

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT KAKAMEGA**  
**PETITION NO. E006 OF 2025**

**IN THE MATTER OF THE CONSTITUTION OF THE  
REPUBLIC OF KENYA,  
IN THE MATTER OF ARTICLES: 2(1),10(2)(b), 20, 21, 22, 23, 27,  
& 41 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: SECTION 12 OF THE EMPLOYMENT  
AND LABOUR RELATIONS COURT ACT, 2011**

**AND**

**IN THE MATTER OF SECTION 5 OF THE EMPLOYMENT ACT  
BETWEEN**

**REV.PATRICK MUSUNGU LIHANDA.....PETITIONER**

**VERSUS**

**REV.KENNEDY MBARANYA ADIARA.....1<sup>ST</sup> RESPONDENT**

**REV.JULIUS RONO.....2<sup>ND</sup> RESPONDENT**

**REV.RICHARD OBWOGI.....3<sup>RD</sup> RESPONDENT**

**REV.PATRICK OYONDI.....4<sup>TH</sup> RESPONDENT**

**THE PENTECOSTAL ASSEMBLIES**

**OF GOD KENYA.....5<sup>TH</sup> RESPONDENT**

(BEFORE HON. JUSTICE DAVID NDERITU)

**JUDGMENT**

**I. INTRODUCTION**

1. The petitioner commenced these proceedings by way of a petition dated 20<sup>th</sup> February 2025 through M/s Oloo & Oloo Advocates LLP seeking for the following reliefs –

- a. A declaration that the respondents have violated the petitioner's right to fair labour practices under Article 41 of the Constitution.*
- b. A declaration that the lack of immediate settlement of the funds owed to the petitioner by the respondent contravenes the provisions of Articles 10 and 27 of the Constitution.*
- c. An order directed to the respondents to pay the petitioner the following amounts due:*
  - i. Radio mast installation expenses-Kshs200,000/=*
  - ii. Equity Bank Radio loan- Kshs57,000/=*
  - iii. Goibei PAG Hospital renovations- Kshs114,100/=*
  - iv. Monthly fuel of Kshs180,000 per month for 24 months, amounting to Kshs4,320,000/=*
  - v. Payment of three months' salary @Kshs757,718/= per month for October, November and December 2024.*
  - vi. Final terminal dues upon his retirement after serving for a period of 10 years as the General Superintendent,*

*as per the employment law and practice.*

*vii. Terminal benefits, having worked for the church for a period of 10 years as the General Superintendent.*

2. The petition is supported with an affidavit by the petitioner, sworn on even date, with several annexures thereto.
3. In response to the petition, the respondents through Wasilwa Makhakara & Company Advocates filed a statement of response dated 1<sup>st</sup> March 2025. The respondents also filed a list of witnesses, the written statement by CPA Patrick Kirungu Oyondi, a list of documents, and copies of the listed documents attached.
4. The petitioner filed a supplementary affidavit sworn by himself on 27<sup>th</sup> May 2025 in response to the replying affidavit by the respondents above.
5. On 11<sup>th</sup> June 2025 the court directed that the petition be canvassed by way of written submissions. Ms Kihara for the petitioner filed written submissions on 18<sup>th</sup> September 2025. The counsel for the respondents did not file submissions.

## **II. EVIDENCE**

6. As contained and expressed in the petition, supporting and supplementary affidavits, the petitioner's case is that he served as the general superintendent and registered trustee of the 5<sup>th</sup> respondent for a period of ten years. He retired on 1<sup>st</sup> October 2024 following the election of new office bearers.

7. It is deponed that vide a letter dated 31<sup>st</sup> October 2024 the petitioner inquired from the 2<sup>nd</sup> respondent about his terminal dues. It is deponed that vide a letter dated 12<sup>th</sup> November 2024 the 2<sup>nd</sup> respondent informed the petitioner that he was entitled to the following –
- a. Radio mast installation expenses-Kshs200,000/=**
  - b. Equity Bank Radio loan- Kshs57,000/=**
  - c. Goibei PAG Hospital Renovations- Kshs114,100/=**
  - d. Monthly fuel of Kshs180,000 per month for 24 months, amounting to Kshs4,320,000/=**
8. It is deponed that the petitioner was informed that the matter was to be referred to the executive committee for further directions. It is further deponed that while awaiting the executive committee's directions, the petitioner requested the 2<sup>nd</sup> respondent, through a letter dated 14<sup>th</sup> November 2024, to provide a payment plan for the amounts owing.
9. It is deponed that the petitioner received a cheque of Kshs371,000/= dated 18<sup>th</sup> November 2024 and no further communication was given.
10. It is deponed that the petitioner, through his advocates, issued a demand letter dated 25<sup>th</sup> November 2024 to the 2<sup>nd</sup> respondent, but the same was ignored, prompting the filing of the present petition.
11. It is stated that the petitioner is no longer a member of the 5<sup>th</sup> respondent and thus the internal dispute resolution mechanism is not

