



Methodist Church in Kenya Trustees Registered & 2 others v Funanana (Civil Suit E007 of 2023) [2025] KEHC 11844 (KLR) (8 August 2025) (Judgment)

Neutral citation: [2025] KEHC 11844 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL SUIT E007 OF 2023
M THANDE, J
AUGUST 8, 2025**

BETWEEN

METHODIST CHURCH IN KENYA TRUSTEES REGISTERED . 1ST PLAINTIFF

REV ISAYA DEYE 2ND PLAINTIFF

REV SEMI SALAT' 3RD PLAINTIFF

AND

REV GENATONE FUNANANA DEFENDANT

JUDGMENT

1. The Plaintiffs filed this suit against the Defendant seeking the following orders:
 - a. A Permanent injunction against the defendant from referring /representing himself as the Bishop of Methodist Church in Kenya Singwaya Synod.
 - b. A restraining order be hereby issued against the defendant from interfering; in any way with the management and running of the church services for Methodist Church in Kenya Singwaya Synod and other institutions such as schools or any other institution under the Methodist Church in Kenya pastoral care, preventing the ministers posted in the Singwaya Synod by the Conference from performing their duties in their respective stations within Singwaya Synod, by himself, his followers, agents and/or proxy.
 - c. A declaratory order be hereby issued that Reverend Semi Salat is the Bishop for the Methodist church in Kenya Singwaya Synod and that Reverend Semi Salat is in charge of all pastoral, priesthood and administrative duties of the Singwaya Synod.
 - d. Cost of this suit and interests.
 - e. Any other or further relief that this Honorable Court may deem fit and expedient to grant.



2. The 1st Plaintiff (MCK) is described in the Plaint as the registered legal corporate body of the Methodist Church in Kenya and the lawful custodian of the property and legal entity of the said church. The 2nd Plaintiff is the current Presiding Bishop of the MCK while the 3rd Plaintiff is the current Bishop for the MCK, Singwaya Synod whose election has not been formally challenged. The Defendant is described as a minister with the MCK.
3. The Plaintiffs' case against the Defendant is that he was irregularly placed as a Bishop by the former Presiding Bishop but that the entire procedure and alleged annual conference held in 2022 was declared irregular by the High Court and the 58th Annual Conference held in 2023 upheld. The Conference is the supreme authority of the MCK. However, the Defendant has refused to report to his new station where he has been posted as a minister and has denied the 3rd Plaintiff access to the Bishop's office and manse. The Defendant has continued to incite members, misleading them that he is the incumbent bishop and to issue threats to new ministers posted to the Synod by the Conference, thereby causing a breach of the peace. He has also uttered disparaging and demeaning words against the Plaintiffs and is insubordinate to the 2nd Plaintiff and the Conference. He has failed to heed warning letters for his gross indiscipline thus necessitating the filing of the suit herein.
4. In his statement of defence dated 16.4.24, the Defendant denied all the allegations made against him by the Plaintiffs. His case is that the election in the 58th Annual Conference was illegally and unprocedurally held and was not in accordance with the Standing Orders and Deed of Foundation and Deed of Church Orders of the MCK. Further that there was no proper representation from all the circuits and he and other delegates were served with the notice thereof 10 days after the Conference. His contention is that his election as Bishop of Singwaya Synod by the 57th Annual Conference on 3.8.22 is still in force and has not been set aside or quashed and that he was installed as such on 12.2.23. Further that the orders issued by Meoli, J. on 12.6.23 did not nullify his election and cannot be used by the Plaintiffs to stop him assuming office as the duly elected Bishop. He accused the Plaintiffs of flouting the rules of the Church by maliciously deploying him to other stations after his installation as Bishop of Singwaya Synod. He further stated that the matter is prematurely before the Court for want of exhaustion of the available dispute resolution mechanisms. As such, this Court lacks jurisdiction to entertain the matter. He prayed that the suit be dismissed with costs.
5. The Plaintiffs filed a reply to defence dated 5.9.24 in which they reiterated their earlier averments. They stated that the 58th Annual Conference was properly constituted and that it nullified the 57th Annual Conference. Further that the court adopted the consent for settlement of Milimani HCCC No E215 of 2021 that declared the 57th Annual Conference null and void for lack of compliance with the standing orders and deed of church order. Further, that the Defendant has disobeyed church rules and regulations. They added that the Defendant refused to attend the 58th Annual Conference and incited members of Syngwaya Synod to distance themselves from the same. He also refused to attend a mediation meeting convened by Bishop Lawi Imathi, Bishop Zablon Nthamburi and Bishop Stephen Kanyaru, all former Presiding Bishops of the MCK.
6. At the hearing, the parties and their witnesses gave vent to their averments in their respective pleadings and statements.
7. After considering the pleadings, testimonies and submissions, the issues that arise for determination are:
 - i. Whether the Plaintiffs have locus standi to file this suit.
 - ii. Whether the Court has jurisdiction to entertain this suit.



