



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
PETITION NO. E043 OF 2025

IN THE MATTER OF THE ENFORCEMENT OF THE
BILL OF RIGHTS UNDER ARTICLE 22(1) OF THE
CONSITITUTION OF KENYA (2010)

-AND-

IN THE MATTER OF ENFORCEMENT OF
FUNDAMENTAL F RIGHTS UNDER ARTICLES 1, 3 (A),
10, 19, 20, 21, 21 23, 27, 28, 28, 29, 36, 37, 47, 49,
165, 258 AND 259 OF THE CONSTITUTION OF KENYA
2010

-AND-

IN THE MATTER OF SECTION 5 OF THE FAIR
ADMISTRATION ACT CAP 7 LAWS OF KENYA

ERICK MAMBUYA AMUYUNZA.....1ST
PETITIONER

CHARLES ONDIEKI MONDA..... 2ND
PETITIONER
KELVIN KIPLANGAT.....3RD
PETITIONER
WILLIAM RATEMO OIGO.....4TH
PETITIONER
ISAAC NYANDIEKA GESIORE..... 5TH
PETITIONER
PETER OCHANGA OTACHI.....6TH
PETITIONER

VERSUS

**PR. ISIKA PHILIP MUNYAO (Executive Secretary of
the
Central Rift Valley Conference, SDA Church).....1ST**
RESPONDENT
**PR. PETER MWATHI (Acting President of the
Central Rift Valley Conference, SDA Church)2ND**
**RESPONDENT EXECUTIVE COMMITTEE CENTRAL
RIFT VALLEY
CONFERENCE (Registered Trustees of the Seventh-
day Adventist
Church, Central Rift Valley Region)3RD**
RESPONDENT
**PR. SAMUEL MAKORI (President of
East Kenya Union Conference)4TH**
RESPONDENT

**THE INSPECTOR GENERAL OF POLICE,
NATIONAL POLICE SERVICE.....5TH**

RESPONDENT

THE ATTORNEY GENERAL.....6TH

RESPONDENT

RULING

1. Before this Court for determination are two Applications dated **12th June, 2025** and **4th July, 2025** which were directed to be disposed of together .

Notice of Motion dated 12th June, 2025.

2. The Petitioners are seeking the following: -

i) Spent

ii) Spent

iii) THAT the Honourable court be pleased to issue interim conservatory and/or an interim order *ex-parte* in the first instance staying and/or suspending and/or halting any further transfer of pastors by the 1st, 2nd and 3rd Respondents, their agents, servants or assignees and/or any other person acting under their authority pending hearing and determination of the Petition.

iv) Spent.

v) **THAT the Honourable Court be pleased to issue an interim conservatory and/or an interim order restraining the 1st and 2nd Respondents, their agents, servants or assignees and/or any other person acting under their authority from continuing to hold office pending hearing and determination of this Petition.**

vi) **THAT the Honourable court be pleased to order the Officer Commanding Bondeni Police Station or any nearest police station to provide security and assist in the implementation of the above Orders upon their issuance.**

vii) **THAT costs of the application be borne by the Respondents.**

3. The Application is predicated upon the grounds on its face and Supporting Affidavit sworn by the 4th Petitioner (**William Ratemo Oigo**) wherein he deposes that he has been a member of the Seventh-day Adventists Church for over fifteen (15) years and served as a member of the local church board prior to its dissolution. He added that the 1st Respondent's term as the elected Conference Executive Secretary

Central Rift Valley Conference (CRVC) expired on 31st December 2024 and despite non-extension of his term, he continues to hold office unlawfully and remains in control of CRVC affairs

4. It is further deposed that on or about 21st April 2025, the 2nd Respondent was unilaterally installed as President of CRVC without following the procedures outlined in the SDA Church Manual and the Church Working Policy and without congregational participation, union-level approval, or any other form of democratic process. The concerns raised were ignored or threatened with disciplinary action, adds the witness.
5. The deponent continues to aver that immediately after the installation of the 2nd Respondent, mass transfers of pastors across the CRVC region began without notice, consultation and opportunity for affected pastors or congregations to be heard, contrary to the provisions of the Minister's Handbook. Armed police officers are alleged to have escorted the new pastors

into churches and forcibly removed existing ones, causing fear and intimidation among congregants. The witness claims to have personally watched forced installation of a new pastor at Great News SDA Church on 24th May 2025. Armed police officers were stationed outside the church premises, and members of the Church who opposed the transfer were threatened with arrest.

