



**Nduati (Suing for and on behalf of Christian Church International (CCI) v Ndungu (Environment & Land Case E013 of 2023) [2023] KEELC 20817 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20817 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE E013 OF 2023  
LN GACHERU, J  
OCTOBER 19, 2023**

**BETWEEN**

**REUL MURAGU NDUATI (SUING FOR AND ON BEHALF OF CHRISTIAN CHURCH INTERNATIONAL (CCI) ..... PLAINTIFF**

**AND**

**JAMES MUIRURI NDUNGU ..... DEFENDANT**

**RULING**

1. The Plaintiff herein Reul Muragu Nduati (Suing for and on behalf of Christian Church International (CCI) filed this Originating Summons on 12<sup>th</sup> May 2023, appearing in person and sought for various declarations among them;- whether the Plaintiff is entitled to be declared as the proprietor of the entire land parcel registered as Land Reg. No. Mitubiri/Nanga Block 2/244 (Grey stone Holdings) by virtue of purchase registration and development; whether the Defendant/Respondent should be compelled to return the land parcel deeds and all other documents entailing the said land parcel No. Mitubiri/Nanga Block 2/244(Grey Stone Holdings) back to Christian Church International Diocese of Chania (Thika).
2. The above suit was first filed at Thika ELC being ELC No. E016 of 2023. The Defendant James Muiruri Ndungu filed a Notice of Appointment wherein he appointed the Law Firm of Wangui Gachango & Associates Advocates to act for him. He also filed a Notice of Preliminary Objection to the effect that;
  - a. The Court lacks territorial jurisdiction to hear and determine this suit.
  - b. That the Plaintiff has no *locus standi* to institute the Instant suit.
  - c. The entire suit amount to total abuse of the Court process and time and should be struck off for lack of merit



3. This Notice of Preliminary Objection is dated 13<sup>th</sup> June 2023, and was filed on 14<sup>th</sup> June 2023 at Thika ELC.
4. On 15<sup>th</sup> June 2023, the suit was transferred to this Court from Thika ELC since the suit property Mitubiri/Nanga Block 2/244, is situated in Murang'a County. Therefore, with the transfer to this Court, ground No. (a) that the Court lacked territorial jurisdiction to hear and determine the suit was overtaken by event. When the suit was transferred to this Court, it was given No. Murang'a ELC OS E013/2023.
5. The Preliminary Objection proceeded on grounds No.(b) and (c) and the same was argued through written submissions.
6. The Defendant/Objector filed his written submissions on 10<sup>th</sup> August 2023, through Wangui Gachango & Associates Advocates and submitted on the two issues of;- lack of *locus standi* to institute the suit and the suit being an abuse of the Court Process.
7. On the issue of lack of *locus standi*, the Defendant/Objector submitted that the Plaintiff has filed the suit alleging to be suing for and on behalf of Christian Church International (CCI). It was submitted that was a mere allegation as there was no authority from the said Church to support that claim. Therefore, the entire suit is incompetent and the Plaintiff has no *locus standi* to file the suit. That the Plaintiff never availed any proof of being a trustee or any written resolution from the Church authorizing him to institute this suit on its behalf. The Objector relied on the case of *Pius Watere D. Maina (Suing for and on behalf of Baptist Convention of Kenya) vs Director General – Kenyan Urban Roads Authority & 5 Others* (2020) where the Court held; -
  - “ 6. I agree with the assertion by the plaintiff’s advocate that a Society such as a church, not being a legal person, can only sue or be sued through legally designated persons such as trustees.
  7. This suit was filed by way of plaint by one PIUS WATENE D. MAINA, who said that he was a trustee who was suing for and on behalf of the Baptist Convention of Kenya. Before I move to any other issues, it is pellucid that he is not suing on behalf of the trustees and he does not provide any evidence that the trustees had authorized him to institute this suit.

Surely, one person can never constitute trustees.
8. He also relied on the case of *Julian Adoyo Ongunga vs Francis Kiberenge Abano*, Migori Civil Appeal No. 119 of 2015, where the court also held;
 

“ Further, the issue of *locus standi* is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without *locus standi* in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. *locus standi* relates mainly to the legal capacity of a party. The impact of a party in a suit without *locus standi* can be equated to that of a Court acting without jurisdiction. Since it all amounts to null and void proceedings”.
9. It was his further submissions that the Plaintiff had no *locus standi* to bring this suit as he did not present any evidence of authorization from Christian Church International (CCI) to bring the suit on its own behalf. Further that the Plaintiff had no authority or right to sue a person who is not the registered owner of the suit property.



