



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 444 of 2012

BETWEEN

BISHOP ABSOLOM NDUNGO.....1ST PETITIONER

HUDSON KAMAU.....2ND PETITIONER

WILSON KABUI WAMBUA.....3RD PETITIONER

ESTHER METUMI.....4TH PETITIONER

LYDIA WAIRIMU LUKOMIA.....5TH PETITIONER

SOPHIA NJAMBI.....6TH PETITIONER

FRANCIS KIMANI.....7TH PETITIONER

MARY WANJIKU.....8TH PETITIONER

CHARLES MUGIRA.....9TH PETITIONER

SUSAN NDUTA.....10TH PETITIONER

FRYSSIAH GACURU.....11TH PETITIONER

GERALD NDUNGU.....12TH PETITIONER

SYMON MAINA GATIRI.....13TH PETITIONER

SABINA WANJIKU.....14TH PETITIONER

NANCY WANJIRU.....15TH PETITIONER

JOSEPH WAINAINA KAMAU.....16TH PETITIONER

GEORGE MUHINDI KURIA.....17TH PETITIONER

GRACE NJERI KINGARU.....18TH PETITIONER

JOSEPH NDUNGU KANUHI.....	19 TH PETITIONER
GEORGE THUO KIBUTHU.....	20 TH PETITIONER
JACINTA MUMBI NDUNGU.....	21 ST PETITIONER
ANDREW GITONGA.....	22 ND PETITIONER
JOSEPH KAGUONGO.....	23 RD PETITIONER
GIDEON KARIUKI.....	24 TH PETITIONER
HARRISON KIMANI.....	25 TH PETITIONER
JOSEPHINE WANJIRU.....	26 TH PETITIONER
JOYCE MUTHONI.....	27 TH PETITIONER
AND	
HON ATTORNEY GENERAL.....	1 ST RESPONDENT
THE REGISTRAR OF SOCIETIES.....	2 ND RESPONDENT
KENYA REDEEMED CHURCH.....	3 RD RESPONDENT

(Sued through its officials

**BISHOP ALLAN NJERU
JOHN NJENGA KAMAU
CYRUS NJOGOO
STEPHEN MWANGI
ANDREW MURAGE
JOSEPH MWANGI**

JUDGMENT

Introduction

1. The petitioners’ state that they are members of the Kenya Redeemed Church (“the Church”) which is a registered society under the ***Societies Act (Chapter 106 of the Laws of Kenya)*** founded in 1972. At all material times the 1st petitioner was a Bishop in the Church in charge of the Western zone while the other petitioners hold various leadership positions in the Western zone.

2. The Church is sued as the 3rd respondents through its officials. The petitioners’ case is about the freedom of worship and the right to property belonging to the Church. The application is brought through the avenue of **Article 22** to enforce fundamental rights and freedoms under the Bill of Rights.

Petitioners’ Case

3. According to the petitioners, the dispute can be traced to a decision made in 1985 when Bishop Allan Njeru and other church leaders resolved that in order to expand the reach of the Church, it would be divided into two geographical zones, the Eastern and Western Zones. The Eastern Zone was placed under the leadership of Bishop Allan Njeru while the Western Zone was placed under the stewardship of Bishop

Absolom Ndungo.

4. The petitioners aver that the Western Zone experienced phenomenal growth under the leadership of Bishop Ndungo through increased membership and acquisition of properties. The Eastern Zone under Bishop Njeru did not record significant growth and as a result disagreements began to fester due to the interference in the affairs of the Western zone by Bishop Allan Njeru.

5. Efforts to resolve these differences between 2004 and 2007 were fruitless and matters came to a head in April 2011 when Bishop Ndungo was suspended from the Church. This led to his suspension and thereafter cancellation of his licence to celebrate marriages under the ***African Christian Marriage and Divorce Act (Chapter 151 of the Laws of Kenya)***. Bishop Ndungo and his supporters were expelled at an Annual General Meeting held on 22nd December 2011. He challenged the Registrar General's decision to cancel his licence to celebrate marriages in ***Nairobi HC Misc. Application No. 287 of 2011 (JR), Absalom Ndungo v Attorney General and Kenya Redeemed Church***. The court granted an order staying the decision and the case is still pending hearing and determination.

6. The petitioners aver that the Church officials assumed office through a fraudulent and unlawful process and therefore their registration is void and the letter of the Registrar of Societies dated 6th February 2012 confirming them as office bearers should be quashed. The petitioners aver that the Church officials had no power to suspend the Bishop Ndungo as Vice Chairman of the Society. They further aver that the scheme of expelling the Bishop Ndungo was intended to steal a match on the other petitioners and members of the Church's Western zone as part of a scheme to deprive them of their property.

