



**Registered Trustees Mission in Action Nakuru Baby Orphanage v Rigiri & another
(Civil Case 2 of 2023) [2023] KEHC 22731 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22731 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE 2 OF 2023
HK CHEMITEI, J
SEPTEMBER 28, 2023**

BETWEEN

**REGISTERED TRUSTEES MISSION IN ACTION NAKURU BABY
ORPHANAGE PLAINTIFF**

AND

DAMARIS RIGIRI 1ST DEFENDANT

CYRUS KIVUTI 2ND DEFENDANT

RULING

1. This ruling is in respect to the preliminary objection dated February 13, 2023 by the defendants in which they have asked this court to dismiss 'this suit for having been filed by a non-existent entity unknown in law and is thus incapable of suing or being suit.'
2. The applicants /defendants in the affidavit of Cyrus Kivuti sworn on February 20, 2023 deponed among others that the plaintiff had no capacity to sue as it had no known registered trustees for lack of crucial documents.
3. The plaintiff through the affidavit of Slavica Summerscale also known as Slavica Budulica sworn on February 28, 2023 has refuted the above assertion by the defendants indicating that the Trust Deed was registered on November 22, 2011 and she proceeded to attach the same as part of the annexed documents.
4. The court directed the parties to file written submissions so as to dispose the same.
5. Having looked at the submissions critically together with the cited authorities it is now trite law that a preliminary point of law '...raises a pure point of law which is argued on the assumption that all the facts pleaded are correct. It cannot be raised if any fact has to be ascertained and if what is sought is



exercise of judicial discretion.' See *Mukisa Biscuits Manufacturing Ltd vs West End Distributors Ltd* (1969) EA 696.

6. The question of whether the plaintiff has registered trustees or not herein is arguable. I have seen the documents from the Registrar of Documents attached to the rival affidavits. I have also seen copies of the Deed which seems to have been presented for registration.
7. At this juncture it becomes unclear whether the plaintiff is legally registered or not and if it has Trustees. This is an issue which will be determined by way of evidence. It cannot therefore be concluded in the manner the defendants are suggesting namely, by way of a preliminary point of law.
8. In any case if the wrong parties have filed this suit then there shall be recourse in law as the matter progresses or after the conclusion of the same.
9. If that is the case therefore it runs contrary to the principles enunciated in the Mukisa Biscuits authority cited above. In other words, the court is expected to fish evidence within the pleadings to support the application. At that juncture it becomes a factual and not a legal argument. It thus negates the principles of a preliminary objection.
10. Consequently, the court hereby disallows the preliminary objection. Let the issues of registration and leadership be ventilated through the substantive hearing process.
11. The preliminary objection is dismissed. The costs shall await the outcome of the suit.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 28TH DAY OF SEPTEMBER 2023.

H K CHEMITEI

JUDGE

