

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL CASE NO. E055 OF 2025**

**BOSCO OTIENO OKEBE.....1<sup>ST</sup>**  
**PLAINTIFF**

**SAMUEL MWIRIGI KENDA.....2<sup>ND</sup>**  
**PLAINTIFF**

**VERSUS**

**CENTRAL RIFT VALLEY CONFERENCE OF THE**  
**SEVENTH-DAY ADVENTISTS CHURCH.....1<sup>ST</sup>**  
**DEFENDANT**

**EXECUTIVE COMMITTEE CENTRAL RIFT**  
**VALLEY CONFERENCE OF THE**  
**SEVENTH-DAY ADVENTIST CHURCH.....2<sup>ND</sup>**  
**DEFENDANT**

**EXEXECUTIVE SECRETARY CENTRAL RIFT**  
**VALLEY CONFERENCE OF THE**  
**SEVENTH-DAY ADVENTISTS CHURCH.....3<sup>RD</sup>**  
**DEFENDANT**

**EXECUTIVE DIRECTOR CENTRAL RIFT**  
**VALLEY CONFERENCE OF THE**  
**SEVENTH-DAY ADVENTISTS CHURCH.....4<sup>TH</sup>**  
**DEFENDANT**

**RULING**

1. The Plaintiffs by Notice of Motion Application dated 13<sup>th</sup> October, 2025 seek the following orders:-

**i) Spent.**

**ii) Spent .**

**iii) Spent.**

**iv) That this Honourable Court be pleased to issue a temporary injunction restraining the Defendants whether by themselves, their employees, servants, agents or otherwise howsoever from using offices of the National Police Service and other state agencies to run the affairs of the 1<sup>st</sup> Defendant or harass or intimidate the Plaintiffs or to bring pressure to bear upon the Plaintiffs and arbitrarily suspended and dismissed pastors namely Stephen Nginga, James Kibuchi, Moses Atemba, Peter Okeyo, Harrison Tenkeet, Joseph Atika, John Kahiro, Charles Kanyoro, Joel Chepkowny, Zipporah Ongweso, Jeremiah Ngotho, Enock Ong'ono, John Githinji, Haron Ongweso, Kevin Murage, John Mwangi, Francis Mwasya, Peter Mwagi, Joseck Ichwara, Tom Akech and Samwel Onchari not to participate in activities of the 1<sup>st</sup> Defendant pending the hearing and determination of this suit.**

**v) That this Honourable Court be pleased to issue a temporary injunction restraining the Defendants**

**whether by themselves, their employees, servants, agents or otherwise howsoever from convening the 1<sup>st</sup> Defendants sessions or elections at the National Youth Service premises at Naivasha or any other place with restricted access to members of the public before 27<sup>th</sup> October, 2025, on 27<sup>th</sup> October, 2025 or on any other date thereafter without delegates nominated and elected in strict compliance with the church's policy documents pending the hearing and determination of this suit.**

- vi) That the Officer Commanding Station (OCS) Naivasha Central Police Station does supervise peaceful execution and compliance order.**
  - vii) That the costs of this Application be borne by the Defendants/Respondents.**
2. The Application is supported by affidavit evidence of **the 2<sup>nd</sup> Plaintiff** and the same witness' Further Affidavit sworn on 2<sup>nd</sup> November, 2025 in answer to contentions in the Defendants' reply.
3. The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants oppose the Application *vide* by a Replying Affidavit sworn on 20<sup>th</sup> October 2025 by the 3<sup>rd</sup> Defendant **(Philip Isika)** who is also the Executive

Secretary of the 2<sup>nd</sup> Defendant. They also purported to file a Supplementary Affidavit sworn on 5<sup>th</sup> November 2025 disputing the allegations raised by the Plaintiffs in their Further Affidavit dated 2<sup>nd</sup> November 2025.

4. The 4<sup>th</sup> Defendant also opposes the Application by means of Replying Affidavit sworn on 24<sup>th</sup> October 2025.
5. On 14<sup>th</sup> October 2025 the court certified the Application as urgent and granted the temporary injunction sought in prayer (iii) of the Motion to subsist until further orders or directions of the court.