7. The petitioners complain that their right to enjoy and exercise the freedom of conscience, religion, belief and opinion enshrined in **Article 32** have been violated. They assert that their property rights under **Article 40** of the Constitution have been violated as they are the beneficial owners of the properties of Kenya Redeemed Church – Western Zone.

8. In the petition dated 28th September 2012, the petitioners seek the following reliefs;

(a) *That a declaration be issued to declare that the petitioners' right to enjoy and exercise the freedom of conscience, religion, belief and opinion enshrined in Article 32 of the Constitution in their respective churches within the Western Zone of Kenya Redeemed Church vests in them the rights of ownership and occupation of the churches and places of exercising and manifesting their religion.*

(b) *That a declaration be issued to declare that under Article 40 of the Constitution the petitioner and other members of Kenya Redeemed Church – Western Zone are the beneficial owners of the Churches and places of worship situate on the following land parcels:*

(i) *LR Kiganjo/Mutati/T.702 – Ruiru*

(ii) *LR Kiganjo/Gichinga/2678 – Ruiru*

(iii) *LR Dagoretti/Riruta/S713.*

(iv) *LR Mitubiri/Wempa Block 2/46*

(v) *LR Komothai/Igi/856*

(vi) *Plot No. 41 in LR 4148/58 – Bigima Housing company Ltd*

(vii) *Church Plot No D4 – 199 – Kayole.*

(c) *That a declaration be issued to declare that under Article 40 of the Constitution Kenya Redeemed Church is a trustee of the Petitioners and other Church members in the Western Zone in relation to the rights of ownership and occupation of churches and places of worship situate on the following parcels of*

land;

- (i) LR Kiganjo/Mutati/T.702 – Ruiru
 - (ii) LR Kiganjo/Gichinga/2678 – Ruiru
 - (iii) LR Dagoretti/Riruta/S713.
 - (iv) LR Mitubiri/Wempa Block 2/46
 - (v) LR Komothai/Igi/856
 - (vi) Plot No. 41 in LR 4148/58 – Bigima Housing company Ltd
 - (vii) Church Plot No D4 – 199 – Kayole.
- (d) That a declaration be issued to declare that the autonomy status of the Kenya Redeemed Church – Western Zone confers upon it the rights and privileges to determine, govern and operate the churches and affairs of the churches within its jurisdiction.
- (e) That an order of prohibition be issued to permanently prohibit the Third Respondent and its officials from interfering with the ownership, occupation, operations and management of the churches within the Western Zone of Kenya Redeemed Church.
- (f) That a declaration be issued to declare that the relationship between the Eastern and Western Zones of Kenya Redeemed Church has irretrievably broken down for purposes of the lawful enjoyment by all its members of the freedom of conscience, relation, belief and opinion and Association enshrined in Articles 32 and 36 of the Constitution.
- (g) That a declaration be issued to declare that members of the Kenya Redeemed Church in the Western Zone are entitled to register a society to manage, operate their church premises and further their worship and religious practices under Article 32 of the Constitution on account of the irretrievable breakdown of relationship with the Third Respondent.
- (h) That a declaration be issued to declare that the registration of Bishop Allan Njeru, John Njenga Kamau, Cyrus Njogoo, Stephen Mwangi, Andrew Murage and Joseph Mwangi as office bearers of the 3rd respondent attested by the 2nd respondent's letter dated 6th February 2012 is null and void ab initio.
- (i) That a declaration be issued to declare that the suspension and expulsion of the First Petitioner from the 3rd respondent's Society is null and void on account of contempt of Court and violation of the rule of Law.
- (j) That an order of certiorari be issued to quash the registration of Bishop Allan Njeru, John Njenga Kamau, Cyrus Njogoo, Stephen Mwangi, Andrew Murage and Joseph Mwangi as office bearers of the 3rd respondent's society attested by letter dated 6th February 2012.
- (k) That the costs of this petition be borne by the respondents in any event.

Respondents' Case

9. The 3rd respondent has opposed the petition on the principal ground that the petitioners' case is an attempt to divide the Church which is constituted as one unit with several branches under its constitution. It contends that all the property held in the Church's name belongs to the church and cannot be dealt with otherwise or subdivided outside the constitution of the Church.

