



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1125 OF 2020

**IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF CERTIORARI,
PROHIBITION AND MANDAMUS**

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

The Application

1. Eliud Njua Njuma, the Applicant herein, states that he is a member and trustee of the African Independent Pentecostal Church of Africa. He has filed an application by way of a Chamber Summons dated 3rd November 2020, wherein he is seeking the following orders:

- 1. This Application be and is hereby certified urgent and service be dispensed with in the first instance.**
- 2. The Applicant herein be and is hereby granted leave to apply for an Order of Certiorari to remove into the High Court and quash the decision of the Respondent made on 30th October, 2020, ordering that an election be held in African**

Independent Pentecostal Church of Africa to fill the positions of National Chairman, Vice National Chairman, Secretary General, Assistant Secretary General, National Treasurer, Assistant National Treasurer and the Organizing Secretary.

3. The Applicant herein be and is hereby granted leave to apply for an Order of Certiorari to remove into the High Court and quash the decision of the Respondent made on 30th October, 2020, ordering, directing and mandating the 1st to 7th interested parties herein to conduct an election from the local church, parishes, deaneries, dioceses and the central board by 30th November, 2020.

4. The Applicant be and is hereby granted leave to apply for an Order of Prohibition to prohibit the 1st to 7th Interested parties from proceeding with the elections of the officials of the African Independent Pentecostal Church of Africa.

5. The Applicant be and is hereby granted leave to apply for an Order of Mandamus compelling the Respondent to reinstate the Peace Committee as a caretaker committee pending the AIPCA Church elections.

6. The Applicant be and is hereby granted leave to apply for an Order of Mandamus compelling the Respondent to allow the African Independent Pentecostal Church of Africa to amend its Constitution.

7. The Applicant be and is hereby granted leave to apply for an Order of Prohibition to prohibit the Respondent from cancelling or suspending the registration of the African Independent Pentecostal Church of Africa.

8. An Order be and is hereby made that the leave granted do operate as stay of the decisions of the Respondent made on 30th October, 2020 ordering that an election be held in African Independent Pentecostal Church of Africa to file the positions of National Chairman, Vice National Chairman, Secretary General, Assistant Secretary General, National Treasurer, Assistant National Treasurer and the Organizing Secretary. An Order be and is hereby made that the leave granted do operate as stay of the decisions of the Respondent mandating the 1st to 7th interested parties herein to conduct an election from the local church, parishes, deaneries, dioceses and the central board by 30th November 2020. An Order be and is hereby made that the leave granted do operate as stay of the decisions of the Respondent and prohibit the 1st to 7th Interested parties from proceeding with the elections of the officials of the African Independent Pentecostal Church of Africa. An Order be and is hereby made that the leave granted do operate as stay of the decisions of the Respondent and prohibit the Respondent from cancelling or suspending the registration of the African Independent Pentecostal Church of Africa.

9. That the Costs of and incidental to this Application be provided for.

10. Such further relief that the Court may deem just and expedient to grant.

2. The application is supported by a statutory statement dated 3rd November 2020, and a verifying affidavit sworn on the same date by the Applicant. The main ground for the application is that the Registrar of the Companies, who is the Respondent herein, acted *ultra vires* and contrary to the law in issuing the orders captured in a letter dated 30th October, 2020, as the Societies Act does not mandate the Respondent to order for an election. The Applicant has also joined persons who are indicated in the impugned order to be the officials of the African Independent Pentecostal Church of Africa as Interested Parties herein.

3. The Applicant annexed copies of his baptism card at the Africa Independent Pentecostal Church and of the letters dated 30th October 2020 by the Respondent containing the impugned decision.

The Determination

4. I have considered the application dated 3rd 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 the impugned decision orders the Interested Parties to hold elections by 30th November 2020.

5. On the orders sought by the Applicant for leave to commence judicial review proceedings, the applicable law on leave is *Order 53 Rule 1* of the Civil Procedure Rules, which provides that no application for judicial review orders should be made unless leave of the court was sought and granted. The reasons for the leave as explained by Waki J. (as he then was), in **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996** are firstly, to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless; and secondly, to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.

