



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO.1 OF 2016

REV. GEOFFREY MUTHINJA.....1ST PLAINTIFF

REV. ROBERT BANDA NGOMBE.....2ND PLAINTIFF

REV. DOUGLAS MURIUNGI.....3RD PLAINTIFF

REV. JACOB KITHINJI4TH PLAINTIFF

REV. DANIEL KIRUGI5TH PLAINTIFF

Versus

REV. SAMUEL MUGUNA HENRY.....1ST DEFENDANT

REV. JOHN JEMBE MUMBA.....2ND DEFENDANT

REV. JOHN MAROO.....3RD DEFENDANT

RULING

Nullification of election

[1] The Motion dated 23rd January 2018 brought under Article 159 (2) of the Constitution of Kenya, 2010, Section 1A, 1B and 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law seeks the following orders:

- 1. THAT pending the hearing of this application inter-parties elections of the National Committee of East Africa Pentecostal Churches held on 8/02/2017 be and declared invalid, null and void.**
- 2. THAT pending the hearing and determination of this application inter-parties elections of the National Committee of East Africa Pentecostal Churches held on 8/02/2017 be and declared invalid, null and void.**
- 3. THAT elections of the National Committee of East Africa Pentecostal Churches held on 8/02/2017 be set aside.**
- 4. THAT in the alternative to prayer 4 above, this Honorable Court issues Prohibitory Order prohibiting the said officials from assuming office or discharging any responsibilities and from purporting or carrying themselves as bona fide or elected leaders in the circumstance.**
- 5. THAT the Deputy Registrar of Societies who called, oversaw and conducted the elections of the National Committee of East Africa Pentecostal Churches held on 8/02/2017 be barred from participating in any way or ways either directly or indirectly with the affairs of the fresh elections of the National Committee of East Africa Pentecostal Churches.**
- 6. THAT fresh election for the East Africa Pentecostal Churches is conducted afresh at a date to be set by this Honorable Court.**
- 7. THAT a new, impartial and independent Registrar be and is hereby appointed by this Honorable Court to call, oversee and**

conduct fresh elections of the East Africa Pentecostal Churches.

8. THAT the costs of this application be provided for.

[2] The grounds upon which the Motion is grounded are set out in the application and affidavit sworn by Rev. Geoffrey Muthinja on 23rd January 2018. The major argument made was that the election held on 8th February, 2017 was a sham for;

- (1) The Deputy Registrar who oversaw the conduct of the elections was compromised;
- (2) The elections were conducted irregularly, marred with irregularities, manipulations of the voter register and voter list;
- (3) Proper and adequate consultation and participation of members was not conducted during the process of electing delegates to participate in the elections.
- (4) The rules and regulations used in conducting the election were not in accordance with the Constitution and Rules of the East Africa Pentecostal Churches.

According to the Applicants, the whole process was irregular and illegal, thus, rendering the entire election null and void *ab initio*.

Submissions by the applicants

[3] The Applicants filed submissions and reiterated the foregoing arguments. They, however, cited the following cases in support of their case; (1) **Moses Masika Wetang'ula v Musikari Nazi Kombo & 2 others [2014] eKLR**; (2) **Shariff Abdi Hassan v Nadhif Jama Adan [2006] eKLR**; and (3) **Margit Sommer Charo v Isaac Njuguna Njoroge [2012] eKLR**.

Respondent: Election conducted in accordance with rules

[4] The application was opposed vide the 1st Respondent's affidavit sworn on 21st February 2018. It was deposed that the Applicants filed a suit seeking various reliefs by way of plaint on 5th April 2016. This was soon after they had lost in the Court of Appeal Civil Case No. 10 of 2015 in which the striking out by the High Court of all civil cases they and their cronies had filed against the Respondents and the church was confirmed by the Court of Appeal. On 8th November, 2016, this court directed the Registrar of Societies to call, oversee and conduct the said elections. They argued that the applicants did not appeal against the said order. It was asserted that the Registrar went ahead and organized a series of meetings which was attended by all the disputing parties to agree on the process of nominating the delegates. After getting a consensus of all parties the Registrar compiled a voter register which was verified by all the parties on the 10th January 2017. Although the court order related only to the election of the national officials they all agreed that they would also do the District Elections which would then culminate in national elections and a notice was issued to all members ("**SM I**"). During the district elections the applicants did not raise any complaints to the Registrar regarding the process and outcome of the elections and the present allegations. The elections of the national officials and trustees took place at the church headquarters on 8/02/2017 and the same was conducted in a free, fair and credible manner and in accordance with the Church constitution. This was in full consultation and approval of the parties involved; and whenever the Registrar was faced with any challenges he consulted all the parties. The voter register and list could not have been manipulated for it was agreed upon and verified by all parties. Upon completion the registrar's report was made available to all parties and soon thereafter the applicants wrote a letter to the newly elected General Secretary congratulating all the national officials and members of the governing council ("**SM VII**") dated 2/3/2017. The applicants registered their appreciation to the registrar for conducting free, credible and peaceful elections. The new elected national officials have already taken and assumed office and have been for a year now. Thus, the application is without merit and the elections ought not to be disturbed.

