



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELC CASE NO. 197 OF 2021

VERONICA WANJIRA MARINGA & 26 OTHERSPLAINTIFFS/APPLICANTS

VERSUS

A.C.K BUXTON DIOCESE OF TAITA TAVETA.....1ST DEFENDANT/RESPONDENT

COUNTY GOVERNMENT OF MOMBASA.....2ND DEFENDANT/RESPONDENT

RULING

The 1st defendant raised a preliminary objection on the grounds that the 1st Defendant as a Church does not have legal capacity under Section 3 of the Societies Act to sue or be sued in its own name and the proceedings herein against the purported 1st Defendant are bad in law and ought to be struck out.

They submit that the point of law raised is that the 1st Defendant as a Church does not have legal capacity under section 3 of the Societies Act to be sued in its own name and therefore the purported proceedings as against the 1st Defendant are bad in law and ought to be struck out with costs. They relied on Peter Ngugi Geoffrey and 3 Others vs Muthini SPA Church (2019) eKLR in which the court stated as follows at paragraph 9.

In the instant matter, the suit was filed against a religious organization. It is not a corporate body which would then mean it would be sued as a legal personality. That being so it lacks the capacity to be sued in its own name? A society can only sue or be sued through its officials. This is the law. Having failed to sue the officials or trustees of the Defendant or the specific members of the defendant find that the preliminary objection as raised is a pure point of law.

The Court then went ahead to strike out the claim. They also relied on the case of Islamia Madrassa Society vs Zafar Niaz & 8 others (2021) eKLR in which it was held that it is trite law that a society under the Societies Act is not a legal person with capacity to sue or be sued. A society can only sue or be sued through its officer's due orders.

This court has considered the preliminary objection and the submissions therein. The issue for determination herein is, whether this matter is whether the 1st defendant has the locus standi to be sued. A Preliminary Objection, as stated in the case of Mukisa Biscuit Manufacturing Company Ltd vs West End Distributors Ltd (1969) E.A 696,

"..... 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"

In the same case, Sir Charles Newbold said:

"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 had to be ascertained or if what is sought is the exercise of judicial discretion".

J.B. Ojwang, J (as he then was) in the case of Oraro vs. Mbajja (2005) e KLR had the following to state regarding a 'Preliminary Objection'.

"I think the principle is abundantly clear. A "preliminary objection", correctly understood is now well identified as, and declared to be the point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be preliminary objection, and yet it bears factual aspects 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. I am in agreement that, "where a court needs to investigate facts, a matter cannot be raised as a preliminary point."

The issue as to whether or not the 1st defendant has locus standi to be sued is therefore properly raised as a Preliminary Objection and the court will consider the same.

In the originating summons the 1st Defendant is sued as ACK Buxton Diocese of Taita Taveta. In the pleadings the Applicants describe the 1st Defendant as a church. In the case of Peter Ngugi Geoffrey & 3 Others vs Mithini SDA Church (2019) eKLR the court held that;

In the plaint the Defendant is described as a church registered under the Societies Act. The plaint has not exhibited any form of registration in respect to the Defendant's entity. It is trite that a non juristic person is incapable of suing or being sued in its name. If indeed the Defendant is registered under the Societies Act, then the right thing was to have it sued through its officials. None has been disclosed.

I find that in the instant matter the suit was filed against a church and or religious organization. This is not a body corporate and so it lacks the capacity to be sued in its own name. a church such as this would be registered as a Society which can only sue or be sued through its officials. Having failed to sue the officials or trustees of the 1st Defendant, or the specific members of the 1st Defendant I find that the Preliminary Objection as raised is merited and it is allowed. The application and suit is struck out as against the 1st Defendant with cost to the 1st Defendant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 22ND DAY OF FEBRUARY 2022.

N.A. MATHEKA

JUDGE