



REPUBLIC OF KENYA



**Mission SOS International Incorporated v Mission SOS Africa INC & 4 others  
(Civil Suit E005 of 2023) [2024] KEHC 9498 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9498 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KILGORIS  
CIVIL SUIT E005 OF 2023  
F GIKONYO, J  
JULY 26, 2024**

**BETWEEN**

**MISSION SOS INTERNATIONAL INCORPORATED ..... PLAINTIFF**

**AND**

**MISSION SOS AFRICA INC ..... 1<sup>ST</sup> DEFENDANT**

**DISHON MBUGWA ..... 2<sup>ND</sup> DEFENDANT**

**GABRIEL G. CHARO ..... 3<sup>RD</sup> DEFENDANT**

**MARGARET NABWOBA ..... 4<sup>TH</sup> DEFENDANT**

**JOSEPH LERINA KIPTEK ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

**1st defendant cannot be sued**

1. By a notice dated December 4, 2023, the 1<sup>st</sup> defendant raised three preliminary objections, namely: -
  - a. That the 1<sup>st</sup> defendant is registered society under the *Societies Act*, and cannot be sued in its name.
  - b. That the plaintiff is not registered under the *Companies Act*, 2015, and therefore cannot sue in Kenya; and
  - c. That, the plaintiff in its submission stated that it is registered society and therefore cannot sue in its own name.
2. Parties filed submissions to substantiate or deny the objections.



## Analysis and determination

### Nature of preliminary objection

3. A preliminary objection is a pure point of law which does not require probing of evidence to prove; and is capable of decimating the suit (*Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] E.A. 696).
4. The 1<sup>st</sup> defendant argued that, it is a society registered under the [Societies Act](#) and can only be sued through its registered officials.
5. In paragraph 3 of the plaint, the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants have been sued as registered officials of the 1<sup>st</sup> defendant. This fact was admitted in the defence and counterclaim. Therefore, the objection is unsuccessful.
6. Similarly, the plaintiff has stated in paragraph 1 of the plaint that it is registered in the USA as a non-profit making corporation and has provided articles of incorporation in support thereof. The 1<sup>st</sup> defendant did not establish the plaintiff cannot sue in Kenya.
7. In sum, the preliminary objections fail and are dismissed. No order as to costs.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS  
ONLINE APPLICATION THIS 26<sup>TH</sup> DAY OF JULY, 2024**

.....

**HON. F. GIKONYO M.**

**JUDGE**

In the Presence of: -

C/A: Leken/Nyangaresi

Wambui for Applicant/Defendants – Present

Dr. Khakula for Applicant/Plaintiff – Present

