



Lihanda v Lihanda & another (Sued on Behalf of the Executive Committee of Pentecostal Assemblies of God Kenya); Pentecostal Assemblies of God Kenya & another (Interested Parties) (Cause E010 of 2024) [2025] KEELRC 607 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 607 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E010 OF 2024
DN NDERITU, J
FEBRUARY 27, 2025**

BETWEEN

CPA REV. PATRICK LIHANDA CLAIMANT

AND

REV. PATRICK LIHANDA 1ST RESPONDENT

REV. JULIUS RONO 2ND RESPONDENT

**SUED ON BEHALF OF THE EXECUTIVE COMMITTEE OF PENTECOSTAL
ASSEMBLIES OF GOD KENYA**

AND

PENTECOSTAL ASSEMBLIES OF GOD KENYA INTERESTED PARTY

PAG KENYA CHURCH COUNCIL INTERESTED PARTY

RULING

I. Introduction

1. In a statement of claim dated 9th April, 2024 filed through Athung'a & Co Advocates the claimant is seeking the following –
 1. A declaration that the letter dated 2nd April 2024, directing the claimant to show-cause, suspend and handing over is unlawful.
 2. A declaration that the respondents are not holders of the offices of PAG Kenya Church staffs.
 3. Costs of the suit.



2. Contemporaneously, the claimant filed a notice of motion of even date seeking for the following orders --
 1. The application herein be and is hereby certified urgent and shall be heard on priority basis.
 2. Pending the inter partes hearing, the letter dated 2nd April 2024 asking the claimant to show-cause, suspend and hand over the office to the General Treasurer of PAG – Kenya Church be and is hereby stayed.
 3. Pending the inter partes hearing, the claimant shall remain in office as the General Administrator of PAG Kenya Church and be entitled to all benefits and free from any interference by the respondents and/or anybody acting on their directions or on behalf.
 4. A permanent injunction do issue restraining the respondents, their agents and/or servants from using police officers from Gambogi police station or any other police station for purposes of intimidation, coercing, arrest, detaining, charging the claimant in relation to matters relating to the claimant’s employment pending the hearing of this application.
 5. A permanent injunction do issue restraining the respondents, their agents and/or servants from using police officers from Gambogi police station or any other police station for purposes of intimidation, coercing, arrest, detaining, charging the claimant in relation to matters relating to the claimant’s employment pending the hearing of proceedings herein.
 6. This honourable court do declare the respondents are not officials or Pentecostal Assemblies of God Kenya Church and hence should not hold our as the employers of the claimant.
 7. Interim orders issued remain in force after the inter partes hearing until the final determination of the suit.
 8. Costs of this application be recovered from the respondent.
3. In a ruling dated and delivered on 27th June, 2024 the court (Keli J.) issued the following orders –
 - a. The court declares that the respondents are not officials of Pentecostal Assemblies of God Kenya Church and hence should not hold out as the employees of the claimant.
 - b. The court issues an order that pending the interpartes hearing, the letter dated 2nd April 2024 asking the claimant to show-cause, suspend and hand over the office to the General Treasurer of PAG-Kenya Church be and is hereby stayed.
 - c. The court issues an order that pending the interpartes hearing, the claimant shall remain in office as the General Administrator of PAG Kenya Church and be entitled to all benefits and free from any interference by the respondents and/or anybody acting on their directions or on their behalf.
 - d. Costs to the application in the cause.
4. In a notice of motion (the application) dated 31st July, 2024 filed through Oloo & Oloo Advocates LLP, the respondents (applicants) are seeking the following orders –
 1. Vide a ruling delivered on 27/6/2024, this Honourable court granted the following orders:
 - i. A declaration that the respondents are not officials of Pentecostal Assembly of God Kenya Church and hence should not hold out as employees of the claimant.