6. Mr Oigo also states that a pastor is required to serve for a minimum of at least two years in one station before transferring to another station. The replaced pastor for Great News SDA church had only served for one year which makes him ineligible for transfer, according to the witness. His sudden removal is said to have caused confusion, distress, and disruption of ongoing ministry programs.
7. The Petitioners further contend through the witness that the elected Board of Great News SDA Church was unilaterally dissolved by the 1st, 2nd and 3rd Respondents without following the procedures set

forth in the SDA Church Manual and the Ministers Handbook or any other lawful justification.

8. Prior to the events described above, CRVC had a legitimately elected President who was serving in accordance with the SDA Church Manual and ECD Working Policy. On 21st April 2025, the 4th Respondent allegedly convened a meeting against Court orders and on a recognized public holiday without proper notice to all committee members or attainment of the requisite quorum. Removal of the legitimate CRVC President was effected without the two-thirds majority vote required by the constitution and in violation of ECD Working Policy provisions, adds Mr Oigo.
9. Mr Oigo further states *inter alia* that the Court had specifically ordered mediation to resolve CRVC leadership issues, but the 4th Respondent deliberately ignored the mediation process thereby undermining the Court's authority.

The 1st Respondent's Reply

10. The 1st Respondent also objects to the Application stating that the Court lacks jurisdiction to entertain the matter for the reason that the issues raised relate *inter alia* to the terms of service of the 1st Respondent, the appointment of the 2nd Respondent and the transfers of pastors which is the domain of the Employment & Labour Relations Court. The interim conservatory orders issued by the Court are said to be *ultra vires* and the same ought to be set aside or vacated.
11. This matter is further said to be *res judicata* for the reason that the Petitioners' contentions have been the subject of similar litigation in **NAKURU CM ELRC NO. E007 of 2025, Bosco Otieno Okebe & 3 Others versus Isika Philip Munyao & CRVC.**
12. It is further averred that the Petitioner's lack *locus standi* to file the suit as they have not attached any evidence to show that they are members of the Seventh Day Adventists Church or that they were authorized by their respective local churches to initiate

these proceedings. The 1st Respondent continues to aver *inter alia* as follows:

- (a) That Petitioners are not employees of the CRVC to enable them seek specific prayers that accrue and are due solely to an employee of the CRVC;**
- (b) That the 3rd Respondent's dispute resolution mechanisms have not been exhausted and so the instant petition and the accompanying Application are premature;**
- (c) That the 1st Respondent is legally holding office pursuant to the minutes of the Executive Committee and, according to the working policy of the Central Rift Conference, an employee can work beyond the age of 65 years or beyond 40 years of service as provided for under Section Z 30 05 (3) of the East and Central Africa Working Policy 2019-2020;**
- (d) That the appointment of the 2nd Respondent was undertaken by the 3rd Respondent under the supervision and guidance of the 4th Respondent. It is**

added that transfer of employees is the prerogative of the 3rd Respondent and any affected employee has the liberty, upon making a formal application in writing, to have a transfer reconsidered;

- (e) That there is no evidence that the board of the SDA Great News Church was dissolved and that the 3rd Respondent spearheaded the process since where the local church board is to be dissolved, the 3rd Respondent does not initiate it. The process is undertaken by the church business meeting, where the church members take a vote;**

And;

- (f) That Petitioners are aware of similar previous Court proceedings but opted to file a fresh suit in abuse of the court process.**

4th Respondent's case

13. *Vide* his Replying Affidavit sworn on 30th June, 2025, the 4th Respondent (Pastor Samuel Makori) opposes the Application, contending that the issues raised relate to the employment of the 1st and 2nd Respondents and the transfer of pastors which should

be canvassed in the Employment and Labour Relations Court. The matters the Petitioners raise do not pertain to violations of the constitution, according to the 4th Respondent. Pastor Makori is therefore of the view that the petition discloses no specific or demonstrable breach of constitutional provisions or any injury to the Petitioners under the Constitution's Bill of Rights.