10. After I heard and dismissed the petitioners' application for conservatory orders, the 3rd respondent filed a chamber summons dated 5th December 2012 seeking the following orders;

- (1) *That the application be certified as urgent and service of the same be dispensed with in the 1st instance.*
- (2) *That this Hon Court be pleased to issue/grant an injunction restraining the petitioners and particularly the 1st petitioner BISHOP ABSOLOM NDUNGU who is a defrocked and excommunicated preacher from KENYA REDEEMED CHURCH either by himself or through his/their servants, agents, employees and or followers from interfering with the 3rd respondent KENYA REDEEMED CHURCH in its day to day administration, congregation's/fellowships in all/any of the branch churches, that is to say: - Kiamutugu, Kiandumu, Kamwana, Muchangara, Karumandi, Githuire, Kibugu, Kathara, Kathuthuma, Kamwana, Kiamaina, Kagumo, Getuya, Kiamwenja, Njega's, Maisha Kamili, Mutithi, Ngothi, Mirira, Kebirigo, Kayole, Kitengela, Kabiria, Kabati, Muigai-ini, Kasarani, Githiga, Nginduri, Kihiumwiri, Muruka, Mutatie, Nakuru, Ndara's Kakamega, Eastleigh pending the hearing and determination of this application interparties or the petition herein or pending further orders of the court.*
- (3) *That this Hon. Court be pleased to order that the bonafide duly registered officials of Kenya Redeemed Church (Bishop Allan Njeru, John Njenga Kamau, Cyrus Njogoo, Stephen Mwangi, Andrew Murage, Joseph Mwangi) who are the 3rd respondents herein be accorded such police security through office of the Attorney General and Commissioner of Police and or the local Officer Commanding Station (OCS) in the various local jurisdictions where the 3rd respondents branch churches are located so as to be able to carry on with their congregations/fellowships within their right of worship under each churches appointed pastors without interference of the 1st petitioner and his followers.*
- (4) *That this Honourable court be pleased to make such other/further orders as it may deem fit/just and expedient.*
- (5) *That the costs of this application be provided for.*

11. In order to obviate the need to hear the matter piecemeal and to ensure that was finalised, I directed that the application be heard together with the petition. The gravamen of the 3rd respondent's application as set out in the affidavit is that it is a duly registered society and it is administered through its legally recognised officials. They state that Bishop Ndungu was excommunicated together with other members and that he has been involved in activities that have led to chaos and as such the court should intervene by granting the orders sought in order to protect the Church.

12. The 1st and 2nd respondents have opposed the petition based on the replying affidavit of Joseph L Onyango, Deputy Registrar General and a Principal State Counsel in charge of Societies. It is their position that the petitioners' case is brought in bad faith since all the requisite procedures and due process of the law was followed in registering the society's officials and that the petitioners should not drag them in what is otherwise an internal dispute between Church members.

Determination

13. The dispute between the parties is basically a dispute between members of a society. The Eastern and Western Zone schism has always been in contention and as I stated in the ruling, ***"it is clear to me that the parties have been engaged in constant litigation in our courts in one form or another but none of the cases has substantially resolved the core dispute."***

Existing Cases

14. For the record there are existing cases involving the petitioners and other congregants on one hand and the Church on the other. These cases deal with divisions within the Church and are as follows;

(a) **Milimani CMCC No. 881 of 2011 Samuel M'obuya Morara and Others v The Trustees – Kenya Redeemed Church and Bishop Allan Njeru**, members of church sued the Trustees of the Kenya Redeemed Church and Bishop Allan Njeru. The question in the suit was for a declaration that the two zones of the Kenya Redeemed Church be declared autonomous. They also sought a declaration that the plaintiffs and members of the Church Kayole are entitled to the transfer of Plot D4 199 to such trustees as they may determine. The defendants raised a preliminary objection as to the status and capacity of the plaintiffs to agitate the suit. The preliminary objection was dismissed. This precipitated **Nairobi High Court Civil Appeal No. 219 of 2011**. By a ruling dated 20th July 2012, Hon. Justice Waweru ordered a stay of the subordinate court proceedings.

(b) In **Milimani CMCC No. 1565 of 2011**, Bishop Absolom Ndungo sued the Executive Board of the Kenya Redeemed Church and Bishop Allan Njeru. The plaintiff sought a declaration that he is a Bishop within the Church and an injunction restraining the respondents from convening a meeting to oust him as a bishop in the Church. A preliminary objection was once again raised on the ground that the plaintiffs lacked the capacity to agitate and the same was dismissed. This precipitated another appeal **Nairobi High Court Civil Appeal No. 441 of 2011** where Justice Ang'awa granted an order of stay of that suit on 30th September 2011.

