

IN THE REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI,

PETITION NUMBER E197 OF 2024

PETER

NJOROGE

AMBUKA.....PETITIONER/APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF THE PENTECOASTAL

VANGELISTIC FELLOWSHIP OF AFRICA (PEFA).....1ST
RESPONDENT

DR. THOMAS TEMBO CHIPA (Sued as the Secretary General of PEFA.....2nd
RESPONDENT

DR. JOHN OKINDA (Sued as the Presiding Bishop of PEFA).....3rd
RESPONDENT

PAUL MUNYIRI (Sued as the Deputy Presiding Bishop of PEFA).....4th
RESPONDENT

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1. The applicant previously appeared before the court in the current case, which was dismissed by Hon. Justice Byram Ongaya (as he then was) via judgment delivered on May 29, 2025. The applicant filed a Notice of Motion dated January 20, 2026, brought under Rule 74 of the Employment and Labour Relations Court (Procedural) Rules 2024, seeking the following orders.

a. Spent

b. THAT pending the hearing and determination of this application, this Honourable Court be pleased to issue an interim order of status quo ante reversing the petitioner's suspension from holding the office of deputy regional bishop and Acting Nairobi Regional Bishop issued by the respondent on 22.11.2024 and stopping the ongoing disciplinary hearing which are being undertaken pursuant to the 2024 amended PEFA constitution which was expunged by the Registrar of Societies on 27th August 2025.

c. THAT the Honourable Court be pleased to review and set aside its Judgement and decree made on 29th May 2025 dismissing the applicant's petition.

d. THAT that this Honourable Court be pleased to replace its judgment and decree made on 29th May 2025 with an order allowing the applicant's petition and reversing the petitioner's suspension from holding the office of deputy regional bishop and Acting Nairobi Regional Bishop issued by the 2nd respondent on 22.11.2024 and stopping the ongoing disciplinary bearing.

e. THAT costs of this application be borne by the Respondents.

2. Grounds of the application

a) There is discovery of a new and important matter or evidence which, despite the exercise of due diligence was not within the knowledge of the applicant and could not

have been produced by the applicant at the time when this court passed its decree on 29th May 2025.

b) The Registrar of Societies on 27th August 2025 expunged from its records the amended PEFA constitution approved on 16 February 2024, on which the suspension letter and the disciplinary proceeding against the applicant are based.

c) The applicant's suspension and the disciplinary proceedings being conducted against the applicant have no legal or constitutional basis. Further, the current National Executive Board (NEB) on whose instance the disciplinary proceedings against the applicant have been instituted was elected pursuant to the 2024 constitutional amendment, which was subsequently expunged by the Registrar of Societies and the legality of any actions or proceedings they have undertaken while in office is itself in serious question in light of the decision of the registrar of societies

d) There is sufficient reason to allow this application for review.

e) That this application has been made without unreasonable delay after the respondents failed to comply with the recommendations made by the registrar of societies in the latter dated 27 August 2025.

3. The applicant filed an affidavit in support of the application of the same date and attached as PNA-1 a copy of the letter from the Registrar of Societies dated August 27, 2025, which expunged the 2024 constitution of the first respondent; as PNA-2, the suspension letter

dated November 22, 2024, and another suspension letter issued after the dismissal of the petition as PNA-3.

4. The application was opposed by the respondents through the replying affidavit of Dr. Thomas Tempo Chipa, filed together with a Notice of Preliminary Objection, raising the following grounds.

- a. THAT this Honourable Court is functus officio, having heard and finally determined the dispute between the parties vide the Judgment delivered on 29th May 2025, and lacks the jurisdiction to re-open the merits of the case under the guise of a review application.
- b. THAT the Application is an appeal disguised as a review, as it seeks to "replace" a final dismissal Judgment with a contrary "allowing" Judgment, which is a remedy outside the narrow and strictly circumscribed remit of Order 45 of the Civil Procedure Rules and Section 16 of the Employment and Labour Relations Court Act.
- c. THAT the Application is an abuse of the process of the Court and offends the doctrine of res judicata, in so far as it invites the Court to adjudicate upon the legality of the Petitioner's suspension and the Respondents' disciplinary processes - matters which were conclusively determined in the Judgment of 29 May 2025.
- d. THAT the Application is caught by the doctrine of sub judice and/or lis pendens, as the Petitioner and his proxies have instituted parallel proceedings (including Milimani High Court Petition No. E052 of 2026) touching on the same governance subject

matter, thereby exposing the Court to the risk of issuing inconsistent and embarrassing orders.

- e. THAT the Application is fatally defective for material non-disclosure and lack of candour, in that the Petitioner failed to disclose to this Court that he has actively derailed the Church's compliance processes through various interim stay orders obtained in the High Court and now seeks to benefit from the very "illegality" he helped engineer.
 - f. THAT the Application is barred by the Doctrine of Laches, having been filed with an inordinate and unexplained delay of over five (5) months from the date of the alleged "new evidence" (the Registrar's letter dated 27 August 2025), which delay is fatal to an application for interlocutory and discretionary relief.
5. The applicant filed a further affidavit in reply to the response sworn on the 28th February 2026, where he further annexed various correspondence challenging the internal disciplinary process.
 6. The court heard the counsel for the applicant and respondents, who made oral representations on the application, on the 2nd March 2026. The applicant was represented by Mr. Otieno Advocate, and the respondent by Mr. Akhaambi, Advocate.