**The 1<sup>s</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Application Dated 21<sup>st</sup> October 2025.**

6. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants seemed to be aggrieved by this interim order and brought their own Notice of Motion Application dated **21<sup>st</sup> October, 2025** for the following reliefs:

- i) **Spent**
- ii) **That an order do issue to review, set aside, discharge and/or revoke the orders of this Honourable Court issued on 14<sup>th</sup> October, 2025 in respect of the Plaintiffs motion dated 13<sup>th</sup>**

**October, 2025 pending the hearing and determination of this application. (sic)**

- iii) That an order do issue to review, set aside, discharge and /or revoke the orders of this Honourable Court issued on 14<sup>th</sup> October, 2025 in respect of the Plaintiffs motion dated 13<sup>th</sup> October, 2025 pending the hearing and determination of this suit.(sic)**
- iv) That the suspended pastors be allowed to attend the Defendants' session scheduled on 27<sup>th</sup> October 2025 or any other date the session may be convened.**
- v) That the plenary and all proceedings of the said session be governed in accordance with the Holy Bible, the Seventh-Day Adventists Church Manual, the Seventh-Day Adventists Working Policy, the Constitution of the 1<sup>st</sup> Defendant and all other SDA governing instruments.**
- vi) That an order do issue declaring the Plaintiffs herein Bosco Otieno Okebe and Samwel Mwirigi Kenda as vexatious litigants.**
- vii) That the Nakuru County Police Commander or the OCS in Charge of the area where the session is held does provide security and ensure compliance with the orders of this Honourable Court.**

**viii) That this Honourable Court be pleased to make such further orders as it shall deem fit and expedient to grant.**

**ix) That the costs of this Application be provided for.**

7. The Application is supported by an Affidavit sworn by the said Philip Isika on the same date titled **“1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants Supporting Affidavit and Replying Affidavit”**.

8. The court directed the two Applications to be disposed of together. I shall hereafter set out in summary the Parties' averments in their respective affidavits as filed.

**Affidavit In Support of Notice of Motion dated 13<sup>th</sup> October 2025**

9. The 2<sup>nd</sup> Plaintiff avers that from 2024 the 4<sup>th</sup> Defendant has been working in cahoots with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in running the affairs of the 1<sup>st</sup> Defendant Church with a view to manipulating and influencing the outcome of elections that were planned to be conducted in 2025. The 4<sup>th</sup> Defendant was to chair the Nominating Committee and

*inter alia* dismiss or arbitrarily suspend some named Church Pastors who were eligible to vote and vie for various positions. It is further contended that the 4<sup>th</sup> Defendant and his co-conspirators planned to allow unelected persons to irregularly serve in the 2<sup>nd</sup> Defendant; unlawfully re-appoint retired pastors; get the police to harass pastors to intimidate them so that they don't participate in church activities and generally interfere with affairs of the church as averred in the 2<sup>nd</sup> Plaintiff's Affidavit.

10. The 2<sup>nd</sup> Plaintiff further avers that the 1<sup>st</sup> Defendant dishonestly convened the Church's Sessions at the National Youth Service premises instead of premises accessible to members of the public as was established tradition.
11. The 2<sup>nd</sup> Plaintiff for these reasons *inter alia* therefore craves the injunctive reliefs sought to prevent further violation of constitutional rights of the Church members. Various letters purportedly authored by the Defendants to communicate the actions or decisions complained of are exhibited in the Application.

**The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Affidavit in Reply**

12. Through the Executive Director of the 3<sup>rd</sup> Defendant (Philip Isika), it is explained that disciplinary action was taken against the Pastors in question for misconduct including insubordination inconsistent with their duties. The affected Pastors are said to have been afforded an opportunity to be heard before the disciplinary action but in many instances they allegedly declined to attend the disciplinary hearings. Some 3 named Pastors who apologized for the misconduct alleged against them, however, had the disciplinary proceedings halted in relation to them. These Pastors are said not to have authorized this legal action.
13. Despite the dismissal or suspension of the offending Pastors, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants affirm that the Pastors were not prevented from participating in the Church's Sessions.
14. The Executive Director of the 3<sup>rd</sup> Defendant continues to depose that there are internal mechanisms in the Church providing avenues by means of the Church Constitution, Manual and other Policy Instruments, for appeals in respect

of decisions complained of which the Plaintiffs could have utilized before resorting to court action if dissatisfied.