14. Pastor Makori tells the Court that the transferred pastors have the legal right to follow internal Church procedures to lodge complaints and appeals as provided in the Church Manual and Working Policy. The Petitioners have not allowed the affected pastors to exhaust the Church's internal dispute resolution mechanism before filing suit, states the witness among other depositions.
15. Pastor Makori also attacks the Petition as defective and non-compliant with the law for seeking orders of Judicial Review in a constitutional petition in order to improperly challenge an employment-related dispute. Any administrative grievances ought to be addressed

via the Judicial Review jurisdiction under **Order 53 of the Civil Procedure Rules 2010**, contends the pastor.

1st Respondent's Notice of Motion dated 4th July, 2025

16. The Petitioners are seeking

- a) **Spent**
- b) **That the 1st 2nd and 3rd Respondents be cited and found in contempt of lawful Court orders within their knowledge but deliberately defied them be sentenced to civil jail pursuant to the orders issued on 20th June 2025 by Hon. Justice Julius Nang'ea. (sic)**
- c) **The 1st 2nd and 3rd Respondents be committed to civil jail for a term not exceeding six (6) months and/or such other sanction as this Honourable Court may deem just and fit in the circumstances.**
- d) **The costs of this application be borne by the Respondents.**

17. The Application is predicated on the grounds on its face and the Supporting Affidavit sworn by the said William Ratemo Oigo wherein he avers that despite the subsistence of the orders of 20th June 2025 restraining

the 1st, 2nd and 3rd Respondents and or their agents from further transferring pastors, the Respondents blatantly disobeyed the same and have continued to transfer pastors. The deponent avers:

- (a) That transfer letters issued to Pastor Peter Okeyo and Pastor Jared Nyasani confirm deliberate violation of the Court's orders and form direct evidence of contempt by the Respondents;**
- (b) That *vide* a letter dated 29th June 2025, the Respondents, through an unlawfully convened Executive Committee, suspended pastors and church officers;**
- (c) That following public outcry, the suspensions were withdrawn by a letter dated 2nd July 2025 but the Executive Committee has since disowned the letter claiming that it was not issued by them.**
- (d) That he witnessed forced installation of a new pastor at Great News SDA Church on 24th May 2025, prior to the Court order, and the unlawful transfer campaign has continued even after the orders were issued.**

(e) That the actions of the Respondents demonstrate a pattern of willful disobedience of Court orders, abuse of office, and deliberate undermining of both judicial authority and internal church procedures. Unless this Court intervenes and punishes the Respondents for contempt, the Petitioners will continue to suffer irreparable harm and the authority of the Court would be diminished, contends the witness.

1st Respondents response

18. The 1st Respondent in his Replying Affidavit sworn on stated that no Respondent has disobeyed Court orders and the transfer letters issued are dated 1st April, 2025 and 30th April, 2025, way before the conservatory orders were granted. He further states among other averments:

(a) That the suspension letter dated 29th June, 2025 relates to routine disciplinary and/or human resource procedures and there is no evidence of any transfers undertaken after issuance of the conservatory orders. In any event, it is alleged that there is no

evidence of service of the Court orders in question;

- (b) That the suspension of the 3rd Respondent's employees and/or pastors does not constitute "further transfer" as framed in the order. Therefore, such cannot be construed as defiance;
- (c) The application for contempt is defective as it is not dated and further that the deponent's authority to swear the affidavit on behalf of his co-petitioners is not evidenced.

