



REPUBLIC OF KENYA



**Mutimbia & 5 others v Shikuku & 3 others (Civil Appeal
E005 of 2024) [2025] KEHC 5414 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5414 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL E005 OF 2024
AC MRIMA, J
APRIL 30, 2025**

BETWEEN

**FRANCIS MUTIMBIA 1ST APPELLANT
DOMINIC WANYONYI KHISA 2ND APPELLANT
ISAAC WANJOFU 3RD APPELLANT
VICTORIA MBOLOLE 4TH APPELLANT
SMITH CLAUDE STEVEN 5TH APPELLANT
JEREMY LABORDE 6TH APPELLANT**

AND

**HENRY BARASA SHIKUKU 1ST RESPONDENT
ELIUD SIRENGO 2ND RESPONDENT
JOHN NGWEYA 3RD RESPONDENT
WILSON KORIR JULIUS 4TH RESPONDENT**

*(Being an appeal from the Ruling and Order of Hon. T. Omono (RM) in Kitale
Chief Magistrates Civil Case No. 261 of 2023 delivered on 26th February 2024)*

JUDGMENT

Background:

1. The dispute, subject of this appeal, revolves around leadership of Kenya Good News Outreach Church, Masisi (hereinafter referred to as ‘the Church’). Through the Complaint dated 2nd August 2023, Henry Barasa Shikuku, Eliud Sirengo, John Ngweya and Wilson Korir Julius the Respondents herein, claimed to be the office bearers and as such the ones in control of the Church’s activities.



2. Their leadership notwithstanding, they posited that Francis Mutimbia, Domimic Wanyonyi Khisa, Isaac Wanjoku, Victoria Mbolole, Smith Claude Steven & Jeremy Laborde, the Appellants herein, through unknown individuals had been interrupting Church meetings and manipulating Church members in a bid to remove them from office and change the Executive Members Board so that they occupy their positions in contravention of their Constitution.
3. In their quest for protection, the Respondents wrote to the Registrar of Societies seeking to bar the Appellants from interfering with the Church's activities. To that end, he stated that the Registrar issued them with a copy of the officer bearers coming that the Respondents were the bona fide office bearers. It was on that basis that the Respondents instituted Kitale Chief Magistrates Civil Case No. 261 of 2023 [hereinafter referred to as 'the suit'] claiming that the Appellants be enjoined from accessing the Church's premises and be barred from assuming power in the Church.
4. The Appellants challenged the Plaintiff through their Statement of Defence and Counter-claim dated 22nd September 2023. They denied the Respondent's case in totality. It was their case that the Respondents were former leaders of the Church who were ousted from leadership as per the Church's Constitution. In the Counter-claim they prayed that a permanent injunction be issued against the Respondents and that the Registrar of Societies do effect the necessary changes in the leadership of the Church as per their letter dated 7th September 2023.
5. Before the main dispute could be heard, the Respondents lodged an application by way of a Notice of Motion dated 13th September 2023 which was duly amended on 27th September 2023. They sought orders among them; a temporary injunction restraining the Appellants herein from interfering with the Church's activities, and an injunction restraining the Registrar of Societies from altering the register as regards the officials of the Church at the Registry.
6. The Appellants strenuously challenged the application through the Replying Affidavit and Further Replying Affidavit of Francis Mutimbia, the 1st Appellant herein, deposed to on 25th September 2023 and 12th January 2024 respectively. It was their case that the application was a sham as it sought to waste the Court's time and to circumvent the hearing of the main dispute. It asserted that the Respondents had failed to convene an Annual General meeting to address the election of office bearers despite the Churches Constitution and requests by members.
7. They further pleaded that the attempt to regularize them as office-holders had been rejected by the Registrar of Societies. It was its case that the Appellants were the official leaders of the Church and that the only way to remove the Respondents was through a general or special meeting which the Respondents had refused to call.
8. It was its case that the Appellants position that the Respondents had not demonstrated what prejudice they would suffer if the application were not allowed since the Appellants were the ones in charge of the day to day running of activities in the Church. They contended that the application was seeking to have the Respondents have a backdoor leadership in the Church and that the orders sought were in contravention of the Orders of the Court issued on 10th August 2023 that allowed the Respondents to hold any meetings in the Church. They also claimed that it was only fair to have the Registrar of Societies appear in the matter so as to settle the issue of leadership in the Church. In their Further Replying Affidavit, the Appellants strenuously opposed the Respondents' quest for injunctions. It was their case that they were hell bent on causing chaos at the Church an act which ought not be allowed.
9. Upon considering the application and the responses thereto, the trial Court observed that Respondents failed to establish a prima facie case, but found it necessary to preserve the subject matter pending the final determination. It, hence, issued an order maintaining status quo regarding



the Church leadership as per the register held by the Registrar of Societies as of 8th August 2023 when the suit was lodged before the Court.