15. In answer to the Plaintiff's allegation of manipulation or intention to manipulate Church elections, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants dismiss the claim as merely speculative and unsupported by credible evidence. They assert that the elections were conducted transparently at all levels. In any case, it is pointed out *inter alia* that the Plaintiffs have not shown if they are registered Church members, and if they were nominated to attend the Church's Session in contention.
16. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants also deny the claim that they used the police to harass Church members. Police officers that might have been present at the event were engaged to provide security for delegates attending the Church's Session and not for the purpose of intimidation, they explain.
17. The claim of unlawful and irregular re-appointment of retired Pastors among other allegations by the Plaintiffs are also denied by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The court is

told that the subject Church has traditionally held its meetings at various public and private premises guided by security arrangements provided.

18. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants through their witness bring to the court's attention that their alleged usurpation of power and illegal appointment of the Church's Executive Committee Members is a subject of separate litigation before this court in Constitutional **Petition Number E043 of 2025** pending determination. Other similar proceedings are said to have been instituted by the Plaintiffs *vide* **Nakuru High Court Civil Appeal Number E045 OF 2025; Nakuru Chief Magistrate's Civil Case Number E1045 of 2024; Thika Chief Magistrate's Civil Case Number E157 of 2025 and Thika High Court Civil Appeal Number E226 of 2025.**
19. For the stated reasons *inter alia*, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants therefore urge the court not to allow the Plaintiffs to prevent them from going on with lawful scheduled Church Sessions and/or elections.

20. The 4<sup>th</sup> Defendant (Simon Makori) also filed a reply to the Application by means of an Affidavit. He generally finds common ground with his co-Defendants regarding the dispute. He distances himself from any meetings at which the disputed decisions were made. The 4<sup>th</sup> Defendant avers that he was not involved in planning the Church's meetings or choice of delegates to attend the meetings.
21. The Plaintiffs filed a Further Affidavit dated 2/11/2025 reiterating their earlier evidence. They insist that the affected Pastors were wrongly dismissed and/or suspended and the new ones were brought in irregularly. The Plaintiffs continue to lament that the Defendants are running the affairs of the Church against its Constitution, Policy and Manual.
22. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants thereafter purported to file a Supplementary or Further Affidavit in answer to the Plaintiff's second Affidavit, which Affidavit is contested by the Plaintiffs as illegal or irregular.

**Affidavit by Philip Isika in support of the Notice of Motion Application dated 21<sup>st</sup> October 20225.**

23. Through this Affidavit the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants make more or less the same averments as in the Affidavit in reply to the Application dated 13<sup>th</sup> October 2025. They want the dismissed or suspended Pastors to be allowed to attend the Church's Sessions to be lawfully convened. They also *inter alia* urge that the Plaintiffs be declared as vexatious litigants because of the multiplicity of suits they have filed over the same dispute. The Plaintiffs are said to be strangers to the Seventh Day Adventists Church having not shown that they are delegates entitled to participate in Church Sessions.
24. The 2<sup>nd</sup> Plaintiff replies by Affidavit faulting the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for filing one Affidavit serving as both a Supporting and Replying Affidavit, a procedure said to be not sanctioned by the law.
25. It is also contended that this Application is made in a vacuum as no Counterclaim has been lodged. In all the suits they have instituted, the matter of the Church's elections is not a subject, add the Plaintiffs.

26. Among other depositions, the Plaintiffs state that the Court rightly issued the interim injunction to preserve the substratum of the suit pending determination of the Application dated 13<sup>th</sup> October 2025.
27. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed a Further Affidavit through the same witness reiterating their position on this Application and dismissing the Plaintiffs' claims.
28. Learned Counsel for the Parties were allowed to canvass the Applications by written submissions which were duly filed.

**Plaintiffs' Submissions on the Application dated 13<sup>th</sup> October, 2025**

29. It is submitted that **Order 51** of the **Civil Procedure Rules** provides for claims for enforcement of constitutional rights. Even though the suit has been commenced by way of Plaint, Counsel state that it is a suit for enforcement of constitutional rights and that the Plaintiffs bring the claim on their own behalf and on behalf of others. Reference is made to the case of **Ferdinand Ndungu Waititu vs Benson Riitho Mureithi (Suing on his behalf and on behalf of the general public) and 2 others [2018]**

**KECA 493 (KLR)** for the submission that the Plaintiffs have *locus standi*. It is also submitted that claims for enforcement of constitutional rights may be made informally as was held in **Alex Otuke Ondimu & Another vs Commissioner of Police & 3 Others [2022] KEHC 766 (KLR)** cited and relied upon by Counsel.

