



**Memba v Monyani & another; Apostolic Pentecostal Evangelism Church (Interested Party)
(Civil Case E003 of 2024) [2025] KEHC 13723 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13723 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL CASE E003 OF 2024
JN KAMAU, J
SEPTEMBER 30, 2025**

BETWEEN

BILLY GRAHAM MEMBA PLAINTIFF

AND

ALISTER VIREMBWA MONYANI 1ST DEFENDANT

HARUN LUVANDA 2ND DEFENDANT

AND

APOSTOLIC PENTECOSTAL EVANGELISM CHURCH .. INTERESTED PARTY

RULING

Introduction

1. In his Complaint dated and filed on 28th May 2024, the Plaintiff herein sought the following orders:-
 - a. A declaration that his dismissal as trustee of the Interested Party against the 1st and 2nd Party (sic) was unlawful.
 - b. A declaration that he was still a lawful trustee of the Interested Party.
 - c. An order of injunction injuncting the 1st and 2nd Defendants and the Interested Party and/or their agents from interfering with his mandate in any matter whatsoever as trustee of the Interested Party.
 - d. Cost of the suit to be borne personally by the 1st and 2nd Defendants jointly and severally.
2. He also filed a Notice of Motion dated 28th May 2024 on even date, seeking an order for stay of recruitment of trustee of the Interested Party pending the hearing and determination of the main suit herein.



3. On 10th July 2024, the 1st and 2nd Defendants filed Notice of Preliminary Objection on point of law dated 5th July 2024.
4. They contended that this court lacked the jurisdiction to determine the present application as the jurisdiction of this court had been prematurely invoked on account of Article 5 of the Apostolic Pentecostal Evangelism Church Constitution where the Plaintiff had failed to invoke the steps and resolution mechanisms prescribed under Article 5 before approaching this court. They were categorical that the Plaintiff's application therefore offended the doctrine of exhaustion of internal remedies and was in violation of Section 9(2) of the Fair Administrative Action, 2015.
5. The Defendants' Written Submissions were dated 29th November 2024 and filed on 14th December 2024 while those of the Plaintiff were dated 22nd January 2024 and filed on 22nd January 2025. This Ruling is based on the said Written Submissions which both parties relied upon in their entirety.

Legal Analysis

6. The Defendants submitted that the claim revolved around intended disciplinary proceedings against the Plaintiff which he was evading by misrepresenting to the court that he had been dismissed as a Trustee, yet he had not. They asserted that the Plaintiff was one of the Interested Party's Trustee through letter of appointment dated 18th December 2022 and that the Interested Party had received complaints regarding his morality, which due to his utterances and action, was noted as having deteriorated.
7. They contended that consequently on 28th April 2024, the Council resolved to suspend him from his position of 2nd Trustee of the Interested Party as indicated in its Minutes, Min No 1/28/4/2024, that numerated some of his infamous actions. They pointed out that he was issued with a letter of suspension dated 29th April 2024, which was a precautionary measure pending the outcome of the investigations/disciplinary hearing.
8. They further submitted that he was yet to receive a dismissal letter which he misrepresented to the court that he had at the time of filing this suit and that the disciplinary process was yet to be concluded. It was their contention that he had prematurely sought the court's intervention through an injunction, in an ongoing internal disciplinary process of the Interested Party against him.
9. They asserted that the court made an order for Mediation on 19th July 2024 but that despite being invited by the Mediator to attend the Mediation session on 9th August 2024, he declined the invitation. They pointed out that they attended the Mediation session but the Plaintiff evaded it just like he had done with the internal process.
10. They invoked Section 9(2) of the *Fair Administrative Action Act* and placed reliance on the cases of Geoffrey Muthiga Kabiru & 2 Others vs Samuel Munga Henry & 1756 Others[2015]eKLR and Mutanga Coffee Company Limited vs Shikara Limited & Another[2015]eKLR where the common thread was that it was imperative that where a dispute resolution mechanism existed outside courts, the same had to be exhausted before the jurisdiction of the courts was invoked.
11. They further relied on the cases of Eustace Muriithi Njeru vs Energy and Petroleum Regulatory Authority[2020]eKLR where it was held that for a court to intervene in the disciplinary proceedings, an employee had to show that the employer was proceeding in an unfair manner and Ugandan Case, Pastoli vs Kabale District Local Government Council & Others[2008] 2 EA 300 where it was held that the unfairness may be in non-observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision.



