



Ogada (AIC Kisumu City Region) & 3 others v Mulwa (Presiding Bishop AIC Kenya) & 3 others (Petition E010 of 2023) [2024] KEHC 15592 (KLR) (2 December 2024) (Judgment)

Neutral citation: [2024] KEHC 15592 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
PETITION E010 OF 2023
RE ABURILI, J
DECEMBER 2, 2024**

BETWEEN

**ELD AMOS NYAIGA OGADA (AIC KISUMU CITY REGION) . 1ST PETITIONER
ELD MARTIN ORWA OBUYA (AIC KISUMU CITY REGION) 2ND PETITIONER
ELD JOSHUA DUME AYIECHO (AIC MUHORONI REGION) 3RD PETITIONER
ELD DAVID ANYANGO (AIC KISUMU REGION) 4TH PETITIONER**

AND

**REV ABRAHAM MULWA (PRESIDING BISHOP AIC KENYA) 1ST RESPONDENT
REV PAUL KIRUI (DEPUTY PRESIDING BISHOP AIC KENYA) 2ND RESPONDENT
REV JOHN KITALA (ADMINISTRATIVE SECRETARY, AIC KENYA) 3RD RESPONDENT
REGISTERED TRUSTEE, AIC CHURCH KENYA 4TH RESPONDENT**

JUDGMENT

1. The petitioners sued the respondents vide an amended petition dated 22nd April 2024 seeking the following orders:
 - a. A declaration that the 1st, 2nd and 3rd respondents have violated *the Constitution* and Fair Administrations Act and an order nullifying the AIC Kenya Executive Councils decision made on the 21st September 2022 and the Central Church Council decision made on the 12th October 2022.



- b. A declaration that the 1st, 2nd and 3rd respondents have conducted the elections as officials of the 4th respondent and AIC Kenya.
 - c. A declaration that the purported elections of the AIC Kenya held on the 12th November 2023 were illegal, unlawful and unconstitutional and should be nullified.
 - d. That such elections of AIC Kenya held after service of an order of the Court were illegal, unconstitutional and contemptuous of lawful court orders.
 - e. That the respondents be compelled to hold fresh elections of the AIC Kenya that is inclusive of the Greater Central Lake Area.
 - f. A declaration that AIC Greater Central Lake Area comprises of Muhoroni Region, Kisumu City Region, Central Lake Region and Kisumu Region.
 - g. An order directing the Central Church Council amend the Church constitution and include AIC Greater Central Lake into their framework.
 - h. A declaration that the respondents have violated the political rights of the petitioners and communicants of the Greater Central Lake Area.
 - i. A declaration that the respondents have violated the freedom of worship of the petitioners and communicants of Greater Central Lake Area.
 - j. A declaration that the 1st, 2nd and 3rd respondents are unfit to hold office as officials of AIC Kenya and Board of Trustees.
 - k. A declaration that AIC cannot operate under two registered certificates number 1152 for AIC registered in 1961 and number 3852 AIC Kenya registered in 2010.
 - l. That an order directed at the Registrar of Societies to cancel, annul and deregister one of the Certificates namely no. 3852 for AIC Kenya registered in 2010.
 - m. A declaration that all activities, decisions and elections done or carried out pursuant registration no. 3852 AIC Kenya registered in 2010 are illegal, unlawful and unconstitutional.
 - n. The respondents to pay the petitioner costs of the petition in any event.
2. The petitioners averred that they were suspended by the Central Church Council without a hearing and based on a malicious falsehood of a case filed in Siaya and further that notwithstanding the decision, there has not been any official communication of it to the Administrative Secretary of the Greater Central Lake Area thus the decision was unlawful, capricious and against the Fair Administrations Act and Articles 47 and 50 of *the Constitution*.
 3. The petitioners averred that the said decision was arrived at without any reasonable justification and lawful explanation.
 4. The petitioners averred that the deliberate and heinous intention of the 1st – 3rd respondents was to deny the petitioners and their over 5000 communicants their right to elect spiritual leaders of their choice an action which was unfair and violated Article 38 of *the constitution*.
 5. The petition was disposed by way of written submissions.