30. The Plaintiffs' Counsel further argue that the Supplementary Affidavit sworn by Phillip Isika on 5<sup>th</sup> November, 2025 to ostensibly answer averments in the Plaintiffs' Further Affidavit is a document not known in-law and has been filed without leave of court. The court is therefore urged to expunge the purported Affidavit from the record.
31. Reliance is further placed on **Nyanza Fish Processors Limited v Barclays Bank Kenya Limited & 3 Others [2016] eKLR** for the submission that this Application meets the legal threshold for issuance of the interlocutory injunction craved.

32. The Plaintiffs' Advocates therefore urge the court to find that they have made out a *prima facie* case entitling them to injunctive relief pending determination of the suit, the Defendants having failed to abide by the Church Constitution, Working Policy and Manual by improperly convening meetings; carrying out unsanctioned suspension and dismissal of pastors, as well as conducting irregular elections. It is contended that an election is a process and not an event (see the case of **Nicholas Kptoo Arap Korir Salat vs Independent and Electoral Boundaries Commissions & 7 others [2014] eKLR** alluded to by Counsel).
33. Owing to the alleged violation of the Church Policy, the Plaintiffs also contend *inter alia* that the Defendants would not suffer irreparable injury if the Application is granted. The Defendants are also said to have failed to show that the balance of convenience tilts in their favour were the injunction orders to be granted pending hearing and determination of the suit, and the suit is later dismissed.

34. On the issue of the costs of the Application, it is submitted that were it not for the acts of the Defendants, the Plaintiffs would not have moved to court and so the Plaintiffs should be awarded costs. Counsel rely on the case of **Jasbir Singh Rai & 3 others vs Tarlochan Sing Rai & 4 others** [2014] eKLR in this regard.

**The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants submissions on the Application dated 13<sup>th</sup> October, 2025.**

35. Concerning the Plaintiffs' contention that the disputed Supplementary Affidavit they filed is not known in law, the Defendants claim that the court granted leave to the parties to file any affidavits in response, together with their submissions. Upon being served with a Further Affidavit of the Plaintiffs, they put in the Supplementary Affidavit dated 5<sup>th</sup> November 2025 to specifically address the new issues introduced.

36. It is argued that although **Order 51** of the **Civil Procedure Rules** does not expressly provide for the filing of additional responses after a Further Affidavit, of an Applicant, the principles of natural justice demand that where new issues

are raised, the affected party should be allowed to respond. No prejudice will be occasioned to the Plaintiffs if the said affidavit is deemed properly filed, add the 1<sup>st</sup> , 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

37. The 1<sup>st</sup> , 2<sup>nd</sup> and 3<sup>rd</sup> Defendants therefore submit that the Plaintiffs have not satisfied the conditions for grant of an interlocutory injunction as were long settled in **Giella vs Cassman Brown & Co. Ltd [1973] EA 358**. They continue to contend that the Plaintiffs have not demonstrated any enforceable legal or constitutional right that is threatened; that they lack *locus standi* and further the court should not interfere with internal governance of voluntary Associations. Reliance is placed on **Law Society of Kenya v Commissioner of Lands [2001] eKLR** and **Julian Adoyo Ongunga & Another v Francis Kiberenge Bendera [2016] eKLR**, for the proposition that there has to be demonstrable personal or legal interest to sustain legal proceedings.

38. Maintaining that the Plaintiffs' purported grievances are speculative and remote, the Defendants opine that they

would not suffer irreparable loss if the Application is disallowed.

39. On the other hand, Counsel submit that the balance of convenience tilts heavily in favour of the Defendants who have invested heavily in organizing the Church Session in issue, and therefore halting the process would cause enormous financial loss, organizational harm and leadership crisis since the term of the current office bearers is over.
40. Counsel point out that the Plaintiffs have failed to show that they are *bona fide* members, delegates, or officials of the Central Rift Valley Conference or any of its constituent churches. The court is told that representation without mandate contravenes **Order 1 Rule 8** of the **Civil Procedure Rules** and the principles set out in **Hussein vs Gedi; Adan (Interested Party) [2025] KEELC 931 (KLR)**.
41. The Defendants insist that the Plaintiff are vexatious litigants and have abused the Court process by bringing similar litigation *vide* Nakuru CMCC. No. E1052 of 2024,

Nakuru HCA No. E045 of 2025, Thika CMCC NO E157 of 2025, Thika HCA No. E226 of 2025 and Nakuru Constitutional Petition No. E043 of 2025.