- ii. Pending the interpartes hearing, the letter dated 2/4/2024 asking the claimant to show-cause, suspend and hand over the office to the General Treasurer of PAG-Kenya Church be and is hereby stayed.
 - iii. Pending the interpartes hearing, the claimant shall remain in office as the General Administrator of PAG Kenya Church and be entitled to all benefits and free from any interference by the respondents and/or anybody acting on their directions or behalf.
 - iv. Costs to the application be in the cause.
2. This ruling and the consequential orders were based on a court order dated 24/2/2023 in Kakamega Court JR E002 of 2022 which have since been stayed in Kisumu Court of Appeal Civil Application No. E025 of 2023 vide a court order dated 6/5/2024.
 3. The 1st applicant herein was truthful in his replying affidavit dated 22/4/2024 that the file in Kakamega High Court JR E002 of 2022 was transferred to Vihiga High Court and is now Vihiga High Court JR E002 of 2022 and the subject matter of the file is before the DCI for investigations vide a court order dated 19/7/2023.
 4. The issue of the suitability of the 1st applicant herein as the General Superintendent of Pentecostal Assemblies of God Kenya Church has since been settled in Vihiga Constitutional Petition No. 1 of 2023 vide a judgment delivered on 11/7/2023 in which the Honourable Court found him to be a duly elected church official.
 5. The Kakamega and Vihiga High Courts are of equal status to this Honourable Court and therefore this Honourable Court should set aside its ruling and consequential orders given the said circumstances.
 6. The Kisumu Court of Appeal supersedes the status of this Honourable Court and thus this Honourable Court should review and/or set aside its ruling and consequential orders of 27/6/2024 based on the orders of the Kisumu Appellate Court.
 7. There is therefore good and sufficient cause for review.
 8. That this application has been filed without undue delay.
 9. That it would be in the interest of justice to allow this application as prayed.
 10. This Honourable court has powers to grant the orders sought.
5. The application is expressed to be brought under Sections 3A & 80 of the *Civil Procedure Act* & Order 45 Rule 1 of the Civil Procedure Rules. It is based on the grounds stated on the face of it and supported with the affidavit of Martin Oloo, Advocate, sworn on even date, with several annexures thereto.
 6. In response to the application the claimant (respondent) filed a replying affidavit sworn by himself on 28th August, 2024 with two annexures thereto.
 7. By consent, counsel for both parties addressed the court by way of written submissions. Mr. Oloo for the applicants filed his written submissions dated 19th November, 2024 while Mr. Athung'a for the claimant filed his dated 28th August, 2024.

II. The Evidence

8. In the supporting affidavit it is deposed that the above ruling by Keli J. was mainly founded on an order of the High Court at Kakamega (P. J. Otieno J.) given on 24th February, 2023 which has since been



stayed by the Court of Appeal in Kisumu Civil Application No. E025 of 2023 in a ruling dated 6th May, 2024. A copy of the ruling of the Court of Appeal is annexed to the affidavit.

9. It is deposed that the issue of whether the 1st respondent herein is properly in office as the general superintendent of the Pentecostal Assemblies of God Kenya Church (the Church) has since been settled in Vihiga High Court Constitutional Petition No. 1 of 2023 vide a judgment delivered on 11th July, 2023 wherein he was found to be duly elected official of the church. An incomplete copy of the said judgment, it starts at paragraph 149 and the page that is supposed to bear the judge's signature is missing, is annexed to the affidavit.
10. It is deposed that in view of the rulings from the High Court in Vihiga and Kakamega and further in view of the binding ruling by the Court of Appeal as cited above this court should review and or set aside the orders of 27th June, 2024.
11. It is deposed that the respondents are the duly elected officials of the Church and since the foregoing facts were allegedly not available when this court made the impugned orders it is now fair and just that the said orders be reviewed and or set aside.
12. In the replying affidavit by the claimant it is deposed that the High Court in Vihiga Petition No. 1 of 2023 did not declare the respondents as duly elected officials of the Church but ordered for elections supervised by the Registrar of Societies within 90 days. The orders issued in those proceedings are annexed to the affidavit.
13. It is deposed that the respondents are in contempt of the order of this court and should have no audience with the court unless and until they purge the contempt.
14. It is deposed that the application is defective as it is supported with an affidavit sworn by counsel on record for the respondents yet raising contentious issues.
15. It is deposed that the Court of Appeal only pronounced itself on stay of execution of orders made on 24th February, 2023 and that ruling had nothing to do with an intended appeal which the respondents, in any event, have not demonstrated that they have filed since 2023.
16. It is deposed that the application raises no new material facts or evidence that were not within the knowledge of the respondents as at the time the impugned orders of this court were made on 27th June, 2024.
17. It is deposed by the claimant that he is ready and willing to face disciplinary process as long as the same is fair and free. The claimant deposed that he is capable of refunding any salaries and other emoluments paid to him if at the end of the proceedings it is found that his removal from office was fair and just. It is deposed that there is no demonstratable irreparable loss that may be occasioned to the respondents by them obeying and complying with the orders of this court issued on 27th June, 2024.