10. Further, the trial Court granted leave for parties to amend their pleadings for purposes of giving effect to its orders of 25th September 2023 joining the Registrar of Societies.
11. It was the above ruling that necessitated the appeal herein.

The Appeal:

12. The Appellants urged that their appeal be allowed on the following grounds: -
 1. That the learned magistrate erred in law and fact by ordering status quo obtaining regarding Kenya Good News Outreach Churches leadership and membership as per the records held by registrar of Societies as of 8th August 2023 when the suit was filed.
 2. That the learned magistrate erred in law and fact by granting leadership to persons who had been voted out by the Kenya Good News Outreach churches as per *the constitution* of Kenya Good News Outreach churches and records filed with the registrar of societies.
 3. That the learned magistrate erred in law and fact in finding that the Respondents terminated 1st to 4th Appellants.
 4. That the learned magistrate erred in law and fact by allowing an application amendment to include parties without amending the Plaintiff (suit) in total disregard of the protest registered by the Defendants.
 5. That the learned Magistrate by failing to give of directions on the reluctance of the Plaintiff to amend the Plaintiff pursuant to third party proceedings consent order before ruling on the application.
 6. That the learned trial magistrate erred in law and in fact by ordering that parties are granted leave to amend their pleadings for purpose of giving effect to the orders of this court issued on 25th September 2023.
 7. That the learned trial magistrate erred in law and fact by declining to issue an injunction with one hand but granting it through status quo order with the other hand.
13. The Appellants reinforced the above through their submissions.

The Respondents' case:

14. The Respondents challenged the appeal through written submissions dated 2nd May 2024. In urging that the impugned ruling was sound, it was their case that the Court exercised its discretion judiciously. It relied on Civil Appeal No. E074 of 2022 Yooshin Engineering Cooperative -vs- AIA Architects Limited which referred to Price & Another -vs- Hilder (1986) KLR 95 where the following was observed: -

.... it would be wrong to interfere with the trial Courts discretion merely because the Court's discretion would have been different.

15. The Respondents submitted that discretion of a Court is free and the main concern is to do justice to the parties. It was their case that the Appellants had not availed any evidence that they called for elections as advised by the Registrar of Societies vide the letter dated 7th July 2023. Regarding



amendment of the suit, it was its case that the purpose was to include the Registrar of Societies who would shed light on the legitimate leaders of the Church.

16. The Respondents submitted that the appeal ought to be dismissed since the Appellant's motive was to unlawfully usurp power.

The Registrar of Society's case:

17. The Registrar of Societies responded to the appeal through written submissions dated 30th May 2024. It urged the Court to allow the transfer of the suit from the trial Court to the High Court since it was denied fair trial guaranteed under Article 50(1) of *the Constitution* at the lower Court even though it had not been served with pleadings. It decried non-service.
18. It further submitted that pursuant to Article 165(6) and (7) of *the Constitution* as read with section 18(b)(i) of the *Civil Procedure Act*, the suit ought to be transferred to the High Court for hearing. The decision in *Alice Sisina -vs- Land Registrar Kajiado & Another (2015) eKLR* was relied upon in support.
19. In conclusion, it was its case that its request of transfer should be allowed in order to accord it a chance to defend itself in the suit.

