



Republic v Registrar General, the Registrar of Societies & another; Kenyakisa (Exparte Applicant); Lihanda & 4 others (Interested Parties); Salamba & 2 others (Proposed Interested Parties) (Judicial Review E002 of 2022) [2024] KEHC 5357 (KLR) (30 April 2024) (Ruling)

Neutral citation: [2024] KEHC 5357 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
JUDICIAL REVIEW E002 OF 2022
JN KAMAU, J
APRIL 30, 2024**

**N THE MATTER OF THE PENTECOSTAL ASSEMBLIES OF GOD KENYA CHURCH
AND
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
ORDERS FOR CERTIORARI, MANDAMUS AND PROHIBITION
AND
IN THE MATTER OF THE PURPORTED REGISTRATION OF PATRICK LIHANDA;
RICHARD OBWOGI JULIOUS K. RONO AS OFFICE BEARERS OF THE P.A.G K CHURCH**

BETWEEN

REPUBLIC APPLICANT

AND

**THE REGISTRAR GENERAL, THE REGISTRAR OF SOCIETIES 1ST
RESPONDENT**

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

REV ANTHONY KENYAKISA EXPARTE APPLICANT

AND

PATRICK LIHANDA INTERESTED PARTY

RICHARD OBWOGI INTERESTED PARTY

JULIUS RONO INTERESTED PARTY

MARGARET KAVETSA MASAYA INTERESTED PARTY

SARAH TUNEN SAGASI INTERESTED PARTY



AND

REV ELKANA SALAMBA PROPOSED INTERESTED PARTY
REV BENARD AYIEKA PROPOSED INTERESTED PARTY
REV JAMES OGENDI PROPOSED INTERESTED PARTY

RULING

Introduction

1. In their Notice of Motion dated 20th March 2023 and filed on 28th March 2023, the Proposed 6th, 7th and 8th Interested Parties herein, Rev Elkana Salamba, Rev Bernard Ayieka and Rev James Ogendi sought to take up and continue to carry out the administration of the Pentecostal Assemblies of God (hereinafter referred to as “PAG”) Church as ordered by court and to strictly execute the orders as required.
2. On 27th March 2023, the 6th Proposed Interested Party, swore a Replying Affidavit. The same was filed on 28th March 2023. He averred that he was a retired General Superintendent of the PAG Kenya Church. He pointed out that a court order was issued by this court on 24th March 2023 and the same had been executed by the police and the mission remained vacant (*sic*).
3. He asserted that together with the 7th Proposed Interested Party who was the Chairman of the Church Council, Rev Stephen Karigu and the 8th Proposed Interested Party who were trustees of the PAG Church, they had been appointed as caretakers vide Kisumu CMCC No 543 of 2018. He stated that by order of the said court, the original plaintiff one Tom Olendo withdrew from the suit and other plaintiffs took over the suit.
4. He further contended that an appeal was filed against all orders issued in Kakamega in CMCC No 100 of 2019 and the court pronounced itself to all orders affecting the Respondent (*sic*) even before this case was filed and further explained the role of the administration of the Church in the hands of the Ex parte Applicant. He added that there were other orders as consolidated in Kakamega Petition No 6 of 2018 which called for the action of the police in regard to its orders.
5. On 11th March 2024, the Ex parte Applicant swore a Replying Affidavit in opposition to the said application. The same was filed on even date. He averred that the case he presented to court challenged the legitimacy of the election that was purportedly carried out on 4th and 5th March 2019 and that the court made its findings vide Judgment delivered on 24th February 2023. He asserted that the proceedings were prerogative in nature wherefore the orders applicable were purely administrative in nature and that it was not expected that any party would seek for orders that fell outside the realm contemplated by law.
6. He was categorical that the issue relating to who should lead the church was not pleaded or prayed for in the pleadings thus the orders sought on appointment of caretakers to run the church was misplaced, belated and incapable of being granted. He was emphatic that the court was functus officio and lacked the requisite jurisdiction to grant the orders sought in the current proceedings.
7. He pointed out that the grounds in support of the application and issues therein perfectly related to the proceedings in Vihiga High Court Constitutional Petition No 1 of 2023 which was still active and pending judgment set for 24th June 2024 and hence the Proposed Interested Parties ought to have raised their issues in the aforesaid matter.