III. Submissions by Counsel

18. Counsel for respondents submitted that Kakamega High Court JR E002 of 2022, now known as Vihiga High Court JR No. E002 of 2022, concerning whether the respondents are duly elected officials of the Church was stayed by the Court of Appeal in Kisumu Civil Application No. E025 of 2023 in an order issued on 6th May, 2024.
19. It is further submitted that the issue as to whether the 1st respondent is the duly elected general superintendent of the Church was dispensed with in Vihiga High Court Constitutional Petition No. 1 of 2023 wherein it was found that he was duly elected as such.



20. It is on the foregoing basis that counsel for the respondents identified two issues for determination – Whether the application meets the ingredients set out for review in Order 45(1) of the Civil Procedure Rules; and, Whether the respondents are entitled to the reliefs sought.
21. Citing the above law, counsel for the respondents submitted that the orders by the Court of Appeal and those from the High Court at Vihiga came to the knowledge of the respondents after this court had issued the orders sought to be reviewed in the application herein.
22. On the second issue it is submitted that the respondents have met the threshold set out in Section 80 of the *Civil Procedure Act* by submitting new and important evidence that was not available to them before the ruling of 27th June, 2024 that is sought to be reviewed. Citing Republic V Advocates Disciplinary Tribunal Ex parte Apollo Mboya (2019) eKLR, it is submitted that had the court been seized of the evidence now availed it could not have issued the orders now sought to be reviewed and or set aside.
23. It is further submitted that the new and important evidence now availed could not have been procured or accessed by the respondents prior to the ruling of 27th June, 2024 by this court. It is submitted that the orders of the Court of Appeal issued on 6th May, 2024 are still in force and that whether an appeal has been filed or not is a matter that may only be canvassed in the appellate court.
24. It is submitted that there is absolutely nothing unlawful for counsel for the respondents, Dr Martin Oloo, swearing the supporting affidavit to the application as he only deposed to facts that are within his own knowledge and believe as per the law and with the consent of the respondents.
25. It is further submitted the respondents are duly elected officials of the Church and the orders issued by this court on 27th June, 2024 have allegedly tarnished their names and image yet the orders of the High Court and the Court of Appeal alluded to above confirm that they are legally in office.
26. On the other hand, counsel for the claimant submitted that the application for review by the respondents fails to satisfy Order 45(1) of the Civil Procedure Rules and that the same lacks merits and amounts to abuse of court process.
27. It is further submitted that the respondents have not demonstrated any connection between the subject matter in this cause and the subject matter in the High Court at Vihiga or the subject in the Court of Appeal. It is submitted that the consent order recorded in the Court of Appeal was subject to the filing of an appeal which the respondents have not demonstrated to have filed.
28. It is insisted that by swearing the supporting affidavit to the application counsel for the respondents became a witness and ceased to be counsel and hence he is subject to cross-examination.
29. It is submitted that the respondents are in contempt of the orders issued by the court on 27th June, 2024 and should not be heard unless and until they purge the contempt.

IV. Issues for Determination

30. In my considered view there is only one main issue for determination in this application – Should the court allow the application as prayed and hence review and or set aside the orders of 27th June, 2024?
31. Upfront, it is important to make it clear that this court (ELRC) is created under Article 162(2)(a) of *the Constitution* and operationalized under the *Employment and Labour Relations Court Act* and the rules of procedure made thereunder. Under Section 12(1) of the above Act, “The court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in



accordance with Article 162(2) of the Constitution and the provisions of this Act or any other law which extends jurisdiction to this court relating to employment and labour relations”.

