



Oyondi v Lihanda & another; Pentecostal Assemblies of God Kenya & another (Interested Parties) (Cause E010 of 2024) [2024] KEELRC 1699 (KLR) (27 June 2024) (Ruling)

Neutral citation: [2024] KEELRC 1699 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E010 OF 2024**

**JW KELI, J
JUNE 27, 2024**

BETWEEN

CPA REV PATRICK OYONDI APPLICANT

AND

REV PATRICK LIHANDA 1ST RESPONDENT

REV JULIUS RONO 2ND RESPONDENT

AND

PENTECOSTAL ASSEMBLIES OF GOD KENYA INTERESTED PARTY

PAG KENYA CHURCH COUNCIL INTERESTED PARTY

RULING

1. The ruling is on application by way of a Notice of Motion application by the Claimant/Applicant (herein “Applicant”) dated 9th April 2024 and filed on an even date brought under the provisions of Articles 152 (2) (d) and 162, and Sections 3 and 12 of the [Employment and Labour Relations Court Act](#), seeking the orders: -
 - a. Spent.
 - b. Pending the interparties 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. Pending the interparties 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. 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.
 - e. 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 the proceedings herein.
 - f. The Honourable Court do declare the Respondents are not officials of Pentecostal Assemblies of God Kenya Church and hence should not hold out as the employees of the Claimant.
 - g. Spent.
 - h. Costs of this application be recovered from the Respondents.
2. The Notice of Motion was premised on the grounds on the face of the application and the grounds in the supporting affidavit of the Claimant sworn on 9th April 2024 as follows: -
- i. He was employed in 2011 as the General Administrator of PAG Kenya for 7 years which was renewable (PO 1).
 - ii. That the 1st Respondent with ill motive through the Show Cause letter of 2nd April 2024, required the applicant to show cause, suspended him from office, and directed that he hand over his office, purporting that the said directive was from the Executive Committee of PAG Kenya Church.
 - iii. That in various Court cases involving the PAG Kenya Court, the 1st respondent was injuncted in a ruling (PO3) from acting and holding himself out as the General Superintendent of the Church and he was found in contempt of Court in Vihiga High petition No. 1 of 2023 and thus the Respondents lack the capacity to issue any letters to employees of PAG Kenya Church.
 - iv. The 1st Respondent is a clandestine person, who together with the 2nd Respondent caused themselves to be registered as officials of the church as per the Registration Certificate (PO4) and the Court should declare the respondents not holders of the said offices, to purport to deal with the employment of PAG Kenya Church.
 - v. The respondents are using the Gambogi Police officers to harass the applicant, to compel him to leave the office to the 2nd Respondent, yet the police have no business in dealing with an employer-employee relationship.
 - vi. The work of a general Administrator performed by the applicant entails carrying out the day-to-day business of the church and calling the Church business conference in the event the 1st respondent fails to do so.
 - vii. The 1st Respondent's term in office expired and he is out to frustrate other employees for him to remain in office and that the respondents acted in violation of the rules of natural justice by denying the applicant the right to be heard.
 - viii. The process of removing the applicant from office does not tally with the process specified in *the Constitution* of PAG Church Kenya (PO5).



- ix. That the applicant is serving a 7-year term contract which cannot be terminated a will and he has not been found guilty of any wrongdoing.
3. The Application was opposed by the respondents and the interested parties through the Grounds of objection dated 19th April 2024 and the Relying affidavit sworn by the 1st respondent on 22nd April 2024 and filed on an even date on the grounds that: -
- i. The application is unmerited, misconceived in law, and an abuse of the Court process, as the applicant withheld information, from the Court that there is still pending at the Vihiga High Court -Constitutional Petition No. 1 of 2023 which is set for conclusion on 24th June 2024 regarding the PAG Church Kenya.
 - ii. The applicant seeks to rely on a Court order that was stayed in civil appeal no. 33 of 2020 on 17th July 2020(PL-1) and the Kakamega CMC No. 100 of 2019 transferred to Kakamega High Court as Petition No. 6 of 2018(PL-2) which is now Petition No. 1 of 2023.
 - iii. The applicant wishes to rely on orders in JR No. 2 of 2022 whose subject matter is before the DCI for investigation on account of fraudulent signatures.
 - iv. The applicant is not a qualified CPA nor licensed by the Institute of Certified Public Accounts (ICPAK) as his name does not appear on the institute's directory, and hence a fraudulent presentation.
 - v. The applicant is aware of his unsuitability to hold the office of General Administrator which issue has always been controversial and the subject of Petition No. 1 of 2023.
 - vi. That the applicant is a serial litigator, who incites members of the church to engage in demonstrations against the respondents and the interested parties.
 - vii. the applicant has written threatening messages to the respondents claiming that the respondents stepped on a live wire by holding the Applicant to account, and the applicant has supplied the Court with false documents to mislead the Court.
 - viii. The applicant's appointment was a for period of seven years from May 1, 2011, and lapsed on 30th April 2017, and if the application is allowed the respondents and the interested parties will be greatly prejudiced.
4. The Applicant in rejoinder filed a further Supporting affidavit sworn on 30th April 2024 stating that: -
- i. The Respondent and interested parties did not controvert his position and the applicant is a CPA-qualified member of ICPAK as per the letter authorizing him to use the said initials (PO1).
 - ii. That the proceedings stayed were those in CMC Kakamega 100 of 2021, and the High Court Civil Appeal No. 7 of 2020 upheld the orders obtained in CMCC 100 of 2019 injuncting the 1st Respondent from carrying himself as the General Superintendent of PAG(PO2).
 - iii. The orders demonstrating that the Respondents do not have capacity as their positions as officials of PAG were shelved in Kisumu CMCC 543 of 2023 and Kakamega CMCC no. 100 OF 2019 and the same has never been vacated or appealed from, as per the letter of authenticity by the police (PO3).