- iii. Whether the 57th Annual Conference and the election of the Defendant are valid.
- iv. Whether the Plaintiffs are entitled to the orders sought.

Whether the Plaintiffs have locus standi to file this suit

8. It is the Defendant's contention that no evidence was placed before the Court to show that the Plaintiffs have the capacity to sue as Trustees of the MCK. The Plaintiffs were also not authorised by the Trustees of the MCK to file the suit on its behalf. Further that the Plaintiffs filed the authorisation documents without leave of the Court after the Defendant raised the issue in Court. As such, the suit is a non-starter, fatally defective and ought to be struck out.
9. I have looked at the Complaint and note that the 1st Plaintiff is described as the registered legal corporate body of the MCK and the lawful custodian of its property. As legal corporate body of the MCK, the 1st Plaintiff has capacity to sue and be sued in its corporate name. Indeed, in his statement of defence, the Defendant admitted this description of the 1st Plaintiff. Accordingly, the Court finds that the 1st Plaintiff has the requisite locus standi to institute the suit herein.
10. The 2nd Plaintiff is described in the Complaint, as the Presiding Bishop, Chief pastor and Principal Officer of the MCK while the 3rd Plaintiff is described as the current Bishop of Singwaya Synod. The record shows that the authority of the 2nd and 3rd Plaintiffs to sue on behalf of the MCK was not filed together with the Complaint. As such, they had no authority to sue on behalf of the MCK. The subsequent filing of their authority and without leave of the Court does not cure the defect. That said, the lack of locus standi on the part of the 2nd and 3rd Plaintiffs does not render the suit fatally defective, as the capacity of the 1st Plaintiff is established. All that the Court needs to do, as it now does, is to strike out, the 2nd and 3rd Plaintiffs as parties in the suit. They shall henceforth be referred to as Rev. Deye and Rev. Salat respectively.

Whether the Court has jurisdiction to entertain this suit

11. It is the Defendant's contention that this Court lacks jurisdiction to entertain the matter herein. In his view, the matter is prematurely before the Court for want of exhaustion of the dispute resolution mechanism under the Standing Orders and Agenda. He prayed that the suit be dismissed with costs.
12. Although the Defendant did not cite any law, it is clear that he is relying on the doctrine of exhaustion. This doctrine of exhaustion is encapsulated in the *Fair Administrative Action Act* (FAAA) which was enacted to give effect to the right to fair administrative action guaranteed under Article 47 of *the Constitution*.
13. Section 9(2) of the FAAA bars the court from assuming jurisdiction over a matter prematurely as follows:

The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
14. Section 9(2) of the FAAA is explicit that courts shall not review an administrative action or decision unless all the mechanisms for appeal or review and all remedies available under any other written law are first exhausted.



15. The doctrine of exhaustion accords with Article 159(2)(c) of *the Constitution* which recognizes and entrenches the use of alternative mechanisms for dispute resolution in the following terms:
- (2) In exercising judicial authority, the Courts and tribunals shall be guided by the following principles-
- (c) alternative forms of dispute resolution including resolution, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause 3.
16. The doctrine of exhaustion encourages disputants to seek other means of resolving their conflicts rather than, or before coming to Court. The jurisdiction of the Court should only be invoked when all other means of dispute resolution fail or are exhausted. This was the holding in the case of *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* [2015] eKLR wherein the Court of Appeal stated:
- It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and 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 of courts. This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.
17. The evidence of PW1 is that he, together with other former Presiding Bishops of the MCK, namely, Bishop Lawi Imathiu and Bishop Stephen Kanyaru made efforts to reach out to the Defendant to resolve the matter and that meeting was set up but he was unwilling. Eventually, the Defendant was served with notice to show cause as well as warning letters which he ignored, thereby necessitating the filing of the suit herein. The Defendant himself stated that he received letter from former Presiding Bishop Lawi Imathiu or Ntombura inviting him to a meeting to find solution to the matter. He however asserted that he is only answerable to the Presiding Bishop and not to retired Bishops.
18. The Court notes that efforts were indeed made to resolve the matter prior to the filing of this suit but the Defendant rebuffed the same. He cannot now claim that the Plaintiff did not exhaust the dispute resolution mechanisms prior to filing the suit. In any event, the Defendant has not set out the dispute resolution mechanisms of the MCK which the Plaintiff allegedly failed to exhaust before coming to Court. The Defendant's contention in this regard thus fails. I accordingly find that this Court has the requisite jurisdiction to deal with the matter.

