



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL CASE NO. 19 OF 2019**

**BETWEEN**

**PATRICK LIHANDA.....PLAINTIFF**

**AND**

**ANTONY KENYAKISA.....1<sup>ST</sup> DEFENDANT**

**ALBERT ASIGO.....2<sup>ND</sup> DEFENDANT**

**PETER INWANI.....3<sup>RD</sup> DEFENDANT**

**JOHN OLEMPROKOI.....4<sup>TH</sup> DEFENDANT**

**FRED UMUHANO.....5<sup>TH</sup> DEFENDANT**

**ZEDEKIAH ORERA.....6<sup>TH</sup> DEFENDANT**

**ELIJAH MIKWA.....7<sup>TH</sup> DEFENDANT**

**JAMES OGENDI.....8<sup>TH</sup> DEFENDANT**

**NATHAN ONDEGO.....9<sup>TH</sup> DEFENDANT**

**GEORGE OKELLO.....10<sup>TH</sup> DEFENDANT**

**ARTHUR AMIGA.....11<sup>TH</sup> DEFENDANT**

**RULING**

1. By an application dated 08<sup>th</sup> October, 2019 filed on 09<sup>th</sup> October, 2019, the Plaintiff/ Applicant prays for orders THAT:

**1) That this Honourable court be pleased to make an order of transfer to this court for hearing and final determination of the following matters:**

**i. KISUMU CMCC No. 543 of 2018 Tom Olendo vs Patrick Lihanda & Others**

**ii. HAMISI SRMCC. No. 15 of 2019 Stephen Karigu & Others Vs Patrick Lihanda & Others**

**iii. HAMISI SRMCC. No. 81 of 2018 Rev. George Okello v Trustees PAG Pastors and Staff Provident Fund**

**iv. MILIMANI CMCC. No. 1899 of 2019 Isaac Mjete vs Elkana Salamba & 3 Others**

**v. VIHIGA PMCC. No. 123 of 2019 Albert Asigo vs Patrick Lihanda & Others**

vi. KISII CMCC. No. 156 of 2019 Bernard Mogusu & Others Vs James Ogendi & Others

vii. VIHIGA PMCC. No. 157 of 2019 Antony Kinyakisa vs Patrick Lihanda

viii. VIHIGA PMCC. No. 158 of 2019 Fred Oluhano vs Patrick Lihanda

ix. VIHIGA PMCC. No. 159 of 2019 Patrick Asigo vs Patrick Lihanda

x. KISUMU CMCC No. 421 of 2018 Antony Kinyakisa vs Patrick Lihanda

2. An order be issued staying the Order made in KISUMU CMCC No. 543 of 2018 Tom Olendo vs Patrick Lihanda & Others; HAMISI SRMCC. No. 15 of 2019 Stephen Karigu & Others Vs Patrick Lihanda & Others and VIHIGA PMCC. No. 123 of 2019 Albert Asigo vs Patrick Lihanda & Others

3. 2<sup>nd</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants be enjoined by themselves, their servants, assigns, agents, servants and or whosoever claiming through them from accessing, withdrawing and/or dealing with A/C No. 995850100004069 at Bank of Baroda Kisumu Branch in the name of PAG-K PAG Pastors and Staff Provident Fund

2. The application is based on the grounds among others that the Defendants have filed a multiplicity of suits in the subordinate courts disregard of the PAG Church Constitution (1998), the subordinate courts have been issuing contradictory orders with a potential of bringing the dignity and integrity of the court into disrepute.

3. The application is supported by an affidavit sworn by the Plaintiff on 08<sup>th</sup> October, 2019 in which he reiterates the grounds on the face of the application.

4. The 1<sup>st</sup>, 2<sup>nd</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants have opposed the application and the suit on the basis of the Grounds of Opposition dated 14<sup>th</sup> October, 2019 and filed on 17<sup>th</sup> October, 2019 mainly on the ground that a ruling made in Kakamega Constitutional Petition No. 06 of 2018 consolidated most of the matters between the parties. In his replying affidavit sworn on 16<sup>th</sup> October, 2019, the 1<sup>st</sup> Defendant reiterates the grounds of opposition and further states that some of the cases have been withdrawn. He further avers that HCCA NO. 28 OF 2019 arising from **KISUMU CMCC No. 543 of 2018 Tom Olendo vs Patrick Lihanda & Others** and further that an application for stay of execution of the orders in **John Juma & 2 others v Patrick Lihanda & another; Zedekiah Orera & 4 others (Interested Parties) [2018] eKLR (Kakamega Constitutional Petition No. 06 of 2018)** is pending at the Court of Appeal in **HCCA NO. 28 OF 2019**.