the appropriate forum to ventilate his claim.

12. The petitioner further argues that his petition raises constitutional matters which do not fall under the magistrate's court jurisdiction and asserts that this court has jurisdiction to determine his petition.
13. In the statement of response for the respondents and the statement of CPA Patrick Kirungu Oyondi, it is stated that the facts and pleadings in the petition fall short of the threshold of a constitutional petition.
14. It is stated that pursuant to **Sections 7(1) & 9(2) of the Magistrates' Court Act** and **Section 29(3) of the Employment and Labour Relations Court Act**, the aggregate value of the claim is below KShs20 million and thus falls under the jurisdiction of the Chief Magistrate's court at Vihiga. It is stated that the articles of the Constitution cited by the petitioner have no bearing to the petition.
15. It is further stated that the petitioner's tenure as an office bearer was truncated and suspended by a court order in *Kakamega High Court Constitutional Petition No. 6 of 2018* on 8<sup>th</sup> September 2018 after which a caretaker committee took the role of the executive committee of the 5<sup>th</sup> respondent.
16. It is stated that the petitioner failed to provide to the new office bearers or the caretaker committee a handing over report, a financial report, or a report on other administration matters, assets, bank accounts, cash in hand, or processes of the 5<sup>th</sup> respondent, thus preventing the respondents from substantiating the petitioner's

claim.

17. It is stated that the letter dated 12<sup>th</sup> November 2024 from the 2<sup>nd</sup> respondent was not an absolute admission of the sum owed to the petitioner as it was subject to validation by the Executive Committee.
18. It is further stated that pursuant to **Section 9(1) of the Employment Act** there existed no implied or express contract of service that the petitioner was an employee of the 5<sup>th</sup> respondent. It is further stated that there was no basis for the entitlement of monthly fuel of Kshs180,000/= to the petitioner.
19. It is stated that the petitioner's petition is vague as it does not specify the 24 months to which his claim relates.
20. It is asserted that the petitioner irregularly and fraudulently received Kshs371,000/= from a discrete account opened at Equity Bank from which unauthorized signatories withdrew Kshs2,500,000/= alongside the Kshs371,000/= and converted the same for personal use. The 5<sup>th</sup> respondent counterclaims the said sums.
21. It is stated that the petitioner, in clear conflict of interest, signed a cheque to pay himself the said sums leading to the elections of 2024 for new office bearers, at a time when his role was being undertaken by a caretaker committee.
22. It is further stated that in 2024 the petitioner illegally and irregularly received Kshs10,365,285/= purporting it to be registration fees for a

business conference.

23. Further, it is stated that the petitioner while holding himself to have authority of the Executive Committee received Kshs6million from Gambella Investments Limited as annual rent for the 5<sup>th</sup> respondent's Ngara Church in Eastleigh. It is stated that this resulted in the partial destruction of the respondent's church costs were incurred to obtain an injunction to counter the petitioner's actions. The 5<sup>th</sup> respondent counterclaims the said amounts from the petitioner.
24. It is stated that the petitioner is a member of the PAG Pastors & staff Pension Fund, a contributory scheme where the petitioner pays half of the monthly contribution; a member of the 5<sup>th</sup> Respondent's non-contributory scheme at the National Social Security Fund, as well as the Equity Umbrella Pension Scheme, and thus not entitled to any other terminal benefits upon retirement.
25. It is stated that pursuant to *Article 22 of the PAG (1998) Constitution*, the 5<sup>th</sup> respondent has an elaborate internal dispute resolution mechanism, with a church tribunal in place, which should be the appropriate forum for the processing of the petitioner's claim.
26. For all the foregoing, the court is urged to dismiss the petition and allow the respondent's counterclaim with costs.