6. It is also trite that in an application for leave such as the present one, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before court and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave. It was explained by Lord Bingham in **Sharma vs Brown Antoine (2007) 1 WLR 780**, that a ground of challenge is arguable if its capable of being the subject of sensible argument in court, in the sense of having a realistic prospect of success, however, that the test is flexible depending on the nature and gravity of the issues.

7. In the present application, the Applicant has provided evidence of the impugned decision made by the Respondent and averred to the reasons he considers it to be illegal. To this extent I find that the Applicant has met the threshold of an arguable case, and is therefore entitled to the leave sought to commence judicial review proceedings against the Respondent.

8. On the question of whether the said leave can operate as a stay of the impugned report, the applicable principle is that the grant of such leave is discretionary, but the Court should exercise such discretion judiciously. Order 53 Rule 1(4) of the Civil Procedure Rules provides as follows in this respect:

“The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise.”

9. It has in this regard been held that were the action or decision is yet to be implemented, a stay order can normally be granted in such circumstances. Where the action or decision is implemented, then the Court needs to consider the completeness or continuing nature of such implementation. If it is a continuing nature, then it is still possible to suspend the implementation. See in this regard the decisions in **Taib A. Taib vs. The Minister for Local Government & Others, Mombasa HCMISCA. No. 158 of 2006**; **Jared Benson Kangwana vs. Attorney General, Nairobi HCCC No. 446 of 1995**; **Republic vs Cabinet Secretary for Transport & Infrastructure & 4 Others ex parte Kenya Country Bus Owners Association and 8 Others, (2014) e KLR**; and **James Opiyo Wandayi vs Kenya National Assembly & 2 Others, (2016) eKLR**.

10. In the present application, the circumstances in which the Respondent’s decision and orders were being made are not evident from the annexures provided by the Applicant, and his prayer for stay of the impugned decision will therefore need to be canvassed *inter partes*, so that the Respondent and Interested Parties are given an opportunity to be heard on the same.

The Orders:

11. In the premises the Chambers Summons application dated 3rd November 2020 is allowed to the extent of the following orders:

I. The Chamber Summons dated 3rd November 2020 is certified urgent and is admitted to hearing *ex parte* in the first instance .

II. The Applicant is granted leave to apply for an order of Certiorari to remove into the High Court and quash the decision of the Respondent made on 30th October, 2020, ordering that an election be held in African Independent Pentecostal Church of Africa to fill the positions of National Chairman, Vice National Chairman, Secretary General, Assistant Secretary General, National Treasurer, Assistant National Treasurer and the Organizing Secretary.

III. The Applicant is granted leave to apply for an order of Certiorari to remove into the High Court and quash the decision of the Respondent made on 30th October, 2020, ordering, directing and mandating the 1st to 7th interested parties herein to conduct an election from the local church, parishes, deaneries, dioceses and the central board by 30th November, 2020.

IV. The Applicant is granted leave to apply for an order of Prohibition to prohibit the 1st to 7th Interested parties from proceeding with the elections of the officials of the African Independent Pentecostal Church of Africa.

V. The Applicant is granted leave to apply for an order of Mandamus compelling the Respondent to reinstate the Peace Committee as a caretaker committee pending the AIPCA Church elections.

VI. The Applicant is granted leave to apply for an order of Mandamus compelling the Respondent to allow the African Independent Pentecostal Church of Africa to amend its Constitution.

VII. The Applicant is granted leave to apply for an order of Prohibition to prohibit the Respondent from cancelling or suspending the registration of the African Independent Pentecostal Church of Africa

VIII. Prayer 8 of the 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 30th November 2020 .

IX. 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 substantive Notice of Motion, (iii) a copy of this ruling, and (iii) a mention notice, within ten (10) days from today’s date.

X. 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 fourteen (14) days from the date of service.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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.

XV. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 30th November 2020.

XVI. 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 Thursday, 5th November 2020.

XVII. Parties shall be at liberty to apply.

12. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 3RD DAY OF NOVEMBER 2020

P. NYAMWEYA

JUDGE