW CHERERE, J  
MAY 16, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**REGISTRAR OF SOCIETIES ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**EAST AFRICAN PENTECOSTAL CHURCHES ..... EXPARTE APPLICANT**

**AND**

**BISHOP GEOFFREY MUTHINJA ..... APPLICANT**

**BISHOP ROBERT BANDA NGOME ..... APPLICANT**

**REV. DANIEL KIROGI ..... APPLICANT**

**RULING**

1. The record in this matter discloses that for a considerable length of time, two factions, on one hand comprising of Samuel Muguna Henry, John Jembe Mumba, Malachi Njagi Ezekiel, Philip Mwaimwendwa Kaura, Francis Gitonga Mugiira and Alois Arauki and on the other hand Bishop Geoffrey Muthinja, Bishop Robert Banda Ngome and Rev.Daniel Kirogi have been embroiled in litigation concerning the legitimate national officials of the Ex-parte Applicant.
2. The faction led by Samuel Muguna Henry submitted the annual returns of the Ex-parte Applicant for the year ending 31<sup>st</sup> December, 2021 to the 1<sup>st</sup> Respondent and requested to be registered as the national officials of the 1<sup>st</sup> Respondent.



3. 1<sup>st</sup> Respondent by letters dated 29<sup>th</sup> March, 2022 and 05<sup>th</sup> May, 2022 declined the request for registration and directed that both factions resolve the dispute concerning who the legitimate national officials were as provided for in the Ex-parte Applicant's constitution.
4. The Ex-parte Applicant subsequently moved this court seeking an order of mandamus to compel the 1<sup>st</sup> Respondent to accept the annual returns of the Ex-parte Applicant for the year ending 31<sup>st</sup> December, 2021 and register the faction led by Samuel Muguna Henry as the legitimate national officials of the Ex-parte Applicant.
5. By a ruling dated 15<sup>th</sup> December, 2022, this court allowed the Interested Parties to be enjoined in this suit on the ground that they had demonstrated an identifiable legal stake in the proceedings being one of the factions claiming to be the legitimate national officials of the Ex-parte Applicant.
6. Pending the determination of the Ex-parte Applicant's application for an order of mandamus, the Ex-parte Applicant and the Respondents on 06<sup>th</sup> February, 2024 filed a consent letter dated 18<sup>th</sup> December, 2023 whose contents are as follows:

“This suit be and is hereby marked as settled in the following terms: -

1. That the notice of intention to institute the process of de-registration of the Ex-parte Applicant as contained in the letter by the 1<sup>st</sup> Respondent referenced SOC/10990 (A) dated 29/3/2022 be and is hereby revoked.
2. That in order to settle the dispute as to the legitimate officials of the Ex-parte Applicant, fresh election be held under the supervision of the 1<sup>st</sup> Respondent, within 90 days from the date of adoption of this consent.
3. That the elections of the Ex-parte Applicant shall be held strictly in accordance with the Ex-parte Applicant's Constitution, and with particular observance of By Law No 3 (8) in the Schedule of *the Constitution* of the Church and any applicable National Laws.
4. That Pending the elections as agreed herein, the National Officials currently registered by the 1<sup>st</sup> Respondent, that is say: -
  - a. Rev Samuel Muguna Henry - Presiding General Oversear
  - b. Jacob Kieni Rwito - Vice Presiding General Oversear
  - c. John Jembe Mumba - General Secretary
  - d. Musyimi Josia - Assistant General Secretary
  - e. Malachi Hezekiel - National Treasurer
  - f. Alois Mwiti M'Arauki - Assistant National Treasurer shall remain in office
5. That the County Commanders and the Officers Commanding Police Stations in all Church Districts where the church operates shall be served with the final order of the court for enforcement if need be.
6. That the suit herein be marked as fully settled with each party bearing own costs.
7. The Interested Parties opposed the adoption of the consent vide a replying affidavit sworn by Bishop Geoffrey Muthinja on 05<sup>th</sup> February, 2024 on the grounds that the consent was made without the



knowledge and involvement of the Interested Parties herein. It is further contended that the consent is a conspiracy by the Ex-parte Applicant and the Respondents to condemn the Interested Parties unheard and to short-circuit the issues in this matter by declaring the faction led by Samuel Muguna Henry as the legitimate officials of the Ex-parte Applicant.