42. Further it is contended that by bypassing the Church's internal mechanisms of disputes resolution, the Plaintiffs prematurely invoked this court's jurisdiction, rendering their application incompetent. I am referred to the judicial determination in **Speaker of National Assembly vs Karume [1992] KLR 21** which pronounced this legal position in more or less similar circumstances.

**4<sup>th</sup> Defendant's Submissions on the Application dated 13<sup>th</sup> October, 2025**

43. The 4<sup>th</sup> Defendant through his Counsel on record submits that he has been wrongly joined in this suit as no cause of action has been demonstrated against him, and that the Plaintiffs failed to contest the 4<sup>th</sup> Defendant's averments as per his Affidavit filed herein and sworn on 24<sup>th</sup> October, 2025.
44. The 4<sup>th</sup> Defendant finds common ground with his co-Defendants that the Plaintiffs did not exhaust available

internal dispute resolution mechanisms thereby offending the doctrine of exhaustion of remedies. The court is told that the Plaintiffs have not demonstrated exceptional circumstances that would exempt them from the obligation to exhaust internal means of redress before invoking jurisdiction of the Court. Counsel rely on the cases of **Republic vs Kenyatta University Ex-Parte Ochieng Orwa Dominic and 7 Others [2018] eKLR** and **Republic vs JP Maiywo & 2 Others sued as the executive director, Treasurer and Secretary respectively of Central Kenya Conference (CKC); Moses Nyankuru & 23 Others (Interested Parties) Ex-Parte Humprey Nguma Macharia & Another [2019] KEHC 11627 (KLR)** to buttress this argument.

**Plaintiffs' Submissions on the Application dated 21<sup>st</sup> October, 2025**

45. To reiterate that an Affidavit cannot be both a Supporting Affidavit and Replying Affidavit the Plaintiffs rely on the case of **Konchellah vs Julius Lekakeny Ole Sunkuli & 2 Others [2028] eKLR** to submit that the Application is not

accompanied by a compliant supporting affidavit and hence it is incompetent.

46. The Plaintiffs further attack this Application as misconceived for not being based on discovery of new evidence; or mistake or error apparent on the face of the record or any other sufficient reason warranting review of the orders of the Court as stipulated under **Section 80** of the **Civil Procedure Act** and **Order 45 of the Civil Procedure Rules 2010**.
47. In any event, prayers 4, 5, and 6 of the Application are said to have been overtaken by events as the Defendants have postponed the Church's Session that was to be held on 27<sup>th</sup> October, 2025 until further notice, following the Court order of 14<sup>th</sup> October, 2025.
48. Moreover, it is argued that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are seeking orders not anchored in any substantive pleadings and the court cannot grant the orders in a legal vacuum.

49. I have carefully considered the pleadings, rival affidavits, submissions of Counsel made with commendable industry as well as the applicable law. The Court will first examine and decide whether or not the Parties were bound to pursue internal mechanisms and alternative dispute resolution before approaching the court if dissatisfied. Secondly, I shall determine whether exceptions to the doctrine of exhaustion of remedies apply in the circumstances of this case. I shall then issue orders commending themselves to the court.
50. The 4<sup>th</sup> Defendant has exhibited the “**SDA Church Conflict Resolution Guidelines**”, which expressly provide that internal Church disputes of whatever nature are to be resolved through a structured process beginning with negotiation, followed by mediation, and if those fail, referral to arbitration. It expressly provides for a structured procedure prior to subjecting the dispute to civil courts by an aggrieved Party when it becomes inevitable. The Guidelines provide in part that;

**“.....For the Avoidance of doubt, it shall be mandatory for any party who is a member of the Seventh-Day Adventist Church who has an issue to first exhaust the internal dispute Resolution Mechanisms as provided for by the operating documents of the seventh-day Adventists church including *inter alia* the church manual and the general conference working policy before escalating any matter in controversy to the secular process of civil Courts....”**

51. In **Muthinja & another vs Henry & 1756 others** [2015] KECA 304 (KLR) the Court of Appeal provided the constitutional rationale and basis for the doctrine of exhaustion in the following words: -