The Petitioners' Submissions

6. The petitioners submitted that they were suspended on false allegations that a case had been filed in Siaya by unknown people and were never given a chance to defend themselves violating Article 47 and 50 on Fair Administrative Action as upheld in the case of Republic v Kenyatta University Ex Parte Njoroge Humphrey Mbuthi [2015] eKLR.
7. It was submitted that the respondents are guilty of abuse of office, power, leadership and integrity by acting arbitrarily on malicious reports. Reliance was placed on the case of *Community Advocacy and Awareness Trust and Others v Attorney General Nairobi Petition No. 243 of 2011* where the court held inter alia that decisions must be rational and that limits arbitrariness and not discretion by itself. The petitioners further relied on the case of *Njoya & Others v Attorney General* where Rtd. Justice A. Ringera reiterated the supremacy of *the constitution*.
8. The petitioners submitted that the 4th respondent cannot hold two certificates as was held in the case of *Lucas Mudoga & 5 Others v Andrew Inganji & 6 Others* [2014] eKLR where the court held inter alia that two societies with different certificates are distinct and separate.
9. The petitioners submitted that the AIC Kenya's Executive Council decision made on the 21st September 2022 and the Central Church Council decision made on the 12th October 2022 did not meet the Constitutional threshold of fair administrative action under Article 47 and 50 of *the Constitution*. Reliance was placed in the case of *Petition No. 495 of 2015, Kenya Human Rights Commission v NGO Co-ordination Board & 2 Others* [2016] eKLR.
10. Further, the petitioners submitted that the suspension of leaders and communicants of the Greater Central Lake Area from participating in national elections violated Article 47 and 50 of *the Constitution*. In support of their case the petitioners relied on the case of *Attorney General v Kituo cha Sheria & 7 Others* [2017] eKLR where the court emphasized the need to respect of rights by the state r those in authority.
11. It was submitted that the exclusion of the petitioners and the congregants from the nationwide elections and subsequent discrimination violated the petitioners' rights under Article 27 of *the Constitution* and further that in locking out the members of Greater Lake Central Area from the Church, General Meetings, activities, functions and institutions like weddings, baptisms and gatherings amounted to interference with freedom of worship under Article 32 of *the Constitution* and as upheld in the case of *R v Big M Drug Mart Limited* as quoted in *SDA v Minister of Education* [2014] eKLR.

The Respondents' Submissions

12. It was submitted that no sound ground has been propounded by the petitioners to merit the orders sought in the petition but rather the petitioners have presented as evidence unsigned minutes and articles from a newspaper that has no reputation worth taking about.
13. The respondents submitted that the allegations by the petitioners that they were suspended by the Central Church Council without a hearing and based on false allegations of a case filed in Siaya were not true but rather it was a fact that after the promotion of Ochieng, J to the Court of Appeal, the file was transferred administratively to the present court which was then sitting in Siaya and thus it was untrue that there was a new case in Siaya which became the basis upon which "removing officials of the GCLA".