(c) In **Milimani CMCC No. 3129 of 2011**, some church members sued Bishop Allan Njeru and the Church Executive Board seeking, inter alia, a declaration that the Kenya Redeemed Church Western Zone is entitled to operate autonomously of the Eastern Zone and orders that the properties acquired and developed by the members of the Western Zone be declared as being held in their trust. The issue of *res-judicata* and *sub-judice* was raised and in the cause of proceedings the learned magistrate permitted withdrawal of one of the suits that formed the basis of the objections. An appeal was lodged against that order. On 6th March 2012, Hon. Justice Onyancha stayed proceedings of the lower court in **Nairobi Civil Appeal No. 510 of 2011**.

Violation of fundamental rights and freedoms

15. Before I proceed to consider the matters in issue, I must emphasise that the right to move the High Court under **Article 22** is for the purposes of enforcement of fundamental rights and freedoms contained in the Bill of Rights. This provision is not intended to be an avenue for resolution of ordinary disputes that can be settled through the normal process applicable to specific disputes. What the court is obliged to do is to address itself to the specific allegations that relate to violations of the Bill of Rights and when an allegation is made out to grant relief under **Article 23**. The obligation imposed on the court to fashion a remedy and to do justice is predicated upon a violation being established by the petitioner. In my determination, I shall therefore focus on the violation of fundamental rights and freedom as set out in the petition, depositions and submissions.

16. I have considered the pleadings, depositions and particularly the prayers sought by the petitioners and I think there are four issues for determination as follows;

(a) Whether the 1st petitioner expulsion from the Church was proper and whether the Church officials are properly in office.

(b) Whether there is a violation of petitioners' rights to property protected by **Article 40**.

(c) Whether there has been a violation of the petitioner's freedoms of worship and religious practice protected by **Article 32**.

(d) Whether I should grant the orders in the 3rd respondent's Chamber Summons dated 5th December 2012.

Whether the expulsion of the 1st petitioner should be quashed

17. The first issue concerns the expulsion of the 1st petitioner from the Church. The petitioner's case is that the officials lacked the authority to conduct the Annual General Meeting that led to his expulsion. As a consequence the petitioners seek to quash the letter dated 6th February 2012 by which the Registrar of Societies confirmed the Church officials who have now been sued in a representative capacity.

18. Apart from the fact that the issue of expulsion is alluded to in ***Milimani CMCC No. 1565 of 2011***, it is indirectly in issue in ***Nairobi HC Misc. Application No. 287 of 2011 (JR), Absalom Ndungo v Attorney General and Kenya Redeemed Church*** where the Bishop Ndungo is challenging the revocation of his marriage licence. In that case the Court will have to conduct an inquiry into the process that led to the revocation of his membership in the Church as the holding of a marriage licence is predicated upon membership of the Church. From the affidavit of Bishop Allan Njeru annexed to the petitioners' supporting affidavit as exhibit BAN12 it is clear that the manner in which the Annual General Meeting was conducted is clearly an issue in that case.

19. A finding in favour of Bishop Ndungo in the pending case will necessarily flow from a finding that the process of expulsion was indeed flawed. In the circumstances, I think this issue is *sub-judice* and I decline to enter into the inquiry suggested by the petitioner and I dismiss prayers (h),(i) and (j) of the petition.

Whether there is a violation of Article 40

20. The holding of property by the Church is governed by its Constitution. Article 10 of the Church constitution provides that, "*All land, buildings and other immovable property and all investments and securities which shall be acquired by the society shall be vested in the names of not less than 4 trustees who shall be members of the society*"

21. The documents of titles annexed to the affidavit in support of the petition show that the properties claimed by the petitioners are in the name of the Church or its trustees. The petitioners submit that the Church never had trustees as stipulated in its Constitution and therefore an order should be made in favour of the branch members who contributed to the purchase of the land and development of the property taking into account that the Church is organised in branches.

22. In order to protect the right to property, a party must establish a proprietary right or interest in land as the Constitution does not itself create these rights or interests. In the case of ***Joseph Ihugo Mwaaura and Others v The Attorney General and Others Nairobi Petition No. 498 of 2009 (Unreported)***, the court referring to section 75 observed that, "[46] *Section 75 of the Constitution contemplates that the person whose property is the subject of compulsory acquisition has a proprietary interest as defined by law. The Constitution and more specifically section 75 does not create proprietary interests nor does it allow the court to create such rights by constitutional fiat. It protects proprietary interests acquired through the existing legal framework.*" The same principle applies to **Article 40**.

