



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS CIVIL APPLICATION NO. E4 OF 2020**

**REV. PATRICK LIHANDA.....1<sup>ST</sup> APPLICANT**

**REV. SOLOMON KEVERENGE.....2<sup>ND</sup> APPLICANT**

**REV. JOSPHAT MULUSA.....3<sup>RD</sup> APPLICANT**

**ELISHA GOREN RANGWEN.....4<sup>TH</sup> APPLICANT**

**NICHOLUS KAMINA.....5<sup>TH</sup> APPLICANT**

**RUTH KARANJA.....6<sup>TH</sup> APPLICANT**

**VERSUS**

**REV. ASAMBU MDEMBEI.....1<sup>ST</sup> RESPONDENT**

**CHRISTOPHER MMBOGO.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application for determination is a Motion, dated 1<sup>st</sup> October 2020. It seeks stay of proceedings, with respect to orders that were made in Kakamega CMCCC No. E11 of 2020, pending hearing *inter partes* of an interlocutory application in that cause. It also seeks that the said suit be withdrawn and transferred to the High Court, for disposal simultaneously with Kakamega HC Constitutional Petition No. 6 of 2018.

2. The case for the applicants is that the wrangles on the leadership of the PAG- Kenya Church, to be referred to as the church, are the subject of the proceedings in Kakamega HC Constitutional Petition No. 6 of 2018, and the issues raised in Kakamega CMCCC No. E11 of 2020 are the same as the issues in Kakamega HC Constitutional Petition No. 6 of 2018. It is averred that the parties in the two matters are the same, and that Kakamega CMCCC No. E11 of 2020 is in fact *sub judice* Kakamega HC Constitutional Petition No. 6 of 2018.

3. The respondents have opposed the Motion, dated 1<sup>st</sup> October 2020. Their case is that the said Motion is designed to delay finalization of the matter, and that they are entitled to access justice in view of their right to natural justice. It is argued that the court in Kakamega CMCCC No. E11 of 2020 has already granted interim relief.

4. Jurisdiction to grant stay of proceedings is derived from Order 42 Rule 6 of the Civil Procedure Rules, as well as the inherent jurisdiction reserved in section 3A of the Civil Procedure Act, Cap 21, Laws of Kenya. See *George Oraro vs. Kenya Television Network Nairobi HCCC* No. 151 of 1992 (unreported).

5. Stay of proceedings is granted at the discretion of the court. The principles to be met are whether the applicants have established a *prima facie* case; whether the application was filed expeditiously; and whether it would be in the interest of justice for the stay order to be granted. See *Halsbury's Laws of England*, 4<sup>th</sup> Edition, Vol. 37, page 330/332, *Re Global Tours & Travels Limited* Nairobi HC WC No. 43 of 2000 (Ringera J) (unreported), *David Morton Silverstein vs. Atsango Chesoni* [2002] 1 KLR 867, [2002] 1 EA 296 (Omolo, Bosire & O'Kubasu JJA), *Official Receiver vs. Sukdev* [1970] EA 243 (Madan J) and *Muchanga Investments Limited vs. Safari Unlimited (Africa) Ltd & 2 others* [2009] KLR 229 (Bosire, Onyango Otieno & Nyamu JJA).

6. The applicants have explained that they had sought the orders sought herein, in the Motion dated 1<sup>st</sup> October 2020, in Kakamega CMCCC No. E11 of 2020, and the same was denied, whereupon they moved this court through the said Motion. They moved this court timeously.

They sought a chance to be heard, which is a right to which a party is entitled to, unless they are found to abuse the court process or are guilty of laches. The Motion is not *res judicata* as the applicants have come to the High Court after they were denied orders in Kakamega CMCCC No. E11 of 2020.

7. I am alive to that fact that there is a myriad of suits filed at various courts, touching on the administration of the Church, where the parties hereto are also party. I am handling Kakamega HC Constitutional Petition No. 6 of 2018, and the issues raised in Kakamega CMCCC No. E11 of 2020 are similar or related to the issues in controversy in the petition.

8. It would be in the interest of justice, and the need to avoid wastage of judicial resources and time, that the proceedings in Kakamega CMCCC No. E11 of 2020 be put on hold, and the matter consolidated with the pending constitutional petition at the High Court. Since the High Court is already seized of a matter where the same issues are at play, it would be just, to avoid embarrassing the judicial process, and a possible delay in the finalization of the High Court matter, that Kakamega CMCCC No. E11 of 2020 be consolidated with Kakamega HC Constitutional Petition No. 6 of 2018.

9. Consequently, I have found merit in the Motion dated 1<sup>st</sup> October 2020, and the same is hereby allowed in terms of prayers 4 and 5 thereof. Each party shall bear their own costs. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 2<sup>ND</sup> DAY OF JULY, 2021**

**W. MUSYOKA**

**JUDGE**