Whether the 57th Annual Conference and the election of the Defendant are valid

19. It is the Defendant's case that he was duly elected as Bishop of Singwaya Synod by the 57th Annual Conference and thereafter installed as Bishop thereof. In the course of the proceedings herein, the Plaintiff's advocate did on 13.12.23, inform this Court that the issue of the validity of the 57th Conference of the MCK was pending before the High Court in Nairobi in HCCC No. E315 of 2021. This was confirmed by the Defendant's advocate.



20. This Court has seen the consent order issued on 30.8.24 in Nairobi HCCC No. E315 of 2021 as consolidated with Civil Case No. E311 of 2021 and Civil Case No. 10 of 202, referred to in the reply to defence. Order 5 thereof states:

That the proceedings of the 57th Annual Conference held from 3rd – 6th August 2022 be and are hereby declared to be null and void for want of the requisite notice and other substantive non-compliance with the standing orders of the Methodist Church.

21. From the foregoing consent order, it is clear that the issue of the validity of the proceedings of the 57th Annual Conference was settled in the suit in Nairobi HCCC No. E315 of 2021 (consolidated). The position now is that the 57th Annual Conference and the proceedings thereof including the election thereof of the Defendant as the Bishop of Singwaya Synod were nullified.
22. Does this Court have the jurisdiction to reopen the issue of the validity of the 57th Annual Conference and the question whether the Defendant was duly elected Bishop of the Singwaya Synod? To answer this question, it is necessary to consider the law that confers jurisdiction upon the Court.
23. This Court derives its jurisdiction principally from Article 165(3) of *the Constitution* which confers upon it, unlimited original jurisdiction in criminal and civil matters. The provision clearly delineates and demarcates what the Court can and cannot do. One of things it cannot do is supervise superior courts. Article 165(6) of *the Constitution* provides:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

24. The superior courts in the court system in Kenya are listed in Article 162(1) of *the Constitution* as follows:

The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).

25. In *Bellevue Development Company Ltd v Francis Gikonyo & 7 others* [2018] eKLR, Kiage, JA, considered whether a judge can review the finding of a judge of concurrent jurisdiction and stated:

I have no difficulty upholding the learned Judge's holding that as a judge of the High Court he had no jurisdiction to enquire into or review the propriety of the decisions of the Judges, who were of concurrent jurisdiction as himself. In our system of courts, which is hierarchical in nature, judges of concurrent jurisdiction do not possess supervisory jurisdiction over each other. No judge of the High Court can superintend over fellow judges of that court or of the superior courts of equal status. That much is plain common sense. It has, moreover, been expressly stated in Article 165(6) of *the Constitution* in these terms;

“The High Court has supervisory jurisdiction over the subordinate courts and over any other person, body or authority exercising a judicial or quasi judicial function, but not over a superior court.” (Our emphasis)

26. Duly guided by the cited constitutional provisions and authority, this Court lacks the jurisdiction to reopen the settled issue of the 57th Annual Conference in general and the election of the Defendant as the Bishop of Singwaya Synod, in particular.