Petitioner's Supplementary Affidavit

19. In the Supplementary Affidavit sworn by **Eric Mambuya Amuyunza** on 28th July, 2025 it is deposed:

- (a) That the Petition raises substantial and systemic constitutional violations and is not confined to an employment dispute as the reliefs sought include declaratory and injunctive orders which cannot be granted by the Employment & Labour Relations Court;
- (b) That the doctrine of *res judicata* is inapplicable since Nakuru CMCC ELRC NO. E007 OF 2025, involves distinct

parties and relates to different issues, specifically contractual employment terms, and cannot therefore operate to bar this Petition which involves constitutional claims affecting a broader group of church members;

(c) The Petitioners are active members of the SDA Church under CRVC and have demonstrated their membership by providing Baptismal Cards and a Church General Information Forms;

(d) That the Petitioners have sufficiently invoked and exhausted the internal remedies available to them, and the Respondents' failure to engage renders recourse to this Honourable Court both proper and necessary;

And;

(e) That the documents presented by the Petitioners were released by Pastor Isika himself in his capacity as Executive Secretary who is the custodian of church documents, and thus the claim of breach of privacy is unfounded.

Petitioners' submissions

20. On jurisdiction, it is submitted that the core of the Petition is the enforcement of fundamental rights and freedoms, including the rights to dignity, association, fair administrative action, equality, freedom from discrimination, and freedom of religion and conscience.
21. The Petitioners argue that **Articles 22(1) and 258(1)** of the **Constitution** permit individuals to approach the court either in their own interest or on behalf of others. Counsel cited **Malindi Rights Forum (MRF) & another vs National Land Commission & 10 others; County Government of Kilifi & another (Interested Parties) [2023] KEELC 190 (KLR)** and **Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others [2014] eKLR** to submit that the Petition is a matter of public interest and goes beyond personal grievances but also strikes at the heart of freedom of religion and institutional accountability.

22. Citing case law in **Galaxy United FC v Korir & Another; Seka FC (Interested Party)** Counsel submit that where an internal remedy is unavailable in practice, unduly delayed, or fundamentally flawed, the requirement to exhaust internal dispute resolution processes may be waived. Counsel argued that that the Petitioners complied **with Sections 1, 2 and 7 of the SDA Church Conflict Resolution Guidelines** and that the mechanisms provided failed due to inaction, lack of co-operation by the Respondents, absence of a functioning arbitration structure, and a compromised appeal forum.
23. It is further submitted that the doctrine of *res judicata* does not apply since the cited case, Nakuru CMCC ELRC No. E007 of 2025, is between Bosco Otieno Okebe and 3 others v Isika Philip Munyao and CRVC, and also involves different issues. That the matter is said to deal with contractual employment terms while this Petition is mainly concerned with constitutional issues that affect a broader group of church members.

24. The Petitioners in the premises insist that the 1st, 2nd and 3rd Respondents should be cited for contempt and committed to civil jail for willful disobedience of Court orders by going ahead to transfer pastors notwithstanding the court order prohibiting the action.

1st, 2nd and 3rd Respondents' Submissions to the Petitioners' Motion dated 12th June, 2025.

25. On behalf of the 1st, 2nd and 3rd Respondents, Counsel submit that the jurisdiction to hear and determine disputes between an employee and its employer is the preserve of the Employment and Labour Relations Court within the meaning of the provisions of **Article 162(2)** of the **Constitution** and **Section 12(1)(a)** of the **Employment and Labour Relations Court Act**.

26. Counsel cite **Okiya Omtatah Okoiti versus Cabinet Secretary for Water and Irrigation & 6 others [2016] KEELRC49(KLR)** which affirmed that the Employment & Labour Relations Court has the exclusive legal authority to hear and determine matters of constitutional nature including disputes as

to violations and enforcement of constitutional rights within the employment spectrum.

27. Counsel argue that pursuant to the provisions of **Rule 56 Sub-Rule 5(c)** of the **SDA Church Manual - 20th edition (Revised 2022)** the Respondents seek that this matter be referred to the 3rd Respondent's internal dispute resolution mechanisms for resolving the issues raised herein from a theological perspective as guided by the Church doctrines and to bring all the warring parties together for the sake of unity of the Church and its members.
28. The Advocates further contend that the 1st Respondent's terms of service document contains privileged information as to ages and other personal data or information and therefore its procurement ought to have complied with the provisions of **Article 35** of the Constitution of Kenya- 2010 and **Section 6** of the **Access to Information Act**.