### **III. SUBMISSIONS**

27. In support of the petition, counsel for the petitioner submitted on four issues – ***Whether this Honourable court has jurisdiction to***

*determine this dispute; Whether the petitioner exhausted all internal mechanisms before filing this petition; Whether the petitioner has a valid contract of service with the respondents and is entitled to the outstanding funds; and, Whether the petitioner is entitled.*

28. On the first issue, counsel cited *United States Intenational University(USIU) v Attorney General (2012) eKLR* and *Otieno v Export Processing Zones Authority & 2 others (2023) eKLR*, in asserting that the petition is properly before the court as the court is clothed with jurisdiction under *Article 162(2)(a) of the Constitution* and *Section 12 of the Employment and Labour Relations Court Act*.
29. It is submitted that the petition as drafted arises from an employment relationship and the petitioner seeks remedies for alleged violation of his rights under *Article 41 of the Constitution*. It is submitted that the petition as filed meets the threshold of a constitutional petition and the same is not within the purview of the Magistrates' Court.
30. On the second issue, counsel cited *Aboud Suleiman Salim V Kenya Power & Lighting Company Limited (2020) eKLR* asserting that *Article 22 of the Pentecostal Assemblies of God Kenya 1998 Constitution*, on resolution of disputes, does not apply to the petitioner who is no longer a member of the 5<sup>th</sup> respondent.

31. It is submitted that the said clause cannot oust the court's jurisdiction where a violation of the **Constitution** is raised. It is asserted that the petitioner has on various occasions, notably on 31/10/204 and 25/11/2024, tried to engage the respondents but they did not engage to resolve the dispute.
32. On the third issue, the petitioner states that he was an employee within the definition of **Section 2 of the Employment Act**. Counsel cited **Alice Nandwa v St. Mary's Catholic Church (Kwa Njenga) (2018) eKLR** in asserting that despite the absence of a written agreement, the petitioner's appointment, remuneration, and performance of duty were within the respondents' regulation.
33. It is submitted that pursuant to **Article 12.5 of the PAG constitution**, the petitioner's term as general superintendent was a five-year renewable contract, subject to re-election. The petitioner was re-elected on 4<sup>th</sup> March 2019 hence entering a valid contract of service.
34. Counsel submitted that the respondents had no basis for issuing the petitioner a cheque of Kshs371,000/= if he was not an employee, as they allege.
35. Further citing **Prof Michael Madara Ogot v Maseno University (2017) eKLR**, it is submitted that an employer cannot withhold an employee's terminal dues without lawful justification. It is submitted that having proved his engagement the petitioner is entitled to terminal benefits.

36. It is thus submitted that the petitioner had a valid contract of service as to entitle him to the reliefs sought in the petition.

#### **IV. ISSUES FOR DETERMINATION**

37. The court has gone through the petition, the supporting affidavit and the annexures thereto, the supplementary affidavit, the statement of response and the written submissions by the counsel for the petitioner. The issues for determination are - ***Whether the court has jurisdiction to entertain the petitioner's claim, and, Whether the petitioner is deserving of the reliefs sought in the petition.***

#### **V. DETERMINATION**

38. As stated above, the respondents are opposed to the petition on two limbs. Firstly, on the basis of the purported lack of jurisdiction of the court over the subject matter due to pecuniary limits and, secondly, the alleged violation of the ***doctrine of exhaustion*** by the petitioner, hence rendering the petition premature and incompetent. The respondents did not file a notice of preliminary objection (PO) but rather raised the issue in their statement of response and the written statement of CPA Patrick Kirungu Oyondi in opposition to the petition. Nonetheless, that does not diminish the importance and value of the court to determine the same, as they attack the jurisdiction.