**“[37] It is plain to see then, that the Church did have a place a rather elaborate system for dispute resolution which the plaintiffs in the various suits ought to have had recourse to, and exhausted, before litigating in court. We concur with the learned Judge’s categorical finding at paragraph 75 of his judgment thus; That though the court has jurisdiction to deal with the plaintiffs’ complaints it is premature as they did not strictly follow the Church**

**Constitution, providing for dispute resolution mechanism.**

**[38]. We see this as the crux of the matter in this and similar cases. It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.**

**[39]. We find and hold that the exhaustion doctrine applies even where, as was argued by the appellants herein, what is sought to be challenged is the very authority of the organs before whom the dispute was to be placed. We think there were sufficient safeguards in**

**place for a valid determination of the various plaintiffs' disputes had they filed them within the church set up. And there was always the right, acknowledged by the learned Judge, of approaching the courts after exhaustion of the church mechanisms. By failing to do so, and quite apart from the force of their apprehensions, the appellants effectively failed to exhaust their remedies and essentially short-circuited the process by filing suits prematurely."**

52. **Article 159(2)(c)** of the **Constitution** also requires Courts to encourage alternative means of dispute resolution. It has been exhorted that exceptions may, however, arise where internal mechanisms are either unavailable, ineffective, or incapable of granting the remedies sought.
53. Now therefore, do the Plaintiffs' grievances fall within the category of disputes that must first be resolved internally, or they are matters that exceptionally warrant direct intervention by the Court?
54. The Plaintiffs have alleged irregularities in the governance of the Church and conduct of elections. It is not in dispute that the matter has not been adjudicated within the

Church's disputes resolution mechanism before escalation to court.

55. In **Republic v JP. Maiwo & 2 others** sued as the Executive Director, Treasurer and Secretary respectively of **Central Kenya Conference (CKC); Moses Nyankuru & 23 others (Interested Parties) Ex parte Humphrey Nguma Macharia & another** [2019] KEHC 11627 (KLR) the Court stated;

**“[112] In any event, there was no argument before me that the appellate forum created by the Church Manual has developed a rigid policy, which renders the requirement for exhaustion futile. It has not been established that the dispute is purely legal and must be determined by the court. A look at the jurisdiction of the forum and the facts of this case suggests otherwise. It has not been shown that the mechanism is not effective nor has it been demonstrated that the *ex parte* applicant cannot obtain an effective remedy from the mechanism**

**[113]. The second requirement under section 9(4) and upon which this case finally**

**collapses is that on application by the applicant, the court may grant an exemption. My reading of the law is that it is compulsory for the aggrieved party in all cases to exhaust the relevant internal remedies before approaching a court for review, unless exempted from doing so by way of a successful application under section 9(4) of the FAA Act. The person seeking exemption must satisfy the court, first that there are exceptional circumstances, and, second, that it is in the interest of justice that the exemption be given.<sup>[34]</sup> Section 9(4) of the FAA Act postulates an application to the court by the aggrieved party for exemption from the obligation to exhaust any internal remedy. My reading of the said provision is that the applicant must first apply to the court and demonstrate the existence of exceptional circumstances. No such application was made in this case before approaching the court.”**

56. The Plaintiffs have not demonstrated that the *fora* created by the Church Manual and Working Policy or other by laws

governing the Church are rigid, ineffective, or otherwise incapable of granting an effective remedy. On the contrary, the uncontested evidence before the Court shows that the Church has established a structured process of negotiation, mediation, and arbitration, which remains available to the Plaintiffs.

57. There is another important aspect of jurisdiction that arises in this matter. Employment disputes arising from alleged wrongful suspension or dismissal is the purview of the Employment & Labour Relations Court, which is of equal status with this court, created by the law to determine such specific disputes. This court may not therefore have jurisdiction to entertain this aspect of the dispute.
58. On the material presented before the court and in the circumstances, this court may not have jurisdiction, also considering that there are other similar litigation involving the same Parties before others courts.
59. I shall consider the merits of the Application dated 13<sup>th</sup> October 2025, if only as an academic exercise in light of my finding on jurisdiction. Case law in **East African**

**Industries vs. Trufoods [1972] EA 420** and **Giella vs Cassman Brown & Co. Ltd [1973] EA 358** set out long settled principles guiding grant of interlocutory injunction. The same principles were also reproduced in the case of **Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] KECA 606 (KLR)**, as follows:

**“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;**

- (a) establish his case only at a prima facie level,**
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and**
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.**

**These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a *prima facie* case that alone is not sufficient basis**

to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a *prima facie* case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between."