12. They emphasised that the Interested Party's Council had written law, its Constitution, which had a dispute resolution mechanism that existed outside courts and which process had not been exhausted. They contended that the court could only intervene if there was a likelihood of injustice to the employee which had not been demonstrated but that to the contrary, it was the Plaintiff who was sabotaging the Interested Party's activities by his premature cause.
13. They pointed out that the Interested Party's Council did not proceed in any unfair manner and had not been given a chance to proceed and observe the rules of natural justice or to act with procedural fairness and hence, the Plaintiff had not demonstrated that he was going to suffer an injustice.
14. They further cited the case of Attorney General vs Bala [2023] KECA 117 (KLR) where it was held before a court could grant a declaratory relief, it had to be satisfied that it had jurisdiction and power to award the remedy, the matter had to be justiciable in the court, it had to be justified by the circumstances of the case as a declaration was a discretionary remedy, and that there had to be some ambiguity about the issue in respect of which the declaration was asked for so that the court's determination would have the effects of laying such doubts to rest.
15. It was their contention that the Plaintiff had not met any of the aforesaid requirements for grant of the orders sought.
16. They further invoked Section 27(1) of the Civil Procedure Act and relied on the case of Republic vs Rosemary Wairimu Munene, Ex Parte Applicant vs Ihururu Dairy Farmers Co-operative Society Ltd (eKLR citation not given) where it was held that it was well recognised that the principle costs follow the event was not to be used to penalise the losing party but rather, it was for compensating the successful party for the trouble taken in prosecuting or defending the case.
17. They were emphatic that it was well within the knowledge of the Plaintiff that the matter was pending hearing and that it was mischievous of him to approach court to stall it. They urged the court to compensate them for the trouble taken in prosecuting or defending the case.
18. On his part, the Plaintiff submitted that he was issued with a suspension letter dated 24th April 2024, which cited insubordination. He argued that the Defendants' claim that the said letter was a precautionary measure pending the outcome of the investigations/disciplinary hearing was far from the truth.
19. It was his contention that there was no proper internal dispute resolution mechanism that he could have used to seek legal redress. He invoked Article 5 of the Interested Party's Constitution and argued that it did not stipulate any internal dispute resolution or appeal mechanisms that he could seek refuge to or the procedure and the body to hear the said dispute internally.
20. He asserted that the said Article was so vague, left a lot to be yearned and was incapable of being relied upon as an ouster clause to oust the jurisdiction of this court. He was categorical that he was aware that the doctrine of exhaustion of administrative remedies required a person challenging an agency's decision to first pursue the agency's available remedies before invoking the jurisdiction of the court but that that was only with respect to where the specific dispute resolution mechanism was prescribed.
21. He pointed out that the doctrine of exhaustion had exceptions and he urged this court not to shy away from developing further exceptions to the said doctrine not to stifle the strides made but to guarantee, advance and promote fairness of procedure and substance in administrative justice through credible, legal and clear internal dispute resolutions mechanisms.
22. He placed reliance on the case of Kamau vs Kenya Accreditation Service (Petition E053 of 2021) [2021] KEELRC 8 (KLR)(30 July 2021)(Judgment) where it was held that the court could intervene



in the internal disciplinary process for a good cause being demonstrated by the employee and that the intervention was not necessarily meant to stop the process altogether but to put things right so as to avoid a violation of the employee's rights and fundamental freedoms, and also to ensure procedural fairness to the employee.

23. He was emphatic that he had demonstrated that there was no clear and independent internal dispute resolution mechanism and/ or forum to resolve the instant dispute and, therefore, he could not be condemned to resort to a mechanism that was not clear and where his rights to fair hearing and natural justice were bound to be abused.
24. He pointed out that this court had the jurisdiction for failure of the said Article 5 of the Interested Party's Constitution to provide a clear dispute resolution mechanism which he could have resorted to, thus, urged it to dismiss the Defendants' Preliminary Objection with costs.
25. Notably, through minute 1/28/4/2024 (The matter at the D.C.I.O), the Interested Party's Council suspended the Plaintiff from his position of the 2nd Trustee of the Church.
26. Article 5 of the Interested Party's Constitution provides for discipline of members. It reads as follows:-

“Conduct contrary to Christian livings determined by the Holy Bible shall be sufficient grounds upon which any person may be disqualified as a member (Romans 16:17, 18, Corinthians 5:12, II Thessalonians 3:6-15, Titus 10:10, 11, 2 John 9-11)

The steps of the discipline of members shall always be consistent with the instructions given in (Mathew 18:16-20 and Galatians 6:1-2).

The purpose of discipline is restorative and remedial. However, if a person is excommunicated from the church, he/she may be reconciled after he/she has been attested by the Pastor and confirmed by the elders of the Local Church Assembly after sincere repentance.”
27. Having said so, the Plaintiff, having been aggrieved ought to have first sought redress through the instructions given under the said Constitution which were specifically provided for under the Bible verses provided therein. This court did not agree with his argument that the said Article 5 did not stipulate any internal dispute resolution that he could seek refuge to or the procedure and the body to hear the said dispute internally.
28. This court took the firm view that where there was a prescribed resolution mechanism, parties were required to first exhaust it before approaching the court. This was known as the doctrine of exhaustion.
29. In the case of William Odhiambo Ramogi & 3 others vs Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR, it was held that the question of exhaustion of administrative remedies arose when a litigant, aggrieved by an agency's action, sought redress from a court of law on an action without pursuing available remedies before the agency itself.
30. The doctrine of exhaustion ensured that matters could not be considered in court until an aggrieved party had first exhausted the dispute resolution mechanisms that were outside the court system to protect his or her interests, where he or she had consented to such dispute resolution mechanisms.
31. This court agreed with the Defendants that the Plaintiff had approached this court prematurely by failing to first pursue reconciliation through the instructions given under the specific Bible verses as provided for under the aforesaid Church's Constitution of which the parties were members of. To determine the dispute herein at a first instance in the absence of demonstration of contravention of the Fair Administrative Actions Act and the Constitution of Kenya, 2010 would be tantamount to



this court overreaching itself and delving in matters that were outside its scope as far as the Interested Party's Constitution herein was concerned.

32. It was therefore the finding and holding of this court that the Plaintiff ought to have exhausted all other available remedies before invoking the jurisdiction of this court. As this court had no jurisdiction in this matter, it had to down its tools forthwith. In the case of Owners of Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Limited (1989), it was held that jurisdiction was everything and without it a court had no power to take one more step. Jurisdiction was conferred by statute and was not assumed without any legal basis.

Disposition

33. For the foregoing reasons, the upshot of this court's decision was that the Defendants' Preliminary Objection dated 5th July 2024 and filed on 10th July 2024 was merited and the same be and is hereby upheld. The effect of this order is that the Plaintiff's Plaint and Notice of Motion application dated and filed on 28th May 2024 had no limb to stand on and consequently, the same stand as automatically struck out.
34. It is hereby directed that each party will bear its own costs of this suit.
35. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 30TH DAY OF SEPTEMBER 2025

J. KAMAU

JUDGE