- iv. That the Applicant's claim relates to his employment and not the church and the allegations that he is a vexatious litigant are false as there is no mention where he has taken the respondents to Court.
- v. The allegations that he sent threatening messages are false as no evidence of the same has been provided and that the respondents have not demonstrated that the applicant is in office illegally and no steps to correct the same have been taken, and the letter of 2.4.2023 did not refer to the alleged illegal occupancy of the applicant in office and the applicant's averments remain unchallenged.

Written Submissions

5. The Court directed that the application be canvassed by way of written submissions. The parties complied. The Applicant's written submissions dated 30th April 2024 were filed by Athung'a & Company Advocates. The Respondents' and Interested Parties' written submissions dated 27th May 2024 were filed by Oloo & Oloo Advocates LLP on 28th May 2024.

Determination

Issues for determination

6. The Applicant submitted globally on the merits of his application and the incapacity of the 1st Respondent to institute disciplinary proceedings against him, the 1st Respondent having been already adjudged by the Court as lacking capacity, and the unfairness in the decision to commence steps towards removal from office against the applicant.
7. The Respondents/Interested Parties addressed the following issues in their written submissions: -
 - a. Whether the Claimant has locus standi to suspend to bring about a claim before this Court.
 - b. Whether the Claimant has exhausted procedures and processes in P.A.G Kenya Church to invoke the powers of this Court at this stage. Has the Claimant exhausted the available mechanisms.
 - c. Whether the Claimant has a valid contract having produced a contract signed in 2011.
 - d. Whether the Claimant is entitled to the permanent injunction and interim orders sought
8. The Court having perused the pleadings by the parties and their submissions was of the considered opinion that the issue placed before the Court by the parties for determination of the application is whether the application was merited.
9. The genesis of the application was the letter dated 2nd April 2024 (P02) by the Rev. Dr. Patrick M. Lihanda, General Superintendent, addressed to the Applicant as notice to show cause why he should not be dismissed for gross misconduct concerning the church property.
10. The letter required the Applicant to return the church property within 2 days failing which the letter was also Notice to show cause why he should not be dismissed for misappropriating church property. Further, vide the aforesaid letter, the Applicant was suspended from work for a period of 30 days or until he responded to the show cause. He was further ordered to hand over the office of the General Treasurer. He was further asked to appear before the executive committee to show cause on 16th April 2024 accompanied by one person of his choice and show cause why disciplinary action should not be taken against him for having abused the standard of faith. The applicant then filed



suit seeking protection from arrest by police concerning his role as an employee of the respondents. Further, the Applicant sought for an order that; ‘The Honourable Court do declare the Respondents are not officials of Pentecostal Assemblies of God Kenya Church and hence should not hold out as the employees of the Claimant.’