8. He stated that the orders that were issued in Kisumu CMCC No 543 of 2018 appointing caretakers to run the affairs of the PAG Kenya Church had limited timelines and had expired. He pointed out that while construing the validity of the said order High Court in Kitale ELC No 134 of 2017, it determined that the said order of the having been interim in nature, had lapsed after one year as is dictated by order 40 rule 6 of the *Civil Procedure Rules*, 2010.
9. He was categorical that it was not in dispute that all the proceedings relating to this matter were stayed pending the hearing and determination of the Appeal and therefore the Proposed Interested Parties were on a fruitless fishing expedition venture intended at wasting the court's time and resources.
10. In opposition to the said application, on 9th May 2023, the 3rd Interested Party swore a Replying Affidavit on his behalf and on behalf of the 1st and 2nd Interested Party. The same was filed on 10th May 2023. They averred that the same was baseless, unfounded and an abuse of the court process for the reason that this matter had been heard and determined thus the court was functus officio.
11. They were categorical that the parties in the suit were now focused in Civil Appeal Application No E025 of 2023 and that a stay of execution of the Judgement of this court had been agreed upon by consent. They asserted that they were aware that the Ex parte Applicant had filed an application in this court disowning all the affidavits he purportedly signed and that the same should first be heard.
12. They stated that the Proposed Interested Parties had yet to be granted leave to be enjoined in this matter and as such they could not apply for and be granted substantive orders in this matter. They pointed out that the 6th Proposed Interested Party was a former General Superintendent of PAG Kenya having been elected into office and served his term.
13. They further stated that the Constitution of PAG Kenya Church had provisions on how individuals seeking to lead the church accede to office and that if the 6th Proposed Interested Party wanted to ascend into office, he ought to have used the mechanism provided for by the Constitution of PAG Kenya and not through a court order. They further added that there was no power vacuum at PAG Kenya Church because since 2018 the church had been running through the office that was put in place in the year 2013 by the members and that the prayer they ought to be seeking was for the church to be allowed to conduct its election.
14. They were emphatic that the order of 24th February 2023 did not direct the closure of the church offices and neither did it direct anyone to run the affairs of the church but that the church's administration was functional and the mission office was operational. They asserted that the order in Kisumu CMCC No 543 of 2018 had since expired and was therefore unenforceable and that the court in Kitale ELC No 1346 of 2017 confirmed that position.
15. They further stated that be that as it may, the issues in Kisumu CMCC No 543 of 2018 were live and pending in HC Petition No 1 of 2023 before this court and that their application was to be better handled in the aforesaid Petition.
16. They contended that the issues in the case Kakamega CMCC No 100 of 2019 had been stayed pending the hearing of the HC Petition No 1 of 2023 formerly Petition No 6 of 2018. They were emphatic that the application herein lacked merit and was misplaced, frivolous, vexatious and should be dismissed with costs.
17. As at the time of writing this Judgment, only the Proposed Interested Parties had filed their Written Submissions.



18. When this matter came up for mention on 14th February 2024 to confirm compliance and/or for further orders and/or directions, the 1st and 2nd Respondent indicated to court that they would not be filing any Written Submissions. The Ruling herein is therefore based on the affidavit evidence of the 6th, 7th and 8th Proposed Interested Parties, the Ex parte Applicant and that of the 1st, 2nd and 3rd Interested Parties and the aforesaid Written Submissions.