1st, 2nd and 3rd Respondents' Submissions to the Petitioners Motion dated 4th July, 2025.

29. The 1st, 2nd and 3rd Respondents submit that they were never served with the orders alleged to have been disobeyed. It is pointed out that the orders were issued *ex- parte* and without proof of service thereof, the Application should be dismissed as was held in similar circumstances in **Republic v Mwaura & 12 others; Obura & Another (Ex-parte) [2024] KEHC 44 (KLR).**

30. It is therefore argued that the Petitioners have failed to demonstrate that the 1st, 2nd and 3rd Respondents willfully breached the interim orders.

Analysis and determination

31. The 1st, 2nd and 3rd Respondents question whether this Court has the requisite jurisdiction to handle this Petition on two limbs. The first one is on the ground that the issues raised in the Petition are the preserve of the Employment and Labour Relations Court and not the High Court. The second limb is that the Petitioners

have not exhausted the Church's internal dispute resolution mechanisms hence violating the doctrine of exhaustion of remedies.

32. The landmark case **Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1** restated that jurisdiction is everything and if the Court lacks the legal mandate, it must "down tools" and cannot take any further steps in the matter before it.
33. I have perused the proceedings and note that the Petitioners not only challenge employment, suspension, transfer of pastors, but also take issue with alleged procedural unfairness, including lack of notice, opportunity to be heard, and transparency in decision-making in the Church.
34. These are not only employment grievances but constitutional matters affecting the rights of congregants and governance of a religious institution. Thus, while aspects of the Petition touch on employment, there are constitutional questions tending

to place the dispute within the High Court's jurisdiction.

35. The doctrine of exhaustion is grounded on **Article 159(2)(c)** of the **Constitution** and **Section 9 (2)** of the **Fair Administrative Action Act**. It requires litigants to first pursue any internal remedies provided in an organization's structures before approaching the Court if the dispute remains unresolved. There are, however, exceptions if the alternative forum cannot provide adequate relief; if the process is unfair or biased or if the action involves a clear violation of fundamental rights.
36. In this case, the Petitioners produced letters of protest dated 5th May 2025 and 7th July 2025, signed by several congregants, which elicited no response from church leadership. While this shows some effort to seek internal redress, it cannot be said to amount to full exhaustion of the mechanisms available. The SDA Church Manual as per the evidence provides for

escalation through committees, mediation, and appeal structures which are not shown to have been exploited.

37. Further, the Petitioners reasonably apprehend bias because the 4th Respondent, who is a sitting member of the East Kenya Union Conference Executive Committee, is also central to the dispute. While the Petitioners' apprehension of bias due to the 4th Respondent's membership in the Executive Committee does not automatically invalidate the process, it does, however, raise legitimate concerns about impartiality.

38. **Article 159(2)(c) of the Constitution**, however, requires courts to promote alternative dispute resolution, and the SDA Church Manual together with the Conflict Resolution Guidelines provide a framework for resolving disputes internally as shown.

39. In **Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others (2015) eKLR** the Court expressed itself as follows:

“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 fora of last resort and not the port of call the moment a storm brews... 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 the courts...These accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution."

40. The presence of constitutional questions as framed by the Petitioners would appear to generally clothe this Court with jurisdiction over this matter, as was aptly found in Nzioki vs Machakos Regional Church Council- AIC Kenya & 4 others [2023] KEHC 25651 (KLR)

“Clearly, the Court has requisite jurisdiction to hear and determine the dispute. The Court’s jurisdiction is not ousted by

preliminary and/or internal dispute resolution processes.”