8. The Ex-parte Applicant opposed the Interested Parties' objection by way of an affidavit sworn by Henry Kinyua on 28<sup>th</sup> February, 2024. The deponent avers that the issues brought forth by the Interested Parties are alien and cannot be ventilated in these proceedings. He denies that there is a conspiracy as between the Respondents and the Ex-parte Applicant whom he contends are the owners of the suit and challenges the Interested Parties to file their own suit for determination of their claim concerning the leadership of Ex- parte Applicant or the right to be registered by the Respondent as officials of the Ex- parte Applicant.
9. It is further contended that the consent is legitimate and that the Interested Parties cannot purport to have the power to determine how the principal parties deal with the suit.
10. The objection by the Interested parties was heard by way of written submissions which the Ex-parte Applicant and the Interested Parties duly filed.

### **Analysis and determination**

11. I have considered the objection, the responses thereto and the written submissions and the only issue for determination is whether the Interested Parties Objection to the adoption of the consent dated 18<sup>th</sup> December, 2023 and filed on 06<sup>th</sup> February, 2024 is merited.
12. The record demonstrates that the Interested Parties' do not seek to introduce any new issue as its issue is similar to that of the Ex-parte Applicant and the claim by the Interested Parties is therefore in line with the decision of the Supreme Court in Francis Karioko Muruatetu & Another V Republic & 5 Others [2016] eKLR that was cited with approval in SOCAF & Company Limited v John Maina Njoroge & 5 Others; Francis Ngau Musyoki (Interested Party) [2022] eKLR.
13. It is further to be noted that the Interested Parties do not seek to terminate the suit and *Mbeere Elders Welfare Advisory Group & 4 others v Attorney General & 242 others [2018] eKLR - Environment Land Case Petition 1 of 2014*, Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2014] eKLR and Methodist Church in Kenya v Mohamed Fugicha & 3 others [2019] eKLR cited by the Ex-parte Applicant are therefore irrelevant to the issue at hand.
14. In *Trusted Society of Human Rights Alliance v Mumo Matemu [2014] eKLR*, the Supreme Court held:

“An interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or herself appears in the proceedings, and champions his or her cause.....”.
15. As stated at paragraph 5 above, this court allowed the Interested Parties to be joined to this suit for the reason that they had demonstrated an identifiable legal stake in the proceedings being one of the factions claiming to be the legitimate national officials of the Ex-parte Applicant.



16. In *Ransa Company Ltd v Manca Francesco & 2 others* [2015] eKLR, Koome JA (as she then was) had this to say, in a matter where parties proceeded against a party named in a suit without involving the said party:

“In my view, it was unprocedural, irregular and unlawful to exclude the Appellants who was named as an interested party in the Judicial Review proceedings as a party to the consent. The Appellants had filed a lengthy replying affidavit in opposition of the orders sought by the ex parte applicant. The judge overlooked the fact that no consent can possibly be entered into by a claimant as happened in the instant case which purports to take away the rights of a defendant without his knowledge, concurrence or hearing.....”.

17. It is not disputed that the consent dated 18<sup>th</sup> December, 2023 and filed on 06<sup>th</sup> February, 2024 has the effect of determining the dispute between the two factions and legitimizing the faction led by Samuel Muguna Henry as the legitimate officials of the Ex-parte Applicant without the knowledge, involvement and concurrence of the Interested Parties who also claim to be the legitimate officials of the Ex-parte Applicant.

18. The Interested Parties filed a lengthy replying affidavit in opposition of the orders sought by the Ex parte applicant. A consent judgment is a judgment the terms of which are agreed and settle by the parties to the action. The Interested Parties who are affected by the consent herein cannot, with respect, be mere peripheral parties with no say in a consent that affects their rights.

19. From the totality of the material presented before the court, I find that in as far as the consent in issue purports to champion the cause of the Ex parte Applicant and take away the rights of the Interested Parties to ventilate the dispute between them and the Ex-parte Applicant without giving them a hearing, it is unprocedural, irregular and does not have the force of law.

20. In the case of *Msagha vs. Chief Justice & 7 Others Nairobi HCMCA no. 1062 of 2004 (HCK) [2006] 2 KLR 553*) the rules of natural justice “audi alteram partem” were elucidated as follows;

“.....The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker.....”.

21. The decision made by the Respondents to acquiesce to the Ex parte Applicant’s claim, without affording the Interested Parties, who are affected by that decision, an opportunity to be heard, runs afoul to the rules of natural justice that no party ought to be condemned unheard.

22. From the foregoing analysis, this court declines the invitation to adopt as an order of the court, the consent dated 18<sup>th</sup> December, 2023 and filed on 06<sup>th</sup> February, 2024.

**DELIVERED AT MERU THIS 16<sup>TH</sup> DAY OF MAY 2024**

**T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For Ex-Parte Applicant - Mr. Murango for Murango Mwenda & Co Advocates

For Respondents - Mr. Wachira



For Interested Parties - Mr. Kariuki for Mithega & Kariuki Advocates