Submissions by the Respondents

[5] The Respondents submitted that all the statements made by the applicants are general without any particulars of the alleged irregularities or acts of omissions. None of the averments set out in the affidavit points out with certainty the specific provision of the church Constitution or rules was violated or not followed by the Registrar. Article 11 of the constitution of the EAPC provided for the appointment of the returning officer to preside over the elections and that elections shall be done by way of a secret ballot. The Constitution requires that 21 days' notice be issued before the election of the national officials. All these were observed by the Registrar was impartial and carried out a free and fair election. In relation to the prohibitory order sought that prayer has been overtaken by events. The elections were conducted 14 months ago and the respondents are registered as the national officials.

DETERMINATION

Applicants: Nullify election

[6] The Applicants are seeking nullification of the election held on 8th February, 2017. Short of nullification of the election, they are seeking for an alternative order prohibiting the officials elected in the said election from assuming office or discharging any responsibilities or purporting or carrying themselves as bona fide or elected leaders of the Church. Looking at these reliefs, the issues that fall for determination are:-

- (1) **Whether the elections of the National Committee of East Africa Pentecostal Churches held on 8th February 2017 were marred with irregularities that seek for it to be declared null and void. Or**

(2) Whether a case has been made to prohibit the officials elected in the said election from assuming office or discharging any responsibilities or purporting or carrying themselves as bona fide or elected leaders of the Church.

[7] On 8th November 2016, the court directed the Registrar of Societies to conduct elections be in accordance with the law, Constitution and Rules of East Africa Pentecostal Churches. The election were conducted. But, the applicants now allege that the election was marred with irregularities and illegalities as to make it mere sham. An election is an expression of the will of the voters. Therefore, nullification of an election is not mean affair; it completely routs the will expressed by the voters in the election. As such, an election will be nullified only if it is marred with serious irregularities and illegalities as to make it mere sham. And, it be known that allegations of malpractices and illegalities in an election are serious matters and require strict proof. The person who bears the burden of prove is the person alleging- in this case the Applicants. See section 107 and 109 of the Evidence Act CAP 63 of the Laws of Kenya below:

“107. Burden of proof

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

109. Proof of particular fact

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

I expect the applicants to cite the specific irregularities and illegalities and support them with discernible and cogent evidence. What does the record hold?

[8] The applicants contend that the elections were stained with irregularities and illegalities. They declared that there was voter register and list manipulation, lack of impartiality on the part of the registrar and lack of proper consultation and participation of members of one side of the two warring church factions during the process. Consequently, they argued, there was contravention of the Constitution and Rules of the church.

Bare statements

[9] The applicants, made allegations on the manner the election was conducted. However, they did not back up their allegations with evidence. Courts of law have stated in cases without number that orders will not be issued on the basis of mere allegations or allegations of high-level generalization. The applicants failed to specifically state the specific violations that occurred during the election or the particular contravention of the law, Constitution and Rules of the church. There are only bare statement in the supporting affidavit. Moreover, the letter dated 2nd March 2017 addressed to the General Secretary and signed by all the applicants which was not refuted by them, congratulated the elected members, thanked the registrar for conducting a peaceful election but sought the intervention of the governing council to address areas the elections did not address. Indeed, the Registrar filed an elaborate affidavit and gave minute details on the entire process; sometimes he resorted to consultation and consensus. The Registrar was careful to adhere to the Constitution of the Church as well the Rules on elections and caused necessary notices to be issued and consultations had in accordance with the Rules. Ultimately, the election for national officials was lawfully held. Nothing shows that the Registrar did not conduct the elections in accordance with the Constitution and Rules of the Church on elections. There is really nothing to impugn the elections.

[10] From the foregoing, even an intermediate prohibitory order is not merited. In addition, the elected officials have already assumed office and have been registered as such. The applicants failed to discharge their burden. Their application is therefore hereby dismissed with costs to the respondents. It is so ordered.

Dated, signed and delivered in open court at Meru this 18th day of July 2018

F. GIKONYO

JUDGE

In the presence of:

M/s. Kiome for Kithi for plaintiff/applicant

Mr. Muriuki for 2nd and 3rd Respondent

Munga for Murango for 1st Respondent

F. GIKONYO

JUDGE