



**Okoth v Registered Trustees of Anglican Church of Kenya Maseno East & 6 others
(Civil Case E019 of 2024) [2024] KEHC 15421 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15421 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE E019 OF 2024
RE ABURILI, J
NOVEMBER 28, 2024**

BETWEEN

CHARLES DENNIS OKOTH PLAINTIFF

AND

**REGISTERED TRUSTEES OF ANGLICAN CHURCH OF KENYA MASENO
EAST 1ST DEFENDANT
MARGARET NYAMUOK 2ND DEFENDANT
WILLIAM OPIYO ONDORO 3RD DEFENDANT
JOSEPH OTIENO MUGA 4TH DEFENDANT
DOROTHY BONYO 5TH DEFENDANT
GORDON NYAJONG 6TH DEFENDANT
ELIZABETH OTIENO 7TH DEFENDANT**

RULING

1. On 12/11/2024, the plaintiff's application for conservatory orders on the application dated 11th November, 2024 came under certificate of urgency for consideration and this Court did not find the application urgent. The Court directed that it be served upon the respondents for inter partes directions on 21st November, 2024.
2. On the latter date, the Preliminary Objection dated 18th November, 2024 was canvassed with Mr. Dullo counsel for the respondents submitting the plea that anchors the application for interim orders is similar to another suit filed in Nyando SPM Civil Case No. 153 of 2024 by the same plaintiff against the same parties, seeking the same orders. That in the Nyando matter, the court did not certify the



matter urgent and the Ruling was scheduled for 18th December 2024. Counsel submitted that this is serious forum shopping.

3. It was submitted that these same parties have filed several suits including Judicial Review matter JR E044 of 2023 in this Court due for Judgment on 28th November 2024. That the applicants filed several suits in Nyando Law Courts and even raised fake orders in Nyando Law Courts, purporting to stop elections. Counsel wondered why there was obsession by the Plaintiff with elections of the Church and urged the Court to dismiss this suit so that the parties can go to Nyando Law Courts to canvass the same issues which are live in that court, filed by the same parties.
4. On behalf of the applicant, it was submitted that there was no suit filed by the plaintiff in this case and or pending in Nyando Law Courts. That on 11th November, 2024 the Plaintiff filed notice of withdrawal of suit filed at Nyando Law Courts though the Notice of withdrawal of suit has not been adopted as the order but that he believed that it has taken effect since they had not served the pleadings upon the defendants and were grappling with the issue of jurisdiction.
5. According to the applicant, a preliminary Objection should raise pure points of law, not calling for evidence or ascertainment of certain facts. He submitted that this Preliminary Objection calls for facts, pleadings, Rulings in Nyando SPM CC No. E153 of 2024 between the same parties and Civil Case No. E127 of 2024 between Onyango Maurice Okello vs the ACK Church, Civil Case No. E259 of 2024 and E319 of 2024 plus HCJR No. E44 of 2023; which pleadings are not before this Court and the facts need to be ascertained hence the Preliminary Objection fails the test.
6. On the 1st ground that this suit is res judicata Nyando SPM No. E153 of 2024, it was submitted that no Ruling or determination in that matter has been shown to this court.
7. On ground 2, being the allegation of forum shopping, it was submitted that the matters listed are those filed by other litigants. That the 1st Defendant covers a wide Jurisdiction and elections can be challenged by various congregants. Counsel submitted that this Court can consolidate those suits since the Plaintiffs are different.
8. On the 3rd ground, it was submitted that the 1st defendant is misguided because what is before this court is not a constitutional petition but a civil suit and that the plaintiff was only grappling with the issue of which jurisdiction to hear the matter.
9. Again on jurisdiction, it was submitted that Article 165 of *the Constitution* gives this Court unlimited jurisdiction in civil matters and that they withdrew the Nyando matter on the basis of jurisdiction. Counsel urged this Court to dismiss the Preliminary Objection and allow Prayer No. 3 of our application.
10. In a rejoinder, the respondents' counsel submitted that he expected advocates as officers of the court to be truthful. That the suit in Nyando was allegedly withdrawn after the Judicial Officer raised the issue of multiplicity of cases. On the Judicial Review (JR) matter, it was submitted that Charles Okoth is one of them and that the Court cannot consolidate Judicial Review and Civil.
11. On jurisdiction, it was submitted that the Chief Magistrate's court in Nyando is competent to hear the claim which has been filed before it.
12. The Preliminary Objection is on the injunction which Nyando court refused to grant them, they now filed this suit. This is an abuse of the court process and nothing less.
13. It was submitted that due to a multiplicity of suits, the courts may give decisions which are conflicting and that it will be difficult to enforce. Counsel submitted that since Nyando Nyando has other suits



which are pending similar to this suit, the court can even transfer this suit to Nyando for hearing and final determination.

14. Having considered the Notice of preliminary objection as argued orally by both parties' counsel, it is not in dispute that there are other matters similar to this suit, pending before Nyando law Courts. It is also not in doubt that there is no decision on the said matters, presented before tis court for this matter to be considered to be res judicata those other matters.
15. There is also no evidence that the Nyando matters or matters were withdrawn paving way for this matter which is similar to that which is pending before Nyando Law Courts, has the plaintiff herein as a party.
16. What that would amount to is res sub judice and not res judicata. The latter is provided for under section 7 of the [Civil Procedure Act](#) while section 6 of the same Act provides for res subjudice.
17. The sub judice rule allows stay of proceedings in the subsequent suit and not necessarily dismissal or striking out. The rule is against parties engaging in forum shopping and filing a multiplicity of suits in different suits yet expecting the same results.
18. The JR E044 of 2023 not being a civil suit, and as it is pending judgment, this matter cannot be consolidated with it.
19. Consequently, I would hesitate to strike out this suit and order that the suit herein is hereby transferred to Nyando Law Courts for hearing and determination.
20. I make no orders as to costs.
21. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 28TH DAY OF NOVEMBER, 2024.

R. E. ABURILI

JUDGE