60. The case of **Mrao Ltd. vs First American Bank of Kenya Ltd & 2 others** [2003] KECA 175 (KLR) defined what constitutes a *prima facie* case as follows:

"So what is a *prima facie* case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."

## **Determination**

61. At the outset, I hereby expunge from the record the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' purported Supplementary Affidavit to challenge the Plaintiffs' Further Affidavit in respect to the Application dated 13<sup>th</sup> October 2025. This Affidavit is indeed unknown in law. The said Defendants were only allowed to answer to matters raised in the Plaintiffs' Supporting Affidavit which they did *vide* their Affidavit in Reply. Any new issues brought up in the Plaintiffs' Further Affidavit would not have, and have not been considered by the court.
62. As regards the Plaintiffs' contention that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants mischaracterized their Replying Affidavit as "Supporting Replying Affidavit", that description is irregular. The irregularity, however, appears to be in form only as the contents therein seem to legitimately counter the Plaintiff's Affidavit evidence. I find no sufficient cause to impugn this Affidavit.
63. I will begin by disposing of the Notice of Motion dated 21<sup>st</sup> October 2025 seeking review of interim injunctive orders issued on 14<sup>th</sup> October 2025. The orders were consciously

and duly issued so that the court could hear all the Parties before deciding whether or not the injunctive reliefs prayed for pending determination of the suit are merited. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were at liberty to canvass their position in their response to the Application dated 13<sup>th</sup> October 2025 without the necessity of bringing this Application.

64. **Order 45 of the Civil Procedure Rules 2010** provides for review of court orders/decrees or even judgements on account of a mistake or error on the face of the record; discovery of new evidence that despite due diligence could not be presented earlier, or for some other sufficient cause.
65. The Defendants do not point any such error in the proceedings or otherwise demonstrate a basis for review of the court orders under the law.
66. The Application dated 21<sup>st</sup> October 2025 is accordingly dismissed with no order as to costs, given that the Parties appear to be members of the same Church.
67. With respect to the Application dated 13<sup>th</sup> October 2025, there is no dispute that there are internal mechanisms

within the Church in the form of the Church Constitution, Manual and other Policy Documents to address disputes. In line with the doctrine of exhaustion of remedies discussed above and the court's finding that it is bereft of jurisdiction, the Application may not be allowed.

68. Besides, the orders craved in the suit include a declaration that the Pastors dismissed or suspended were unconstitutionally disciplined and that they be compensated. I agree with the Defendants that this may be the province of the Employment and Labour Relations Court created by the law to adjudicate such disputes.
69. The Plaintiffs also seem to pray for interpretation of the Constitution with respect to the dismissal and suspension of the Pastors yet there is another Petition Number E043 of 2025 touching on the same dispute before this court. These proceedings could therefore be potentially *sub judice* in that respect.
70. Moreover, there are many other cited suits before different courts pitting the same parties concerning the same

dispute. This suit may therefore be an abuse of the court process.

71. In the circumstances, the Plaintiffs have not made out a *prima facie* case with a reasonable chance of success at trial. A *prima facie* case is not a speculative grievance. While it is not about proving the claim conclusively at this stage, the Applicant is obliged to show a genuine and arguable case or right under threat to earn the equitable relief of temporary injunction pending trial.
72. In line with established jurisprudence, once a *prima facie* case has not been established, the Court need not delve into the other tests of irreparable injury and the balance of convenience. The three pillars of injunction are sequential hurdles, and failure to surmount the first hurdle is fatal to the Application. Nevertheless, the Applicants may not suffer irreparable loss as they are at liberty to attend Church Sessions if they are lawful delegates or members.
73. This Application is also dismissed but the costs thereof shall be in the Cause.

**J. M. NANG'EA - JUDGE**

**Ruling delivered virtually this 25<sup>th</sup> day of February, 2026.**

**In the presence of:**

**Plaintiffs' Advocate, Mr. Ratemo.**

**1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Advocate, Mr. Nyagaka.**

**4<sup>th</sup> Defendant's Advocate, Mr. Rachuonyo.**

**Court Assistant, Mr Ng'eno.**

ORIGINAL