23. The dispute between the petitioners and the Church is a property dispute, the responsibility of the State in such circumstances is to provide a framework for resolution of such disputes as a means of protecting the property. Various statutory enactments like the ***Land Act, Act No. 6 of 2012*** and the ***Land Registration Act, Act No. 3 of 2012*** which repealed previous statutory enactments like the ***Registration of Titles Act*** fulfil the protection guaranteed by the Constitution by providing an orderly manner of acquisition, holding and disposal of property. Where disputes arise between parties, the ordinary procedures for dispute settlement provided by the State are to be invoked. This is evidenced by the fact that our courts, on a day-to-day basis, deal with land cases within the framework established by the Constitution and law enacted pursuant to Constitutional provisions to protect property rights (See ***Tony Munene v Commissioner of Lands and Others Nairobi Petition 322 of 2012 [2012]eKLR***). It is therefore unnecessary to have recourse to constitutional provisions to resolve what is in fact an ordinary civil dispute respecting claims to property.

24. Whether or not the Church had trustees and what happens to Church property in such circumstances is a matter that does not raise any constitutional let alone a matter for the enforcement of fundamental

rights and freedoms. Thus prayers (b) and (c) which seek declarations in respect of the Church property must be seen in this context I have set out above. In the circumstances I do not find any violation of the right to protection of property guaranteed under **Article 40** entitling the petitioners to relief.

Whether right of worship under Article 32 has been violated

25. The petitioners claim to the property is intimately connected with their claim that their right to worship has been violated and in order to uphold their rights and freedoms the court ought to give effect to the sub-division of the Church to the Western and Eastern Zones. The petitioners further argue that their right and freedom to worship vests in them the rights of ownership and occupation of the churches and places of exercising and manifesting their religion.

26. I agree with the 3rd respondent's submission that the Church is one indivisible body governed by a Constitution. In order to determine the relationship between the Society and its members, the Church constitution must be the first port of call. Membership of the Church is voluntary and the decisions regarding its operations, management and organisation vest in the members who make these decisions at the Annual General Meeting. The issue of property is, as I have set out in the previous part, dealt with by the Church constitution in clear terms.

27. I have also earlier in the judgment, made reference to suit between members regarding the Eastern and Western zone divide. The issue is a live issue which is subject to the suits I have alluded to in the earlier part of this judgment. Any inquiry into this issue will be *sub-judice*.

28. I must however deal with the issue of the right and freedom to worship as a fundamental right protected by the Constitution as it is squarely within the jurisdiction of this court. The right and freedom to worship is not absolute and when it is exercised in association with others through the means of a voluntary organisation such as a church, its exercise is limited to the extent dictated by membership of that society. I will only reiterate what I in ***Rev Peter Gachara and Others v Attorney General and Others Nairobi Petition No. 299 of 2011 (Unreported)***, "*The [Church] is a place of worship for members of the public, but as a church it functions within an organisational structure. In my view therefore, that organisation and the persons who serve in it are subject to internal rules and regulations which they agree to abide by when they agree to join that church. Freedom of worship or religious activity does not operate in a void or vacuum.*"

29. The petitioners will continue to worship in the manner they deem fit but as to whether they will be entitled to the worship in the Church or have a right to the property of the Church is a matter to be determined in the pending suits which I have outlined above. Moreover, the court lacks jurisdiction, in the circumstances to order what is in effect a sub-division of the Church in the manner sought by the petitioners.

Whether the 3rd respondent's application should be granted

30. The application by the Church is a pre-emptive attack on Bishop Ndungo and his followers. In substance the Church seeks to restrain him from interfering with the activities of the Church. As the registered officials of the Church, they seek orders to be accorded police security through the office of the Attorney General, Commissioner of Police and local commands in various jurisdictions where the Church is situate so that the members are able to carry on activities without interference with Bishop Ndungo and his followers.

31. In support of this application the 3rd respondent's counsel relied on the case of ***Rev. Bishop Silas Yego and Another v The Minister of State for Provincial Administration and Internal Security and Others Nairobi Petition No. 395 of 2012 (Unreported)*** where the court granted orders restraining the respondents who were no longer church members from interfering in the church activities. The court gave further orders directed to the police to ensure security to the church pastors and officers.