11. The Applicant annexed various Court Orders concerning the leadership of the church resting with the last one by Justice P.J. Otieno in Kakamega High Court JR E002 of 2022 Republic v Registrar of Societies (Exparte Antony Kenyakisa) and Patrick Lihanda, Richard Oswogi and Julius K. Ronoh(interested parties), where the Court on the 24th February 2023 quashed the registration of the interested parties(the 1st and 2nd Respondents being interested parties in the JR case) as General Superintendent, General Secretary, and General Treasurer respectively of the Pentecostal Assemblies of God- Kenya Church.
12. Vide Kakamega High Court JR E002 of 2022, the 1st Respondent and the author of the notice to show cause to the Applicant was held in contempt of Court order by holding himself as General Superintendent of the church.
13. In response to this particular issue, the said Rev. Patrick Lihanda(1st Respondent) vide his replying affidavit dated 22nd April 2024 stated in paragraph 9 ‘ The applicant’s attempts at relying on Orders in J.R. NO. 2 of 2022 does not disclose the status of the file as transferred to Vihiga High Court. the subject of the file is before the DCI for investigation on account of fraudulent signatures. The applicant is aware of this fact but chooses to mislead the Court.’” The said proceedings before the Vihiga High Court were not annexed for the Court to peruse. The Court further holds that the Vihiga High Court is of the same status as Kakamega High Court and cannot overturn the decision of Justice P.J Otieno in J.R. NO. 2 of 2022 removing the respondents from office.
14. The Court only deals with matters of employee-employer relationship. Whereas the Court will be very hesitant to interfere with the internal disciplinary mechanism of the employer, it will not hesitate to interfere with a process that is tainted by illegality abinitio.
15. The claimant laid before the Court evidence that the person Rev. Patrick Lihanda who authored the notice to show cause and suspended him from office had been removed from office vide Order dated 24th February 2023 by the Court of equal status being Kakamega High Court, Justice P.J. Otieno in Kakamega High Court JR E002 of 2022 Republic v Registrar of Societies (Exparte Antony Kenyakisa) and Patrick Lihanda, Richard Oswogi and Julius K. Ronoh(interested parties). The Respondent in response did not controvert the existence of the Order. The alleged DCI activities cannot invalidate the Court Order whatever version they may take. The alleged case in Vihiga High Court is yet to be determined as per affidavit of Patrick Lihanda hence the Order in JR E002 of 2022 is the lawful position. A decision of the Court cannot be ignored by this Court.
16. In the circumstances I hold on a balance of probabilities that the letter dated 2nd April 2024 (P02) was authored by a stranger pursuant to an order in Kakamega High Court JR E002 of 2022 Republic v Registrar of Societies (Exparte Antony Kenyakisa) and Patrick Lihanda, Richard Oswogi and Julius K. Ronoh(interested parties) delivered by the Court on the 24th February 2023.
17. The Court noted the letter by the 1st Respondent did not question the status contract of the Applicant, which in any case is presumed extended by the fact of continued service. I took note of the issue of the doctrine of exhaustion as submitted in the submissions by the Respondents. I perused the grounds of opposition and the replying affidavit and the issue of an existing dispute resolution mechanism in the church was not pleaded. Submissions are not pleadings. I will say no more on the matter.



18. The Court was invited to issue a permanent injunction against the police in the application. The Court did not find merit in the request. The Court upheld the decision cited by the respondent in *Maher Unissa Karim v Edward Oluoch Odumbe* (2015) e KLR where Justice Aburili upheld the Court of Appeal's position on mandatory injunction as follows:- 'The threshold in mandatory injunctions is higher than in the case of prohibitory injunctions and the Court of Appeal in the case of *Kenya Breweries Ltd v Washington Okeyo* [2002] EA 109 had occasion to discuss and consider the principles that govern the grant of mandatory injunctions. The Court of Appeal held that the test for grant of a mandatory injunction was as correctly stated in VOL 24 of Halsbury's Laws of England 4th Edition paragraph 948 that:-

“ A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally, be granted. However , if the case is clear and one which the Court thinks it ought to be decided at once, or if the act done is simple and summary one which can be easily remedied, or if the defendant attempts to steal a match on the plaintiff, a mandatory injunction will be granted on an interlocutory application.

In the English case of *Locabail International Finance Ltd v Agro Export & Another* [1986], ALI ER 901 which the Court of Appeal in Kenya has followed with approval in many decisions, the Court held that:-

“ A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and then only in clear cases either where the Court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could easily be remedied or where the defendant had attempted to steal a match on the plaintiff. Moreover, before granting a mandatory injunction, the Court has to feel a high sense of assurance that at the end of the trial it would appear that the injunction had been rightly granted, that being a different and higher standard than required for a prohibitory injunction.” I did not find any special circumstances in the instant case to enable me to exercise jurisdiction of granting a mandatory injunction at the interim stage.”

19. The Court declines to grant the mandatory injunction against the police for the simple reason that they are a lawful authority and the Court has no jurisdiction to curtail their mandate. That mandate would lie with the High Court. If the mandate is abused the Court of law is always open to render a remedy.

20. In conclusion, the cause of action being the letter authored by Rev. Patrick Lihanda (1st Respondent) a person whose alleged position of General Superintendent in the church had been quashed by Justice P.J. Otieno in *Kakamega High Court JR E002 of 2022 Republic v Registrar of Societies (Exparte Antony Kenyakisa) and Patrick Lihanda, Richard Oswogi and Julius K. Ronoh*(interested parties), and the response having failed to controvert that position, the Court holds that the application is merited.

21. Based on the foregoing, the Court allows the application as follows:-

- 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 employers 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.

22. The claim to be heard on priority basis. Parties to take a date for pretrial directions.

23. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 27TH DAY OF JUNE 2024.

J.W. KELI

JUDGE

In The Presence Of:

Court Assistant: Macheso

Claimant /Applicant: - Athung'a

Respondent: Dr. Oloo