Whether the Plaintiff is are entitled to the orders sought

27. In order to determine this issue, the Court must of necessity make a determination as to whether the Rev. Salat was duly elected as Bishop of Singwaya Synod.
28. It is the Plaintiff's case Rev. Salat was duly elected as Bishop of Singwaya Synod by the 58th Annual Conference. On his part, the Defendant denies this and contends that the 58th Annual Conference was not properly held as provided by the Standing Orders and Deed of Foundation and Deed of Church Orders of the MCK.
29. The Plaintiff called a total of 7 witnesses, namely, PW1 Prof. Zablon Nthamburi a Trustee of the 1st Plaintiff, PW2 Naftali Gitonga Mugira former Conference Secretary and now Bishop for Nairobi Synod, PW3 Isaya Deye Samson, the Presiding Bishop of MCK, PW4 Rev Dr John Maromba, the current Conference Secretary, PW5 Salat Mapembe Seme, a minister with MCK, PW6 Mark Mathews Omara, chairman of Handampia Local Church within Syngwaya Synod and PW7 Rev Amos Leintoi, Superintendent Minister MCK at Kevenyo Circuit in Western Synod, previously in Tana Circuit Singwaya Synod.
30. The Defendant called 3 witnesses. DW1 was the Defendant, DW2 Matilda Makorai, a member of the Singwaya Synod and DW3 Lydia Habura Jillo Snyod Treasurer.
31. All the witnesses adopted their statements which together with their respective testimonies dwelt primarily on the 57th Annual Conference, the validity of which the Court has declined to delve into.
32. PW1's evidence is that the Annual Conference is the supreme authority of the MCK and that its decisions are final. He stated that the Defendant was elected Bishop of Syngwaya Synod in the 2022 Conference while Rev. Salat was elected by the 58th Annual Conference after nullification of the 57th Conference, which was presided over by the former Presiding Bishop during his illegal extension of his tenure. He stated that the Defendant was invited to the 58th Conference but he did not attend. He asserted that despite Rev. Salat being elected Bishop of the said Synod, the Defendant has refused to hand over the office and has threatened new ministers posted to the Synod and incited synod members, has used disparaging language to the Plaintiffs and has continued with acts of insubordination by presenting himself as Bishop of the said Synod.
33. The assertions of PW1 were corroborated by the other witnesses of the Plaintiff. PW2, PW3 all stated that the 58th Annual Conference nullified the 57th Annual Conference and that Rev. Salat was elected in the 58th Annual conference.
34. PW2 stated that the 58th Conference nullified the 57th Conference was nullified and there was need to have new nominations and elections. The Defendant did not attend the 58th Annual Conference but that his notice was sent. He stated that once a conference nullifies another, the latter prevails.
35. PW5 testified that prior to 58th Conference they had their own Synod meeting in Singwaya Synod where he and other delegates to 58th conference were elected. A few days before annual conference the Synod Standing Committee was called by the Defendant, who was then Bishop, and the main agenda was that they were not to attend the 58th Conference. He was the only one against that idea. All members were forced to sign a paper to that effect.
36. PW7 stated that the 58th Conference nullified the 57th Conference. Further that the Court issued orders on 30.8.24 nullifying 57th Conference.