Decision

7. The application was brought under rule 74 of the ELRC (procedural) Rules 2024, to wit-
‘74. Review

(1)A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—(a)if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;(b)on account of some mistake or error apparent on the face of the record;(c)if the judgment or ruling requires clarification; or(d)for any other sufficient reason.’

8. The power of review was interpreted in Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR), where Justice Mativo (HC, as he then was) stated, ‘The power of review is available only when there is an error apparent on the face of the record. I emphasize that review proceedings are not an appeal. The review must be confined to error apparent on the face of the record, and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of appellate jurisdiction, which is not permissible.’ I adopt the decision to guide in the instant case.

9. The application was brought under the Rule 74(1) ground (a)to wit- ‘(a)if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that

person at the time when the decree was passed or the order made.” The applicant alleged discovery of a new and important matter, namely the letter dated 27th August 2025 from the Registrar of Societies, which expunged the 1st respondent’s amended constitution of 2024. The judgment of the court was delivered on 29th May 2025. That means the alleged new evidence (the letter dated 27th August 2025 by the Registrar of Societies) was not in existence at the time of the delivery of the Judgment by Justice Byram Ongaya (as he then was). Is that the new matter intended in Rule 74? The general rule is that once a court has duly pronounced a final Judgment it becomes functus officio (of no further authority or legal effect) and has no power to alter the Judgment save for limited clerical errors under the slip rule. While Rule 74 grants powers of review of the judgment, the same is limited to authority to rectify evident errors on the face of a judgment, ruling, or order, provided these errors are apparent, and the correction does not grant the court jurisdiction to act as an appellate body or substantially modify its own decision. In Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR)(supra) it was stated- ‘For material to qualify to be new and important evidence or matter, it must be of such a nature that it could not have been discovered had the applicant exercised due diligence. It must be such evidence or material that was not available to the applicant or the court. As stated above, the judgment in question was annexed to the Replying affidavit. The proceedings were part of the documents presented to the court. Differently stated, the material in question does not qualify to be new in that it was not available to the applicant or the court.’ Can the decision delivered by the Registrar of Societies vide letter dated 27th August 2025, post the Judgment of the court of 29th May 2025, qualify as a new and important matter(Rule 74) for the purpose of the review? I would return it in the negative as the letter could not have been produced despite diligence by the applicant or the

respondents, for the simple reasons that it did not exist. The post-judgment decision vide the letter by the Registrar of Societies is not “new discovery” for review purposes. In obiter, from the material before me, it was apparent that the applicant is before the High Court, where the letter is in issue.

10. The trial court relied on the 2018 constitution of the 1st Respondent produced before it by the petitioner and found no breach of the constitution. The trial court also held the impugned internal disciplinary process against the applicant to be in order as follows - ‘While making the finding the Court finds that the petitioner has failed to satisfy the conditions or tests set in the principles that would justify the Court’s interference with an employer’s prerogative to undertake human resource functions thus, in Geoffrey Mworira - Versus- Water Resource Management Authority & 2 Others [2015] eKLR thus, "The principles are clear. The court will very sparingly interfere in the employer’s entitlement to perform any of the human resource functions such as recruitment, appointment, promotion, transfer, disciplinary control, redundancy, or any other human resource function. To interfere, the applicant must show that the employer is proceeding in a manner that is in contravention of the provision of the Constitution or legislation; or in breach of the agreement between the parties; or in a manner that is manifestly unfair in the circumstances of the case; or the internal dispute procedure must have been exhausted or the employer is proceeding in a manner that makes it impossible to deal with the breach through the employer’s internal process." The applicant urged that as the process commenced under the 2024 constitution, thus it was obvious the process was under the expunged document. It was not demonstrated to me that the process was inconsequential under the 2018 constitution of the 1st respondent, which is the default position post-

expunging of the 2024 constitution. Justice Ongaya (as he then was) held there was no breach of the constitution and bylaws of the 1st respondent.

11. As stated earlier, the letter by the Registrar of the Societies of 27th August 2025 did not qualify as a new and important matter to form the basis of review of the Judgment, as it did not exist for discovery by either party during the trial. That being the basis of the application for review, the same cannot stand. The court further noted that the application was tainted by laches as it was brought 5 months post the said discovery. The court was not persuaded by the excuse set out in paragraphs 22 and 23 of the applicant's further affidavit. The court, having held the letter of 27th August 2025 did not meet the test of discovery of a new and important matter as a ground of review, the issue of delay becomes superfluous in the ruling.
12. Consequently, the application is held to be without merit as the letter of 27th August 2025 by the Registrar of Societies did not meet the test of discovery of a new and important matter as a ground of review. The application is dismissed with costs to the respondent.
13. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 24TH DAY OF MARCH, 2026.

J. W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Applicant – Otieno

Respondent- Akhaabi