14. It was submitted that the Bishop of Greater Central Lake Ares, Rev. George Oyier was summoned before a Tribunal set up in accordance with the AIC Constitution to respond to complaints made against him but refused to attend the meeting and instead claimed to be ill however, a day before the meeting on the 9.5.2023, the Petitioners filed an application in MCCC/555/2018 seeking orders to restrain the Respondents from interfering with the Bishop and the leaders of Greater Central Lake Area and restraining them from convening or calling for any tribunal on 10th May 2023 to discuss the said Bishop and leaders of the GCLA.
15. The respondents submitted that due process has been followed but the petitioners have refused to participate in any hearing and have resorted to filing applications to thwart the process and as such the process which was commenced by the petitioners is premature as the said Rev. Oyier ought to have proceeded with the disciplinary process to full determination. Reliance was placed on the case of Rose W. Kirazu v Teachers Service Commission [2016] eKLR where the court held that “Courts should not interfere with the employer’s right to internally discipline an employee unless the process is lawfully and out rightly flawed and this interference will be in this case limited to correcting wrong Procedural Internal Mechanisms”.
16. It was submitted that the Petitioners have not produced any evidence to show that the Respondents acted arbitrarily and in contravention of the rules and procedure provided under the AIC Constitution.
17. The respondents submitted that the petitioners’ allegation that their political rights have been violated as they have been excluded from the church elections was unsubstantiated as rather it was the petitioners who have severally tried to stop the AIC national elections by severally moving to seek injunctions and have refused to respect the leadership of the AIC and decisions of its Central Church Council.
18. It was submitted that the Petitioners bound themselves to comply with AIC’s rules and regulations but have deliberately and repeatedly failed to do so and instead have resorted to rushing to court whenever they are requested to do so thus have become a law unto themselves.
19. The respondents submitted that the petitioners’ claim that the AIC “holds two registration certificates” is res judicata, having been determined in a judgment delivered on 23.11.2018 in (Nairobi) Petition No. 395 of 2012: Rev. Silas Yego and others versus Minister of State, Provincial Administration & Internal Security and 8 others. It was further submitted that the Petitioners have not produced any clarification from the Registrar of Societies on the “two registration certificates” and that they ought to have enjoined her in the suit as this directly affects her office.
20. It was submitted that the alleged violations against Articles 27, 32, 47 and 50 of *the Constitution* remain unsubstantiated and unproven whereas the burden of proof on a petitioner in a constitutional Petition remains on the petitioner as was held by the Supreme Court in the case of Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 others [2014] eKLR. The respondents submitted that the instant petition was filed prematurely before the said Rev. George Oyier and leaders of GCLA availed themselves before the Tribunal, which they refused to do and where no final decision had been arrived at, hence the alleged violation of the right to fair hearing and a fair administrative action cannot arise at the stage.
21. The respondents submitted that the Petition is fatally defective, bad in law and a flagrant abuse of the court process. It was further submitted that the Court ought to dismiss the Petition in its entirety and the Petitioners ought to be condemned to costs of the suit as was held in the case of Petition 429 of 2017: Brian Asin & 2 others v Wafula W. Chebukati & 9 others.



Analysis & Determination

22. I have considered this application, together with the submissions of the parties, the only issue for determination is whether the petitioners merit the orders sought.
23. It is trite that a petitioner must identify the constitutional entitlement threatened, infringed or violated and to demonstrate with some level of precision on the manner of violation as to enable the respondent to mount a defence.
24. The said position was coined in Miscellaneous Criminal Application 4 of 1979, Anarita Karimi Njeru v Republic [1979] eKLR when the court remarked as follows: -
- “... if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed...”
25. The above precedent has been subsequently cited with approval by various courts of superior jurisdiction. In Kenya Medical Practitioners, Pharmacists and Dentists’ Union v University of Nairobi & another [2021] eKLR, the court wholesomely discussed the precision requirement in the following manner: -
87. The foregoing finding (Anarita Karimi case) received endorsement from the court of Appeal in Nairobi Civil Appeal No 290 of 2012, Mumo Matemu v Trusted Society of Human Rights Alliance when the Learned Judges remarked on the importance of compliance with procedure under article 159 of *the Constitution*, the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* and need for precision in framing issues in constitutional petitions. It was observed thus: -
26. The Supreme Court went on to set out the standard of proof in Constitutional Petitions in the case of Communications Commission of Kenya & 5 Others v Royal Media Services Limited supra where the court stated as follows: -
- “Although article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru v Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”
27. Accordingly, it is not enough for the petitioners herein to allege violation/infringement of their constitutional right but there must be a link drawn between them, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement.
28. In the instant case, the petitioners alleged violation of Articles 47 and 50 on Fair Administrative Action on account of the fact that they were suspended on false allegations that a case had been filed in Siaya by unknown people and were never given a chance to defend themselves.



