



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1125 OF 2020

BETWEEN

ELIUD NJUA NJUMAAPPLICANT

VERSUS

REGISTRAR OF SOCIETIES.....1ST RESPONDENT

AND

PAUL WATORO GICHU.....1ST INTERESTED PARTY

JOSPHAT GIKUNDA M'NKANATA.....2ND INTERESTED PARTY

STANLEY MBURU MWANGI.....3RD INTERESTED PARTY

BENARD MAINA MWANGI.....4TH INTERESTED PARTY

BERTHA NYAMBURA MWANGI.....5TH INTERESTED PARTY

STANLEY MUTHOMI.....6TH INTERESTED PARTY

NICHOLETA WAITHIRA MWAURA.....7TH INTERESTED PARTY

REGISTERED TRUSTEES OF THE AFRICA INDEPENDENT PENTECOSTAL

CHURCH OF AFRICA.....8TH INTERESTED PARTY

RULING NO 2

The Application

1. This Court delivered a ruling on 3rd November 2020 on an application brought by the Applicant herein, Eliud Njua Njuma, wherein the said Applicant was granted to commence judicial review proceedings against the Respondent, and directions were given as to the hearing on his prayer that the leave operates as a stay of the Respondent's impugned decision. The said prayer was to be heard on 30th November 2020.

2. The Applicant subsequently filed another application by a Chamber Summons dated 4th November 2020, seeking the following orders:

- 1. That the application be certified as urgent. 2. That the Honourable court hear and determine this matter in the first instance and service of the application be dispensed with.**
- 3. That the orders made by the Hon. P. Nyamweya on 3rd November, 2020 be reviewed.**
- 4. That leave granted to apply for orders of Certiorari, Mandamus and Prohibition to apply as stay to the impending**

elections.

5. That the costs of this application be provided for.

3. The application is supported by a supporting affidavit sworn on even date by the Applicant. The main ground for the application is that by 30th November, 2020 this matter will have been overtaken by events if stay is not issued, as the elections are scheduled to start on 8th November, 2020, and the matter will be rendered nugatory. Further, that there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the Applicant's knowledge and could not be produced by the Applicant, and which evidence clarifies that the elections are scheduled to start on 8th November, 2020.

4. The Applicant annexed a copy of a letter dated 26th October 2020 written by the Respondent, on the date of the impugned elections by the Africa Independent Pentecostal Church.

The Determination

5. I have considered the application dated 4th November 2020 and the reasons offered in support of the urgency, and I am satisfied that the Applicant has demonstrated that this matter is urgent. This for reasons that there is evidence that the impugned elections are scheduled to commence on 8th November 2020.

6. However, this evidence does not detract from the observations by this Court in its ruling of 3rd November 2020 that the circumstances in which the Respondent's decision and orders on the impugned elections were being given need to be first clarified. Furthermore, the orders of stay sought affect other members of the Applicant's church who are not parties to these proceedings, hence the need for the said clarifications. Lastly, the prejudice caused to the Applicant is not irreparable, as any elections held can still be challenged and remedied if found not to have been legally undertaken.

7. The prayer for stay of the impugned decision will therefore still need to be canvassed *inter partes* for these reasons, and the only aspects of the ruling of 3rd November 2020 that can be reviewed in this respect are the timelines ordered by the Court as to the hearing for the prayer for stay .

The Orders:

8. In the premises the Applicant's Chambers Summons application dated 4th November 2020 is dispensed with, and the ruling dated 4th November 2020 is reviewed, only to the extent of the following orders:

I. The Applicant's Chamber Summons dated 4th November 2020 is certified urgent and is admitted to hearing *ex parte* in the first instance.

II. Prayer 8 of the Applicant's Chamber Summons dated 3rd November 2020 that the leave so granted do operate as stay shall be heard *inter partes* at a hearing to be held on 19th November 2020.

III. The Applicant shall file the substantive Notice of Motion, and shall serve the Respondent and Interested Parties with (i) the Chamber Summons application dated 3rd November 2020, (ii) skeletal submissions on prayer 8 of the Chamber Summons dated 3rd November 2020, (iii) the Chamber Summons application dated 4th November 2020, (iv) the substantive Notice of Motion, (v) a copy of the ruling delivered on 4th November 2020 and of this ruling, and (vi) a hearing notice, within five (5) days from today's date.

IV. Upon being served with the said pleadings and documents, the Respondent and Interested Parties shall be required to file their response to, and submissions on prayer 8 of the Chamber Summons dated 3rd November 2020, and responses to the substantive Notice of Motion, within seven (7) days from the date of service.

V. There shall be no order as to the costs of the Applicant's Chamber Summons dated 4th November 2020.

VI. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear and determine prayer 8 of the Applicant's Chamber Summons and the substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

VII. All the parties shall file their pleadings and submissions electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com and asunachristine51@gmail.com.

VIII. The service of pleadings and documents directed by the Court shall be by way of personal service and electronic mail, and in the case of service by way of electronic mail, the parties shall also email a copy of the documents so served to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

IX. The parties shall also be required to file and send to the Deputy Registrar of the Judicial Review Division their respective

affidavits of service evidencing personal service, by way of electronic mail to judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

X. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 19th November 2020.

XI. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the Applicant by electronic mail by close of business on Monday, 9th November 2020.

XII. Parties shall be at liberty to apply.

9. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF NOVEMBER 2020

P. NYAMWEYA

JUDGE