5. The 5<sup>th</sup> Defendant by his replying affidavit sworn on 16<sup>th</sup> October, 2019 avers that this suit is *sub judice* due to existence of suits and applications with similar reliefs and the same subject matter.

6. I have considered the application in the light of the supporting affidavits, the responses and written submission by the parties.

7. It has been conceded that there are other cases pending before different courts filed by other parties against the Applicant and others by various parties most of whom are parties to this suit.

8. Flowing from the existence of multiplicity of suits with similar reliefs and the same subject matter, Njagi J in **John Juma & 2 others v Patrick Lihanda & another; Zedekiah Orera & 4 others (Interested Parties) (Kakamega Constitutional Petition No. 06 of 2018)** (above) stated as follows:

**“The issues raised in this petition and other suits filed by other parties raises fundamentally similar issues. The multiplicity of suits filed by different parties have the potential to embarrass the judicial process if handled by different courts as the courts might issue conflicting orders.”**

9. The foregoing order is still in force and I associate myself with that finding. The High Court in Kakamega is already seized of most of the matters between the parties herein and this information is within the knowledge of the Plaintiff.

10. The Plaintiff’s action of filing another suit in total disregard of the orders in **John Juma & 2 others v Patrick Lihanda & another; Zedekiah Orera & 4 others (Interested Parties) (Kakamega Constitutional Petition No. 06 of 2018)** (above) not only complicates issues but also leaves the court in no doubt that he is not displaying good faith and is bent on abusing the court process.

11. I therefore find that it would be prudent and in the interest of justice to have the matters herein transferred to that High Court in Kakamega for hearing and determination in **John Juma & 2 others v Patrick Lihanda & another; Zedekiah Orera & 4 others (Interested Parties) (Kakamega Constitutional Petition No. 06 of 2018)** (above).

12. It is therefore hereby ordered that:

1) An order be and is hereby issued transferring:

i. KISUMU CMCC No. 543 of 2018 Tom Olendo vs Patrick Lihanda & Others

- ii. HAMISI SRMCC. No. 15 of 2019 Stephen Karigu & Others Vs Patrick Lihanda & Others
- iii. HAMISI SRMCC. No. 81 of 2018 Rev. George Okello v Trustees PAG Pastors and Staff Provident Fund
- iv. MILIMANI CMCC. No. 1899 of 2019 Isaac Mjete vs Elkana Salamba & 3 Others
- v. VIHIGA PMCC. No. 123 of 2019 Albert Asigo vs Patrick Lihanda & Others
- vi. KISII CMCC. No. 156 of 2019 Bernard Mogusu & Others Vs James Ogendi & Others
- vii. VIHIGA PMCC. No. 157 of 2019 Antony Kinyakisa vs Patrick Lihanda
- viii. VIHIGA PMCC. No. 158 of 2019 Fred Oluhano vs Patrick Lihanda
- ix. VIHIGA PMCC. No. 159 of 2019 Patrick Asigo vs Patrick Lihanda
- x. KISUMU CMCC No. 421 of 2018 Antony Kinyakisa vs Patrick Lihanda

to the High Court in Kakamega for hearing and determination in Kakamega Constitutional Petition No. 06 of 2018.

2). **The Plaintiff shall bear the costs of this application**

3). **Orders accordingly.**

DATED AND SIGNED IN KISUMU THIS 04<sup>th</sup> DAY OF February 2020

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi/Okodoi

For Petitioner - Ms. Owino/Mr. Mbegi

For 1<sup>st</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> Respondents - Mr. Ondego/Mr. Wasilwa

For 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents - Mr. Ondego

For 6<sup>th</sup>, 7<sup>th</sup> and 11<sup>th</sup> Respondents - Mr. Ondego/Mr. Odinga