37. In his statement and testimony, the Defendant stated that he is the Bishop of the Synod, having been elected as such by the 57th Annual Conference and installed on 12.2.23. He assumed his duties as Bishop as prescribed in the Standing Orders. He reiterated his averments in his statement of defence. In particular, he contended that he and other heads of circuits and delegates were served with attendance notices 10 days after the Conference. He asserted that the said Conference did not meet the threshold to convene a meeting and hold elections. Further that there are no court orders quashing or setting aside his election. He asserted that he is a faithful member of the MCK and subscribes to the Standing Orders thereof but that the Plaintiffs want to flout the same by deploying him to other stations. He maintains that after his installation as Bishop his station is Syngwaya Synod and not Central Kenya Circuit. As such, he has not breached any direction as alleged by the Plaintiffs.
38. There is on record a notice dated 27.6.23 by the Acting Conference Secretary notifying all delegates of the 58th Annual conference that the Conference would be held from 19th -22nd July 2023. Further, the exhibited extract of minutes of the 58th Annual Conference indicate that Rev. Salat was elected Bishop of Singwaya Synod with 240 votes. The 58th Conference being the latter conference, supersedes the 57th Conference.
39. Although the Defendant contends that the 58th Annual Conference was held in violation of the Standing Orders and Deed of Foundation and Deed of Church Orders, he did not indicate the specific provisions of the cited instruments. He did not also elaborate on what he meant by saying there was no “proper representation” from all synods. He did not say which synods were absent and the implication of that absence as per the Standing Orders. He did not also say which reverends and heads of circuits and delegates were served with attendance notice 10 days after the conference. In an apparent departure from his contention, he stated that he held the annual Synod meeting of Singwaya Diocese and delegates for the next Conference were appointed. However, they of their own volition and without coercion decided not to attend the Conference.
40. Further, while the Defendant claims that the 58th Conference was not properly held, he did admit in his statement of defence that Rev. Deye was duly elected unopposed as Presiding Bishop of the MCK by the said Conference. The Defendant cannot be permitted to approbate and reprobate. He cannot on the one hand admit that Rev. Deye was duly elected as Presiding Bishop of the MCK at the 58th Annual Conference and at the same time claim that the said Conference and the election conducted therein were not properly held. When a party makes a choice between 2 courses of conduct, he is to be treated as having made an election from which he cannot resile (see Halsbury's Laws of England (4th ed. Reissue 2003) Vol. 16(2) at para. 962).
41. DW2 stated that she did not attend the 58th Conference. She confirmed that she was at the Standing Committee meeting of Singwaya Synod on 15.7.23 by the Defendant where they resolved that they would not attend the 58th Conference. DW3 also confirmed that she attended the Standing Committee of the Singwaya Synod, 2023 where they nominated delegates for the 58th Conference and that it was resolved that they would not attend the Conference.
42. The testimony of the Defendant and his witnesses clearly show that he and other delegates from Syngwaya Diocese were clearly aware of the 58th Conference, but wilfully chose not to attend the same. The evidence on record negates claim by the Defendant that he and other delegates were served with the notice for the Conference 10 days after the same.
43. It is trite law that he who alleges must prove. Section 107 of the [Evidence Act](#) provides:
1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
44. The Defendant was obligated to place before this Court, cogent evidence to support his claim that the 58th Annual Conference was held in violation of MCK's legal instruments. He did not however place any evidence to substantiate his claims and his vague allegations are of no probative value. The Defendant failed to discharge the burden of proof placed upon him by law.

In light of the foregoing, the Defendant's claim that the 58th Annual Conference and the election thereat were not properly held, fails.
 45. In light of the foregoing, the Court comes to the inescapable conclusion that Rev. Salat was duly elected Bishop of Syngwaya Synod by the 58th Annual Conference.
 46. Having so found, it follows that since the Synod can only have one Bishop, the Defendant cannot continue holding, referring or representing himself as the Bishop of Singwaya Synod. To this end, the Plaintiff has sought a permanent injunction against the Defendant restraining him from referring or representing himself as Bishop of the said Synod.
 47. In *Kenya Power & Lighting Co. Limited v Sheriff Molana Habib* [2018] eKLR, Korir, J. (as he then was) had this to say on the nature of a permanent injunction, and I concur:
 8. It is apparent from the pleadings that the Respondent was seeking a permanent injunction against disconnection of his electricity by the Appellant. A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.
 48. In the instant case, having considered the facts herein, I find that the Plaintiff has demonstrated the need for protection of Rev. Salat's rights as Bishop of Singwaya Synod. He must be allowed to discharge his mandate as Bishop, without any interference or hinderance from the Defendant. There is therefore justification for the grant of the permanent injunction sought by the Plaintiff.
 49. As I conclude, I must say that this whole suit is regrettable and dealing with the same has been deeply troubling. The parties herein are all senior church ministers. In his first letter to the Corinthians, the Apostle Paul posed, which I also pose to the parties herein:

I say this to your shame. Is it so, that there is not a wise man among you, not even one, who will be able to judge between his brethren? But brother goes to law against brother, and that before unbelievers! I Corinthians 6:5-6 NKJV
 50. In the end, I do find that the suit is merited and make the following orders:
 1. A declaratory order is hereby issued that Reverend Semi Salat is the Bishop for the Methodist church in Kenya Singwaya Synod and is in charge of all pastoral, priesthood and administrative duties of the Singwaya Synod.
 2. A permanent injunction is issued against the Defendant restraining him from referring or representing himself as the Bishop of Methodist Church in Kenya Singwaya Synod.
 3. An order is issued restraining the Defendant by himself, his followers, agents and/or proxies from interfering in any way with the management and running of church services for



Methodist Church in Kenya Singwaya Synod and other institutions such as schools or any other institution under the Methodist Church in Kenya, and preventing the ministers posted in the Singwaya Synod by the Conference from performing their duties in their respective stations within Singwaya Synod.

4. The circumstances herein do not call for an award of costs.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 8TH DAY OF AUGUST, 2025

M. THANDE

JUDGE