Legal Analysis

19. The Proposed Interested Parties submitted that they were duly appointed administrators of the PAG Church having been appointed by the court. They pointed out that as members of the PAG Church, the Judgment entered herein directly impacted on the affairs of the church and the consent order entered by the parties on 19th July 2023 directly impacted on the church as it primarily sanctions continuing illegalities in the management of the PAG Church affairs.
20. This court found it prudent to determine the issue on its jurisdiction to handle the application herein as far as the doctrine of *functus officio* was concerned as raised by the Ex parte Applicant, 1st, 2nd and 3rd Interested Parties who had argued that this court became *functus officio* upon delivering its decision on 24th February 2023.
21. The doctrine of *functus officio* was considered by the Court of Appeal in [Telkom Kenya Limited v John Ochanda \(suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited\)](#) [2014] eKLR, where the court held that:-
- “*Functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon.”
22. This court also had due regard to the Supreme Court case of [Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others](#) [2013] eKLR, which cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, “[The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law](#)” (2005) 122 SALJ 832 which reads: -
- “The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter...The [principle] is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”
23. Further, Section 99 of the [Civil Procedure Act](#) Cap 21 (Laws of Kenya) provides exceptions to the doctrine of *functus officio* in the following terms-
- “Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”
24. It is not contested that on 24th February 2023, P. J. Otieno J who was seized of this court delivered a Ruling in which he allowed the Ex parte Applicant’s Notice of Motion application dated 4th July 2022 in which the Ex parte Applicant had sought orders to issue for certiorari, mandamus and prohibition against the Respondents herein who had registered the 1st, 2nd and 3rd Interested Parties as General Superintendent, General Secretary and General Treasurer respectively contrary to the order of the



court that was issued on 21st July 2022. He further cited the 1st Interested Party for contempt of the said order and directed that the 1st Respondent appear in court on 21st March 2023 at 2.30 pm to show cause why he should not be punished for contempt.

25. It was not clear what issues the 6th, 7th and 8th Proposed Interested Parties wished to be heard afresh and determined after the final decision that was rendered by P.J. Otieno J. However, it was apparent that the application herein was not one that fell within the ambit of Section 99 of the Civil Procedure Act for which this court could be persuaded to re-open the file so as to make corrections.
26. Litigation had to come to an end. Re-opening proceedings by a party who was dissatisfied by a decision of a court was a practice that was frowned upon by the law through the doctrine of *functus officio*. This prevented and/or barred this court from revisiting the matter on a merit-based re-engagement once a decision disposing of the matter in its finality had been rendered.
27. In addition, it would not be prudent for this court to hear and determine the Intended Ex parte Applicants' application herein for the reason that any purported determination in respect of the said application would be tantamount to it sitting on appeal on a decision of a court of equal and competent jurisdiction like it by re-opening a matter that had since been concluded.
28. From the abovementioned cases and provision of the law, it was the finding and holding of this court that the High Court became *functus officio* once the decision of 24th February 2023 was issued and it could not therefore re-open the proceedings herein so as to consider the Intended Ex parte Applicants' application on merit. It could have, however, proceeded to hear any applications subsequent to decisions of other courts of the same jurisdiction like it in this matter if the matter had not been finalised and was still active.
29. Most importantly, it was important to note that it was not in dispute that there was an appeal that had been lodged at the Court of Appeal Kisumu in Civil Appeal Application No E025 of 2023 wherein an order staying the decision of P.J. Otieno J was issued. Paragraph 2 of a consent order dated 29th March 2023 read as follows:

“By Consent

The Ruling of the High Court of Kenya by Honourable Justice P.J Otieno, given at Kakamega on 24th February 2023 in High Court Judicial Review Misc. Application Case No E002 of 2022 at Vihiga, be stayed pending the hearing of the intended appeal...”

30. The Court of Appeal was superior court to this court and was therefore bound by its orders whether the orders were given by the Court of Appeal or such orders were by the consent of the parties because these latter orders, once endorsed and adopted, became orders of the Court of Appeal.
31. Without belabouring the point, this court had no option but to down its tools forthwith for want of jurisdiction.

Disposition

32. For the foregoing reasons, the upshot of this court's decision was that the 6th, 7th and 8th Proposed Interested Parties' Notice of Motion application dated 20th March 2023 and filed on 28th March 2023 was not merited and the same be and is hereby dismissed. Costs of the application will be in the cause.
33. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 30TH DAY OF APRIL 2024



J. KAMAU
JUDGE