Analysis:

20. From the foregoing discourse, the issues that emerge for determination are as follows: -
 - i. Whether the trial Court properly directed itself in;
 - a. Maintaining status quo of the leadership at the Kenya Good News Outreach Church in Matisi.
 - b. Ordering the Registrar of Societies to be a party in the proceedings suo moto.
 - ai. Whether the suit be transferred to the High Court.
21. This Court's role, as a first appellate Court, is well established in law. The Court of Appeal in *Susan Munyi -vs- Keshar Shiani [2013] eKLR* observed thus: -

... As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions.
22. Similarly, in *Abok James Odera t/a AJ Odera & Associates -vs- John Patrick Machira t/a Machira & Co Advocates [2013] eKLR* the Court set out the role of a first appellate Court in the following terms: -

... This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way. See the case of *Kenya Ports Authority vs Kustron (Kenya) Limited 2000 2EA 212*.
23. A consideration of the above issues now follows.
 - a. Whether the trial Court rightly maintained the status quo of the leadership at the Kenya Good News Outreach Church in Matisi:



24. As pointed out from the outset of this judgment, the root cause of the instant dispute is the leadership of the Church. The trial Court upon considering the material presented before it was not satisfied that the Respondents had proved a case as for an injunctive relief. However, pending the determination of the main dispute, the Court directed that the prevailing status quo of the leadership of the Church as at the date the suit was lodged be maintained. That order is what gravely aggrieved the Appellants herein.
25. Before delving into the question whether the Court rightly maintained the status quo, it is first necessary to ascertain whether the trial Court properly directed itself in declining to allow the Respondents' application.
26. From a reassessment of the evidence, the only document speaking to the leadership of the Church was a letter dated 3rd September 2023 authored by the Church and addressed to the 1st Appellant herein. The letter referred to a Special General meeting that resolved that the 1st Appellant do assume the Church's leadership. The trial Court found that without proof of minutes of the general meeting, the Appellants had not established a prima facie case deserving of injunctive reliefs. With that finding, the other legal principles in injunction applications were not considered and the application failed.
27. On perusal of the record, this Court, however, noted a huge discrepancy between the documents filed at the trial Court and those in the Record of appeal. Whereas the former had no minutes of the special general meeting, the latter had. It, therefore, means that the minutes may have been improperly introduced on appeal. The trial Court, therefore, did not have the benefit of the said minutes and its decision, to that extent, cannot be faulted.
28. The above notwithstanding, this Court will for record purposes, briefly address the concept of status quo. The first port of call is an understanding of the term 'status quo'. The Black's Law Dictionary, 10th Edition defines it as follows: -

The situation that existed before something else (being discussed) occurred.

29. The Court of Appeal discussed this concept in *Shimmers Plaza Ltd .-vs- National Bank Of Kenya Ltd* [2015] eKLR as follows: -

status quo in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events All it means was that everything was to remain as it was as at the time the order was given. If there was any transaction that was going on in respect of the land in question, it had to freeze and wait the discharging of the Court order. [emphasis added].

30. Further, in *Misc. App (JR) No. 26 of 2010 The Chairman Business Premises Tribunal at Mombasa Ex-parte Baobab Beach Resort (Msa) Ltd*, the Court suitably discussed the subject as follows: -

..... an order for status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof.

It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for



status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint. In its negative form, however, an injunction may have the same effect as an order for status quo.

31. Returning to the matter at hand, the Plaint was filed on 2nd August 2023. The record has a letter attached to the Plaint dated 27th December 2022 which indicated that the Respondents herein were the leaders of the Church. There are also minutes of a Pastors' Annual general meeting of 31st August 2023 which 'elected' the 1st to 4th Appellant's herein as the new officials of the Church.
32. Applying the concept of status quo to the circumstances in this case, there is no doubt it tilts in favour of the Respondents since long before the proceedings were commenced, the Respondents were already in the leadership of the Church. The trial Court, therefore, asserted that the status quo ante be preserved pending the hearing of the main suit.
33. Speaking to discretion, the Court of Appeal in Civil Appeal (Application) E014 of 2022, JMM-vs-GNJ (Civil Appeal (Application) E014 of 2022) [2023] KECA 99 (KLR) (3 February 2023) stated as follows: -

..... The discourse of exercise of judicial discretion reminds us the words of Benjamin Cardozo, in his seminal work "The Nature of the Judicial Process" New Haven: Yale University Press, 13th Edn 1946 pg 141 who opined that a Judge derives his strength from hallowed principles. He wrote:

... The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains.... (emphasis added)