32. Section 27 of the above Act allows the making of rules of procedure for the court. The current rules are the Employment and Labour Relations Court (Procedure) Rules 2024. The previous rules that are now revoked and replaced with the above were promulgated in 2016. Rule 74 (1) of the current rules provides as follows –

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.

33. The above provisions are in the same wording and context as Rule 33 of the 2016 Rules which were applicable when the application herein was filed.
34. This court takes the considered view that except where it is so specifically provided for the Civil Procedure Act and the rules made thereunder do not apply to this court. This is so because the constitutive Act of this court and the rules made thereunder, as alluded to above, adequately provide for the substance and procedure applicable in hearing and determination of matters that come before it. This view is buttressed by the specific provisions in the Rules of this court that invite specific application of the Civil Procedure Rules as when and where they are deemed necessary and applicable. For example, Rule 10(2) of the Rules (2024) provides that “Any person who wishes to institute judicial review proceedings shall do so in accordance with Sections 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules.” Likewise, Rule 73(2) provides that “Rules on execution or stay of execution of an order or decree of the court shall be in accordance with the Civil Procedure Rules.”
35. The point made here is that the law intended that as a specialized court dealing with employment and labour relations matters only, the ELRC to have its own special and unique procedure which, to a large extent, is devoid of the technicalities that may apply to other courts under the Civil Procedure Act and the Rules thereunder.
36. Therefore, in an application for review before this court (ELRC) the applicable law is Rule 33 of the 2016 Rules for applications filed before 24th August, 2024 and Rule 74 for applications filed after the said date. However, as noted above, the said two Rules are a replica of each other.
37. The law as stated above provides that an aggrieved party may apply for review of the order or judgment within reasonable time. Such an applicant has to demonstrate discovery of new important matter or evidence which was not within its knowledge and could not have been accessed or availed as at the time the judgment, order, or ruling was made. An application may also be made on account on an error apparent on the face of record; or, need to clarify the order, judgment or ruling; or, for any other sufficient reason.



38. As far as the court understands the application by the respondents herein the same is based on the grounds that there is important matter and evidence that was not available to them, even upon due diligence, which they now desire to have the court apply to review and or set aside the orders issued on 27th June, 2024. And what is that evidence, material fact, or evidence? Firstly, that the ruling was based on an order dated 24th February, 2023 issued in Kakamega High Court JR No. E002 of 2022 which has since been stayed by the Court of Appeal in Kisumu Civil Application No. E025 of 2023 vide an order issued on 6th May, 2024. Secondly, it is the respondents' case that the above High Court proceedings were transferred to the High Court at Vihiga and the subject matter thereof is also under investigations by the Director of Criminal Investigations (DCI). Thirdly, it is the respondents' position that the 1st respondent was declared the duly elected general superintendent of the Church by the High Court in Vihiga Constitutional Petition No. 1 of 2023.
39. The application that culminated in the ruling of 27th June, 2024 is dated 9th April, 2024 and was filed in court on even date. Except for the ruling of the Court of Appeal that is alluded to by the respondents and mentioned in the foregoing paragraphs of this court, all the other rulings and or orders of the High Court, whether in Kakamega or Vihiga, had been made by the time the application by the claimant was filed in court as above. The respondents were fully and truly aware of those rulings and orders as they are party to those proceedings. Further, the ruling and the order by the Court of Appeal made on 6th May, 2024 was made while the application dated 9th April, 2024 was pending in this court.
40. If the respondents were of the considered view, as they now claim, that the proceedings in the Court of Appeal were material and relevant to the application dated 9th April, 2024 that was pending in this court, culminating in the ruling of 27th June, 2024 now sought to be reviewed or set aside, nothing should have been easier than for the respondents to bring that evidence before this court for consideration.
41. The record shows that directions in regard to the application dated 9th April, 2024 on filing of response to the same and written submissions were taken on 22nd April, 2024. The matter was again mentioned on 7th and 28th May, 2024. By this time the Court of Appeal had already issued its orders on 6th May, 2024 but the respondents did not bring the said ruling to the attention of the court.
42. Upon the ruling of 27th June, 2024 by this court the respondents applied for leave to appeal and the same was granted. Further proceedings were also stayed pending the filing, hearing, and determination of the intended appeal. There is no evidence that the intended appeal against the said ruling was filed by the respondents. Procedurally, as per the law the said intended appeal ought to have been filed within 30 days of the ruling.
43. After sensing inaction by the respondents, the claimant filed an application dated 29th July, 2024 for contempt against the respondents for disobeying and failing and or refusing to comply with the orders of 27th June, 2024 issued by this court.
44. The respondents immediately thereafter filed the instant application dated 31st July, 2024 seeking for review and or setting aside of the orders of 27th June, 2024 by this court. Of course, that is the subject matter of this ruling.
45. On 15th October, 2024 this court ordered that the application by the respondents be heard and determination ahead of the application for contempt and the latter is still pending hearing and disposal.
46. As it is demonstrated above, there is no new material or evidence that is disclosed and demonstrated by the respondents that was not in their possession and knowledge as at the time of the hearing and determination of the claimant's application dated 9th April, 2024 culminating in the ruling of 27th June, 2024. All the allegations made about the rulings and orders issued in the High Court and the