32. The orders granted in the ***Rev Bishop Silas Yego Case (Supra)*** were conservatory in nature where

the bona-fide Church official had filed a petition. Unlike in that case, I have had the opportunity to consider the present case and I am not inclined to grant the orders sought in the application in view of the various existing cases. Granting the orders as a matter of finality would effectively finalise those cases particularly in view of the position I have taken in holding that some of the issues raised herein are *sub-judice*.

33. As I stated earlier in the judgment the proceedings commenced by the petitioner are for purposes of enforcing fundamental rights and freedoms. They are not intended to enforce ordinary claims. Having found that there has been no violation of the petitioner's fundamental rights, the jurisdiction of the court under **Article 22** is exhausted.

34. Finally, I am convinced that notwithstanding this decision, the State through its instrumentalities is able to maintain law and order when requested to do so without the necessity of a court order to that effect.

Recusal of the Judge

35. Before I conclude this judgment, I would like to deal with the contents of Paragraph 5 of the affidavit sworn by Absolom Ndungo sworn on 30th April 2013 where he states as follows;

[5] THAT in view of the 3rd respondent's deposition in paragraph 5 of this petition my co-petitioners and I believe that the Honourable Mr Justice Majanja cannot fairly, impartially and independently adjudicate over this petition and this decision be seen as impartial by all parties given that the 3rd respondent rightly views him as having already taken their partisan position in the matter.

36. This affidavit was sworn in response to the 3rd respondent's chamber summons dated 5th December 2013. The specific part referred to is to be found in the deposition of Bishop Allan Njeru sworn on 5th December 2012 where he depones "*THAT reading through the ruling of 17/10/2012, it is clear that this Honourable Court appreciates that the church as a registered society functions in unity and oneness in its day to day congregation/fellowship to members.*" In other words, the 3rd respondent took the position that its case was supported by the ruling declining to grant conservatory in favour of the petitioners.

37. When the issue of disqualification was brought to my attention on 30th April 2013, I declined to deal with it and ordered the matter to proceed for hearing on 8th May 2013. To my mind, an accusation of impartiality and partisanship against a judicial officer is a grave matter that must be substantiated. Such an accusation must be based on facts and evidence and it is the duty of the Court in such cases to carefully scrutinize the facts and circumstances that give rise to the assertion. I adopt the dicta of Tunoi JA., in **Republic v David Makali and Others, CA Criminal Application Nos NAI 4 and 5 of 1995 (Unreported)** where he stated that, "*It is my view that where such allegation is made, the court must carefully scrutinise the affidavit on either side.....*"

38. In this case, the petitioner is aggrieved by a ruling I delivered on 17th October 2011 in which I dismissed the petitioners' application for conservatory orders. The mere fact that a judge dismisses an interlocutory application neither sufficient ground for a judge to disqualify oneself nor evidence of partisanship. As judges we are required, in the course of proceedings, to rule on interlocutory matters and ruling in favour of one party or other does not, of itself, constitute grounds for recusal.

39. I would also add that it is improper for counsel and parties to cast doubt on the objectivity of the judge in bland and unsubstantiated statements made in the course of proceedings and in affidavits. This conducts undermines the delivery of justice in the public eye. Where a party feels that a judge ought to recuse himself or herself, then a formal application supported by facts and evidence ought to be made at the earliest opportunity.

Conclusion

40. The facts as I have set out do not disclose a violation of the petitioners' fundamental rights and freedoms by the 1st and 2nd respondents. Likewise, the case between the petitioners and the Church is not one that meets the threshold of a case deserving of relief under **Article 22**.

41. I also decline to grant the orders sought by the 3rd respondent in the Chamber Summons dated 5th December 2012.

42. The award of costs in a case for the enforcement of fundamental rights and freedoms is a matter within the discretion of the court (See ***John Harun Mwau and Other v Attorney General Nairobi Petition No. 65 of 2010 (Unreported) [2012] eKLR***). I find that it is another attempt to litigate matters that are already pending in other courts. In the circumstances, this case is one where the petitioners should be ordered to pay costs of the suit.

43. The petitioners' suit be and is hereby dismissed with costs to the 3rd respondent.

DATED and DELIVERED at NAIROBI this 17th day of May 2013.

D.S. MAJANJA
JUDGE

Mr K. Mungai instructed by Kinoti & Kibe Advocates for the petitioner.

Mr Mohammed, Litigation Counsel, instructed by the State Law Office for the 1st and 2nd respondents.

Mr W. Kariuki instructed by Wambugu Kariuki & Associates Advocates for the 3rd respondent.