29. The respondents controverted the same by stating that the basis upon which the petitioners alleged their suspension was done were untrue as the alleged case in Siaya involved the transfer of the instant suit to the Siaya Court following the promotion of Ochieng, J to the Court of Appeal and further that the Bishop of Greater Central Lake Area and the petitioners had been summoned to a tribunal for disciplinary proceedings but instead refused to participate in any hearing and resorted to proceed to initiate court proceedings to thwart the same.
30. Addressing the issue of whether or not there was a case filed in Siaya High Court as both parties appear to be lost on this issue, I must clarify that the relevant file from Kisumu was only submitted to Siaya High Court when I was deployed to Kisumu High Court as a visiting Judge from Siaya High Court effective 16th September 2022 which then meant that I had to hear some matters virtually from Siaya High Court while I attended physical hearings at Kisumu High Court on the 3rd week of each month since I was still presiding over Siaya High Court. Nothing short of that explanation.
31. The evidence on record which I must agree with shows that the petitioners and the Bishop of the Greater Central Lake Area were exposed to due process which they have refused to participate in but instead resorted to filing applications to thwart the process. The said process has never been completed as far as this court is concerned.
32. It is not lost on this court the numerous applications and suits filed by the petitioners against the respondents which this court has had conduct of.
33. In addition, it is trite that where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. This is the now well-defined doctrine of exhaustion that is well set out in *the Constitution* and the Fair Administrative Actions Act under Articles 47 and 50 of *the Constitution* and Section 4 of the *Fair Administrative Action Act*.
34. The petitioners aver that they were expelled from the Annual General Church Council Meeting held on the 12th October 2023 and that they subsequently learnt that they had been expelled from the Central Church Council yet in the whole amended petition, they fail to cite what provision in the AIC Constitution was violated.
35. It is my view, that the petitioners have not adduced any evidence to show that the Respondents acted arbitrarily and in contravention of the rules and procedure provided for under the AIC Constitution.
36. On the petitioners' allegations that that their political rights under Article 38 of *the Constitution* have been violated as they have been excluded from the church elections, no evidence was placed before this court to substantiate the petitioners' averment that they and the communicants in the Greater Lakes Area had been excluded from the election save for a timetable for ACC Elections that was part of the annexures to the petition.
37. However, it is not lost on this court that the petitioners sought and gained orders that halted the said elections.
38. In my view, the allegations of violation of the petitioners' rights as entrenched in Article 38 remained unsubstantiated.
39. On the claim that the 4th respondents holds two certificates from the Registrar of Societies, the respondents controverted the same by stating that the issue is res judicata, having been determined in a judgment delivered on 23.11.2018 in (Nairobi) Petition No. 395 of 2012: Rev. Silas Yego and others versus Minister of State, Provincial Administration & Internal Security and 8 others. No



evidence has been adduced by the petitioners to counter this and accordingly, this averment remains unsubstantiated.

40. Taking all the aforementioned into consideration, it is my finding that the petitioners have failed to prove that the provisions of *the Constitution* alleged to have been contravened were indeed infringed and that the said infringement was occasioned by the respondents.
41. In the circumstances, it is my finding and holding that this petition lacks merit and the same is hereby dismissed.
42. I would have awarded the respondents costs of the dismissed petition. I however take judicial notice of the many disputes the parties hereto have before this court and in each one of them, the court has avoided awarding costs for reasons that the parties are congregants of the same church, who are expending all their time and energy battling in court as opposed to taking care of the sheep. I therefore order that each party bear their own costs of the petition as dismissed.
43. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 2ND DAY OF DECEMBER, 2024

R.E. ABURILI

JUDGE