10. On whether the suit amounts to a total abuse of the Courts process and time and that it should be struck off for lack of merit, the Defendant/Objector submitted that the suit herein is intended to embarrass fair trial and is an abuse of the Court process. That it is the duty of the Court to maintain its integrity in the administration of justice by stopping litigations brought for ulterior considerations. Further that in order to efficiently utilize Judicial resources and enhance timely disposal of proceedings, as well as save on costs, the Court should dismiss the entire suit and/or strike it out.
12. The Plaintiff through his Advocates Thaama Mbugua & Associates Advocates filed his submissions in opposition to the Preliminary Objection on 22<sup>nd</sup> August 2023, and submitted that the principles of equity provides that the courts ought to look at the substance over form.
13. The Plaintiff relied on Article 159 of the *Constitution of Kenya* 2010, which provides that in exercising judicial authority, Courts shall not pay undue regard to procedural technicalities. That since the Originating Summons had been filed by the Plaintiff in Person, the authority to plead on behalf of the Church was left out inadvertently, but the same was cured by a Further Affidavit dated 9<sup>th</sup> August 2023.
14. It was further submitted that the Defendant/Respondent has been rightly sued for reasons stated in the Originating Summons, and the issues raised in the Preliminary Objection can only be confirmed at the hearing and determination of the suit. Further that issues of merit are not points of law, and can only be determined after hearing and determination of the suit. It was further submitted that the Defendant/Objector is rightly sued as he is the perpetrator and that the Church cannot sue itself as Greystone Christian Church belongs to Christian Church International (CCI). The Plaintiff urged the court to dismiss the instant Preliminary Objection dated 13<sup>th</sup> June 2023, with costs.
15. This Court has considered the whole suit, and the instant Notice of Preliminary Objection and the rival written submissions and finds as follows; -

The Defendant/Objector has raised a Preliminary Objection on two points; Lack of *locus standi* and the suit being an abuse of the Court process.

A Preliminary Objection was described in the case of *Mukisa Biscuit Manufacturing Ltd vs West End Distribution Ltd* Civil Appeal No. 9 of 696 (EACA) 1969 EA 696;

a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

Further Sir Charles Newbold P held;

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue and this improper practice should stop”.

From the above description, it is clear, that a Preliminary Objection is only raised on pure points of law and it cannot be raised if facts have to be ascertained.



16. In the case of *Nitin Properties Ltd vs Jagjit Singh Kalsi & Another*. Civil Appeal No. 132 of 1989 2 (1995 – 1998) 2EA 257, the Court held;

“ A Preliminary Objection raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of Judicial discretion ”

Again, the case of *Quick Enterprises Ltd vs Kenya Railways Corporation*, Kisumu HCC No. 22 of 1999, the Court held;

“When a Preliminary Points are raised, they should be capable of disposing the matter Preliminary without the Court having to resort to ascertaining the facts from elsewhere apart from looking at the Pleadings”

Having established what a Preliminary Objection is, the Court will now determine whether what has been raised herein amounts to a Preliminary Objection as per the description of Preliminary Objection in *Mukisa Biscuit case*(Supra).

17. It is the Defendant/Objector’s submissions that the Plaintiff herein lacks *locus standi* to institute this suit because the Plaintiff had not attached authority from the said Christian Church International (CCI) authorizing him to file this suit. This fact was countered by the Plaintiff who admitted to having filed the suit initially in person and inadvertently omitted to attach the authority to plead. The same was filed in Court through a Further Affidavit filed on 10<sup>th</sup> August 2023. The said authority is dated 4<sup>th</sup> May 2023. The Originating Summons was filed on 12<sup>th</sup> May 2023. The authority to plead was thus issued before the suit was filed. However, it is clear that for an objection to qualify to be a Preliminary Objection, there should be no ascertainment of facts. The Court herein had to first peruse the Court file to check on whether the authority is attached or not. That is ascertainment of facts.
18. Further the Defendant/Objector submitted that the Plaintiff did not avail evidence to proof that he is a trustee. Availing that evidence would be through attachment of documents and that would amount to ascertainment of facts. It was also the contention of the Defendant/Objector that the Plaintiff had no right to sue a person who is not the registered owner of the suit property. That the Plaintiff sued James Muiruri Ndungu in his personal capacity, but according to the Green card, JMN3, the suit land is registered in the name of Greystone Christian Church.
19. Clearly, this is what is called ascertaining by evidence. By submitting on the annexures which forms part of the exhibits to be considered, then the Defendant/Objector is calling the Court to ascertain facts. This objection therefore is not based on pure point of law, but is based on ascertainment of facts. This can only be done during the hearing of the main suit where evidence would be adduced and exhibits produced. In the case of *Oraro vs Mbaya* (2005) IKLR 141, the Court held as follows:-

“ A Preliminary Objection correctly understood is now well defined as and declared to be point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a Preliminary Objection yet it bears factual aspects of calling for proof or seeks to adduce evidence for its authentication is not as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a Preliminary Objection”



20. The issue of whether the suit property is registered in the name of Greystone Christian Church on behalf of the Plaintiff or otherwise is a disputed fact. That can only be ascertain by investigation of facts and thus it is not a pure point of law.
21. On whether the suit is a total abuse of the Court process or not, that can also be ascertained after evidence has been called, and then the said facts and evidence be interrogated by Court and thereafter the Court to make a determination. This is not a pure point of law and cannot be raised as a Preliminary Objection at this juncture.
22. Having analysed what amount to a Preliminary Objection and having considered relevant authorities herein, the Court finds that what the Defendant/Objector has raised is not a pure point of law and this Notice of Preliminary Objection dated 13<sup>th</sup> June 2023, is not merited and the same fails and is thus dismissed entirely, with costs to the Plaintiff herein.
23. Let the suit proceed for hearing and be determined on merit.
24. Consequently, the Preliminary Objection dated 13<sup>th</sup> June 2023, be and is hereby dismissed entirely with costs to the Plaintiff.
25. It so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023.**

**L. GACHERU**

**JUDGE**