41. Parties must, nevertheless, demonstrate a spirited and diligent effort to exhaust internal avenues before invoking judicial intervention. Unless there is clear evidence of actual unfairness, the Court should give the institution an opportunity to resolve its own disputes. The Court must presume that the institution can act fairly.
42. In the premises, while internal remedies must be pursued diligently, the High Court retains jurisdiction where constitutional questions are involved. The Petitioners have not shown that they have fully utilized the Church’s internal disputes resolution avenues before bringing these proceedings.
43. Concerning the contention that this matter is *res judicata* by dint of **Nakuru CMCC ELRC No. E007 of 2025** that has been determined, the Petitioners have not quite debunked this claim. This matter is

therefore seemingly *res judicata* as the dispute in the two cases appear to be substantially similar.

44. As to whether the Petitioners have *locus standi* to initiate the suit, **Articles 22 and 258** of the **Constitution** permit persons to litigate in their own interest, on behalf of others or in public interest. The Petitioners have pleaded membership of the SDA Church and raised issues that affect the wider congregation. The Petitioners would therefore appear to have the right to bring this action. Public Interest arises where issues raised affect a wider community or the public at large, not just the personal interests of the litigants{(See **Esther Awuor Adero Ang'awa vs Cabinet Secretary Responsible for Matters Relating to Basic Education & 7 others; John Diro & 6 others (Intended Interested Parties) [2021] KEHC 2279 (KLR)**}.

45. **Article 23 (1) and (3)(c)** as read with **Article 165** of the **Constitution** empower the High Court to grant appropriate relief, including conservatory orders, to

enforce fundamental rights. The test for conservatory orders was set out by the Supreme Court in **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others** [2024] KESC (KLR). Where it was stated:-

“Conservatory orders” bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as the “prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success’ in the applicant’s case for orders of stay. Conservatory orders consequently, should be granted on the inherent merit of the case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”

46. The Petitioner must demonstrate a *prima facie* case with a likelihood of success to merit conservatory

orders pending disposal of the Petition. The Court must be satisfied that there is a real danger of prejudice if the orders are not granted. The Court considers the public interest and the need to preserve the subject matter pending determination of the dispute.

47. The Petitioners have the onus of establishing a *prima facie* case with a likelihood of success, but this does not mean proving the case conclusively at the interlocutory stage. The test is whether the issues raised are serious, arguable, and not frivolous. See **Bundid & another vs Ministry of East African Community (EAC), the Asals and Regional Development & 3 others [2024] KEHC 3479 (KLR)**.

48. In light of this court's apparent lack of jurisdiction to determine this matter for the reasons that aspects of the dispute are within the purview of the Employment and Labour Relations Court, and the fact that the Church's internal disputes resolution avenues have not been exhausted, the Petitioners have not demonstrated

a *prima facie* case in this court's opinion. The court need not delve into the question of any irreparable loss and/ or where the balance of convenience tilts to considering this finding.

49. My senior brother Mativo J (*as he then was*) restated the test for establishing contempt in **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** where he stated -

“40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove;

(i) The terms of the order,

(ii) Knowledge of these terms by the Respondent,

(iii) Failure by the Respondent to comply with the terms of the order.”

50. Contempt proceedings are only triggered where there is a clear and binding order of the Court that has been willfully disobeyed. In the present case, the orders of 20th June 2025 prevented the 1st 2nd and 3rd Respondents from transferring pastors but did not bar suspension or any other disciplinary action. In any

event, the Petitioners concede that a letter dated 29th June 2025 convening the meeting that purported to suspend the Pastors in question was withdrawn *vide* another letter dated 2nd July 2025. Contempt of the court order has not therefore been proven. It should be appreciated that contempt proceedings are *quasi* criminal in nature and the standard of proof is higher than the balance of probability set in civil cases.

51. In the final analysis both Applications are dismissed but the costs thereof shall be in the Cause.

J. M. NANG'EA - JUDGE

Ruling dated, signed and delivered at Nakuru this 9th day of March, 2026.

In the presence of:-

Petitioners' Advocate, Mr. Andama

1st - 3rd Respondents' Advocate, Mr. Matoke H.

4th Respondent's Advocate, Mr. Rachuonyo

Court Assistant (Jeniffer)

J.M. NANG'EA - JUDGE