



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: D.S. MAJANJA J.

CIVIL APPEAL NO. 48 OF 2019

BETWEEN

REV. BENARD MOGUSU OBWOCHA.....1ST APPELLANT

REV. RONALD OMBEGO MORACHA.....2ND APPELLANT

JOSEPH KORINGO.....3RD APPELLANT

(Suing as pastors and ordinary members of PAG Kenya Church)

AND

REV. JAMES OGENDI1ST RESPONDENT

REV. BENARD AYIEKA2ND RESPONDENT

(Sued at Trustees of PAG Kenya Church)

(Being an appeal from the Ruling and Order of Hon. E.A. Obina, PM dated 8th May 2019 at the Magistrates Court in Kisii in Civil Case No. 156 of 2019)

RULING

1. As the parties rightly point out, this Court has supervisory jurisdiction under **Article 165(6)** of the Constitution and the **High Court (Organisation and Administration) Act, 2015** to intervene in proceedings before the Subordinate Court notwithstanding that the appeal is incompetent.

2. The appellants appeal against an order of the subordinate court dated 8th May 2019 which provided as follows:

1. The ex-parte orders granted on 21st March 2019 (read 22nd March 2019) are hereby vacated in their entirety and anything done using and/or on the basis of the said orders is hereby declared null and void and the status quo before the institution of the suit is hereby restored.

2. All the election carried out using the court order issued on 21st March 2019 are hereby vacated and any person or persons elected by reason of the said order is hereby declared null and void and that all the person elected in 2014 be and are hereby restored and considered the legal elected members of the PAG Kenya Church and they shall continue discharging their duties as District overseers or Committee members or officers of the PAG Church as they were before the issuance of this court's order dated 21st March 2019.

3. The ex-parte orders granted herein on 21st March 2019 are hereby vacated in their entirety.

4. The present suit be and is hereby struck out with costs to the Defendants for being an abuse of the Court process.

3. As is clear from the order I have set out above, apart from striking out the suit, the trial magistrate proceeded to make other orders that were in essence declarations yet the underlying claim had been dismissed. Once the suit was struck out and interim orders discharged, the

court lacked jurisdiction to issue positive orders that amounted a determination of rights not only of the parties before it but also third parties who were not given the opportunity to be heard. That is why the parties agreed dispose of the appeal summarily by invoking this courts supervisory jurisdiction.

4. I therefore set aside the order of the subordinate court dated 8th May 2019. Given the nature of the matter and the fact that the underlying subject is a church dispute, I refer the matter back to the subordinate court to determine whether the case is suitable for alternative dispute resolution under **Article 159(2)(c)** of the Constitution or whether it falls within the cases referred to mediation by the High Court at Kakamega as preliminary issues in respect of the application dated 10th April 2019.

5. The parties shall appear before any other magistrate other than Hon. Obina, PM on 29th May 2019 for further directions and orders. For the avoidance of doubt there are no interim or other orders in force.

6. There shall be no order of costs of this appeal.

DATED and DELIVERED at KISII this 20th day of MAY 2019.

D.S. MAJANJA

JUDGE

Mr Begi instructed by Aboki Begi and Company Advocates for the appellants.

Mr Ondego and Mr Mokua instructed by Ondego Garo Advocates for the respondents.