REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 36 OF 2019

THE CENTRAL BOARD OF THE AFRICAN INDEPENDENT PENTECOASTAL CHURCH OF AFRICA (Suing through the National Executive members JULIUS NJOROGE GITAU..... 1ST PLAINTIFF

PAUL WATORO GICHU.....2ND PLAINTIFF

STANLEY MBURU MWANGI .....3RD PLAINTIFF

STANLEY MUTHOMI .....4TH PLAINTIFF

VERSUS

REGISTRAR OF SOIETIES .....1ST DEFENDANT

FREDRICK WANG'OMBE.....2ND DEFENDANT

SAMSON MUTHURI.....3RD DEFENDANT

FREDRICK WANG'OMBE.....4TH DEFENDANT

REGISTERED TRUSTEE OF AFRICAN INDEPENDENT PENTECOASTAL CHURCH OF AFRICA.....INTERESTED PARTY

RULING

On 22nd May, 2019 this court delivered a ruling relating to a dispute herein by declining to hear the same for two main reasons. The suit had been filed before the internal dispute resolution mechanism provided in the Constitution of the Church (Section 2) had been initiated and exhausted. The other reason was that the plaintiffs had not obtained a written clearance as provided under clause 10 of the same Constitution before they moved to the court.

The plaintiffs have now returned to court by way of an application dated 8th July, 2019 under Sections 80, 1A,1B and 3A of the Civil Procedure Act, Orders 45 and 51 of the Civil Procedure Rules for the orders that the ruling and consequential orders issued on 22nd May,2019 be reviewed and or set aside pending the hearing and determination of this suit.

The reasons for seeking the said orders are set out on the face of the application alongside a supporting affidavit sworn by the 1st plaintiff. The application is opposed and the respondents have filed grounds of opposition and or replying affidavits which I have on record. The parties have filed their respective submissions and cited several authorities which I have also read.

Order 45 1. (1) of the Civil Procedure Rules provide as follows,

"1. (1) Any person considering himself aggrieved— (a) by a decree or order from which an appeal is allowed, but from which no

appeal has been preferred; or (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay."

The plaintiffs have now presented a letter authored by Charles Wahome Gikonyo, the Chancellor of the Church. That letter is dated 25th June, 2019 the thrust of which is that, there is no Church Tribunal and that "**all arbitration, mediation and alternative dispute resolution has failed**." The effect of the aid letter is intended to aid the plaintiffs acquire authority to approach the court as provided in the constitution aforesaid. The ruling having been delivered on 22nd May, 2019, the letter now in question was authored a month later. That is 25th June, 2019.

As at the time of the prosecution of the application, leading to the court ruling aforesaid, that letter was not in existence. It is instructive to note that the absence of such an authority appears in the ruling and the court was clear that it had not been exhibited by the plaintiffs. Order 45 cited above is clear that the plaintiffs are bound to show,

"Discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made….."

It is clear from the Constitution that such a letter was necessary and this was within the knowledge of the plaintiffs. The plaintiffs however approached the court without such an authority and that is why the court declined to entertain the suit. The authority by way of a letter as contemplated in the constitution is a condition precedent before moving to court. However framed, it cannot have retrospective effect.

It is not within the power or duty of the court to run the affairs of this church. Whether or not there is no Church Tribunal is not therefore within the court's power to intervene. On the other hand, if such a tribunal does not exist the author of the letter now sought to validate these proceedings cannot justify the conclusion that the alternative dispute resolution has failed.

This court believes in the doctrine of exhaustion. Like expressly stated in the ruling of 22nd May, 2019 "**The internal dispute resolution mechanism provided in the church constitution has not been initiated and or exhausted".**

Where members of an institution, in this case the church, have expressly declared and provided a set procedure to address any disputes that may arise, it behoves them to abide thereby. That shall ensure order is maintained in such institutions**.**

The plaintiffs may not use evidence acquired after the court ruling to validate their status before this court. If that were to be accepted, the court would be allowing the litigants to reopen proceedings even after a matter has been determined on merit. No court can countenance such a situation. I reiterate my findings in the said ruling and hold that, the application presented by the plaintiffs has not met the threshold required under the law to justify the grant of the orders sought. The same is accordingly dismissed.

The plaintiffs knew or ought to have known that this application was an exercise in futility, yet they have subjected the respondents to the need to reply and argue the same. In the earlier ruling, I had made an order that each party bears their own costs but having dismissed the present application, I am constrained to order that the plaintiffs shall pay the defendants the costs occasioned by this application.

Dated, signed and delivered at Nairobi this 9th Day of December, 2019.

A. MBOGHOLI MSAGHA

JUDGE