39. The respondents contend that the 5<sup>th</sup> respondent has an elaborate

internal dispute resolution mechanism and pointed to Article 22 of the *PAG Constitution* that provides –

**ARTICLE 22: DISPUTE RESOLUTION**

**22.1 No member, pastor or official of the church shall take any matter or dispute involving member, pastor, official, organ of the church or the church to a court of law or any tribunal without first exhausting the dispute resolution machinery hereinafter.**

40. The respondents further made reference to *Article 28.1. & 28.2 of the PAG Constitution* to the effect that –

**28.1. The appeal and Arbitration Tribunal shall:**

**a) Hear all disputes and differences arising between and among members of:**

- i. The Executive Committee**
- ii. The Executive committee and the council**
- iii. Pastors and the Executive Committee**
- iv. Departments**
- v. Departmental Heads and Executive Committee**

**b) Hear all appeals arising out of excommunication cases.**

**c) Deal with matters touching on departure from the ....**

.....

**Article 28.2 Composition**

**a) One senior minister from Christ Is The Answer Ministries**

- b) One Pentecostal Bible College Representative**
- c) A lawyer who must be a practicing Christian and in agreement with the Church's standard of faith, who shall be appointed by the Executive Committee**
- d) One Pentecostal Assemblies of Canada(PAOC) representative**
- e) Two retired pastors who must have served on the council who shall be appointed by the executive committee.**
- f) One lay person co-opted by the Tribunal at its first meeting**
- g) One mature and respected PAG-Kenya women(sic) appointed by the Women's Ministry.**

41. The court has not had the benefit of seeing the 5<sup>th</sup> respondent's Constitution as neither party availed the same in court. However, the petitioner did not object to the validity of the Articles cited above.

42. The ***doctrine of exhaustion*** dictates that for good order, where an internal dispute resolution mechanism is provided for a party should exhaust that internal process prior to invoking the jurisdiction of the court. Guided by the rationale in ***Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR*** the court stated as follows

—

***The exhaustion doctrine 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.*

43. The question that arises is whether the petitioner has put forward a compelling case to merit an exception to the *doctrine of exhaustion*. The petitioner's position is that he is no longer an official with the 5<sup>th</sup> respondent and thus he should not be subjected to the internal dispute resolution mechanism by the respondents. He further asserts that while he engaged the respondents through letters to settle the dispute, the respondents failed to rise to the occasion and failed to settle the petitioner's claim through the said internal dispute resolution mechanism.
44. The petitioner stated that he is neither a member of the 5<sup>th</sup> respondent nor an official. Under *Article 22.1 of the PAG Constitution* the other person who was obligated to invoke the internal dispute resolution mechanism is a pastor. The petitioner identifies as a reverend and, in the basic English definition, a reverend is an established, esteemed, and respectable pastor.
45. A reading of the above articles on dispute resolution does not indicate that a pastor must belong to the 5<sup>th</sup> respondent to invoke the internal dispute resolution mechanism. Moreover, considering that the issues raised by the petitioner relate to his alleged terms of engagement with the 5<sup>th</sup> respondent, the said issues fall within the

administrative control of the respondents and are within the purview of that forum before jurisdiction of the court is invoked.

46. There is no evidence that the petitioner invoked the internal dispute resolution and this renders this petition premature for determination by this court. The single letter by the petitioner demanding settlement of this alleged terminal dues does not amount to or constitute the internal dispute resolution mechanism envisaged in the provisions cited above.
47. Consequently, this Court shall not hear and determine the petition dated 20<sup>th</sup> February 2025 as the same was filed prematurely.
48. Further, from the evidence availed to court there is no employment relationship established between the petitioner and the respondents or any of them or at all. The petitioner was an elected trustee of the 5<sup>th</sup> respondent. He was not a recruited employee for salary or wages. That is not an engagement that fits within the definition of an employee as envisaged under **Section 2 of the Employment Act**.
49. There was no contract of employment or services, oral or written, between the petitioner and the respondents or any of them or at all.
50. Further, the court finds and holds that the claim by the petitioner is not within the jurisdiction of this court for the reasons stated above. Hence, even if the petitioner had exhausted the internal dispute resolution mechanism, the court should still have rejected the claim for not falling within its jurisdiction under **Section 12 of the**

**Employment and Labour Relations Court Act.**

**VI. COSTS**

51. No orders as to costs.

**VII. ORDERS**

52. The court makes the following orders –

*a) The petition dated 20<sup>th</sup> February 2025 is hereby dismissed.*

*b) No orders as to costs.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT  
KAKAMEGA THIS 19<sup>TH</sup> DAY OF MARCH 2026.**

.....  
**DAVID NDERITU**  
**JUDGE**