Court of Appeal were within the knowledge of the respondents as they were parties to the proceedings in those courts.

47. On the alleged ground of new materials or evidence the application by the respondent shall fail.
48. However, the court is obliged to look into the entire circumstances, materials, and evidence availed and consider whether there is any other sufficient reason(s) or cause for reviewing or setting aside the impugned orders.
49. I have taken time to read the pleadings and evidence filed by the parties not only in regard to the application that is the subject matter of this ruling but indeed the entire cause. The issue of whether the respondents, and more so the 1st respondent, are duly elected and legally in office is a matter that is still under litigation. In fact, in Kakamega High Court JR E002 of 2022 the 1st respondent was found guilty of contempt for holding himself as the general superintendent of the Church as the court had found that he was not legally in office and enjoined him from holding himself as such. Further, the High Court in Vihiga stayed the matter before it pending criminal investigations of the same issue by the DCI.
50. Further, the order for stay by the Court of Appeal issued on 6th May, 2024 stayed the orders issued by the High Court in Kakamega pending the hearing of an intended appeal. The respondents have not demonstrated that they filed the intended appeal. Likewise, the respondents indicated their intention of appealing the ruling by Keli J when the same was delivered on 27th June, 2024. Again, other than the instant application for review, there is no evidence that an appeal was filed.
51. It is important to note and delineate the jurisdiction of this court. ELRC is a specialized court that deals with employment and labour relations matters and disputes – see Section 12 of the [Employment and Labour Relations Court Act](#). It is not in the purview of this court to determine whether the respondents are or are not legally in office. However, that issue is axillary to the dispute in this cause as it speaks to the legal capacity of the respondents to initiate and take disciplinary action against the claimant.
52. As it turns out, the orders by the High Court at Kakamega (P. J. Otieno J.) and those by Keli J stand unchallenged. Both learned Judges declared that the respondents are not duly elected officials or officers of the Church and as such they have no authority and or capacity to hold themselves as such. Consequently, the respondents have no capacity to take any disciplinary action against the claimant.
53. I have taken time to read the ruling and orders of Keli J dated 27th June, 2024 and I find no reason to interfere with the same by way of review or setting them aside.
54. The application for review of the above orders by the respondents dated 31st July, 2024 has no merits and the same is thus denied and dismissed with costs.

V. Orders

55. The court makes the following orders –
 - a. The notice of motion by the respondents dated 31st July, 2024 is hereby dismissed for lack of merits.
 - b. Costs to the claimant.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 27TH DAY OF FEBRUARY, 2025.

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DAVID NDERITU
JUDGE