34. In expounding the above, the Learned Judges observed as follows:

... In the simplest terms, judicial discretion is the exercise of judgment by a Judge or court based on what is fair under the circumstance and guided by the rules and principles of law. The exercise of discretion may either be judicial or judicious. It is judicial, if it is exercised in accordance with the enabling statutes while it is judicious when it carries or conveys the intellectual wisdom or prudent intellectual capacity of the judge. However, whichever of the two approaches, the exercise must be based on a sound and sensible judgment with a view to doing justice to the parties. (See Aduaka, Charles E, Judicial Discretion and its application under the Nigerian Legal System, International Journal of Innovative Legal & Political Studies 6(4):38-49, Oct-Dec, 2018)

Therefore, discretion is that freedom or power to decide what should be done in a particular situation. The general meaning of the word "discretion" includes analysis, appraisal, assessment, choice, consideration, contemplation, designation, determination, discrimination, distinction, election, evaluation, examination, free decision, free will, freedom of choice, liberty of choosing, liberty of judgment only to mention but some. Judicial discretion then is the exercise of judgment by a Judge or court based on what is fair under the circumstances and guided by the rules and principles of law. Every discretion be it judicial and judicious must be based on prudence, rationality, sagacity, astuteness,



considerateness and reasonableness. There is no hard and fast rule as to the exercise of judicial discretion by a court because if it happens then, discretion will become fettered.

There is always the need for a court exercising discretion to give reasons in justification of the exercise. There can hardly be any justifiable reason for exercising discretion upon imprecise facts. It is the nature and strength of facts made available to the court that provide the tonic for the proper exercise of discretion. Admittedly, the exercise of discretion upon known facts involves the balancing of a number of relevant considerations upon which opinions of individual judges may differ as to their relative weight in a particular case. But that will not necessarily affect the justness of the exercise of the discretion, so long as the facts are available and reasonably appreciated.

35. With the foregoing, since the order was a matter of an interlocutory ancillary relief, this Court finds that the learned trial Magistrate exercised his discretion properly and judiciously. The trial Court did not err.

Whether the trial Court properly ordered the Registrar of Societies to be a party in the proceeding's suo moto:

36. According to the record, no application to enjoin the Registrar of Societies was made by any of the parties. However, there was an application dated 10th January 2024 which sought orders against the Registrar of Societies even though it was not a party yet. In the impugned ruling, the Court was challenged for enjoining the Registrar of Societies on its own motion, that is without being moved by any party.
37. Order 1 rule 10(2) of the Civil Procedure Rules provides as follows:

The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

38. In *Civicon Limited -vs- Kivuwatt Limited and 2 Others* [2015] eKLR the Court observed as follows: -

.... Again, the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.



39. The nature of the dispute herein pitted the Registrar of Societies as a central entity for the comprehensive determination of the matter. The Registrar was, hence, a necessary party whose presence was in tandem with the law.
40. The trial Court's joinder of the Registrar of Societies suo moto [on its own motion] cannot, therefore, be faulted.

Whether the suit can be transferred to the High Court:

41. The quest for transfer of the suit to this Court for hearing was on the basis that the Registrar of Societies was not served with the pleadings. Simply put, non-service of pleadings is not a ground for transfer of a suit from one Court to another.
42. The ground, therefore, fails.

Disposition:

43. Having dealt with all the issues for determination, and as I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.
44. Deriving from the above, the following final orders do hereby issue:
 - a. Subject to the rest of the orders herein, the appeal hereby fails and is dismissed.
 - b. For clarity, the order on maintaining of the status quo by the trial Court was properly arrived at and is hereby upheld. Therefore, the leadership of Kenya Good News Outreach Church, Matisi shall comprise of Henry Barasa Shikuku, Eliud Sirengo, John Ngweya and Wilson Korir Julius pending the determination of the suit.
 - c. The joinder of the Registrar of Societies in the proceedings is upheld. The Registrar shall be served with the pleadings and be at liberty to file and serve its pleadings within 14 days of service.
 - d. The prayer to transfer the suit to the High Court is hereby declined.
 - e. The Appellants shall shoulder the costs of the appeal.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Miss Odiya, Learned Counsel for the Appellants.

Mr. Nakitare, Learned Counsel for the Respondents.

Amina – Court Assistant.

