



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CONSTITUTIONAL PETITION NO. 46 OF 2014

1. ROBWA C. KIMKUNGU
2. BERNARD ODHIAMBO ADUDA
3. ROSEMARY KIMARUA
4. PAUL NGIGE IRERI
5. GRACE WUGANGA (All suing for and on behalf of
the members of Jesus Celebration Centre) APPLICANTS

VERSUS

1. REDEEMED GOSPEL CHURCH INC.
2. REDEEMED GOSPEL CHURCH REGISTERED TRUSTEES
3. BISHOP ARTHUR KITONGA
4. LAND REGISTRAR, MOMBASA
5. LAND REGISTRAR, MACHAKOS
6. LAND REGISTRAR, EMBU
7. LAND REGISTRAR, KISUMU
8. LAND REGISTRAR, SIAYA
9. LAND REGISTRAR, KIRINYAGA
10. REGISTRAR OF TITLES
11. MINISTRY OF HOUSING AND URBAN DEVELOPMENT
12. NATIONAL LAND COMMISSION
13. COUNTY GOVERNMENT OF KAJIADO

AND

1. EQUITY BANK LIMITED

2. LOW SHAD INVESTMENTS LIMITEDINTERSTED PARTIES

RULING

INTRODUCTION

[1] This is a ruling on a Preliminary Objection dated 31st July 2014, the particulars whereof were given in a notice therefore by Counsel for the 1-3 Respondents as follows:

1. *The petitioners have no **locus standi** to sustain or prosecute this application/petition for and on behalf of Jesus Celebration Centre.*
2. *The matters raised are not within the realms of Rights and Fundamental Freedoms and there is no incident (s) of denial violation, infringement or threat thereto.*

[2] By their petition dated 14th July 2014, the petitioners pray, principally, for a **Declaration**, in enforcement of the fundamental rights and freedoms of petitioners to own property under Article 40 of the Constitution, that the suit properties being parcels of land registered or due for registration in the names of the 1st and 2nd respondents belong to the Jesus Celebration Centre congregation and an **Order** to the 4th - 10th Respondents to effect the registration of proprietorship of the properties in the name of Jesus Celebration Centre Trust.

[3] Simultaneously with the Petition, the Petitioners filed a Notice of Motion dated 14th July 2014 for interim injunctive relief pending the hearing of the petition to restraining the 1-3 Respondents from interfering with the quiet and peaceful occupation and use of the suit properties by the petitioners and congregation of the Jesus Celebration Centre.

RESPONSE

[4] The Respondents filed a replying affidavit sworn by the Secretary General of the 1st respondent on 25th July 2014 denying the *locus standi* of the petitioners and any violation, or threat thereof, of the rights of the petitioners as alleged in the Petition.

SUBMISSIONS ON THE PRELIMINARY OBJECTION

[5] Counsel for the parties – Mr. Adere for the 1 – 3 Respondents; Mr. Migos Ogamba for the 1st Interested Party; and Dr. Khaminwa for the Petitioners, made submissions as follows, and ruling was reserved:

“Mr. Adere:

[Notice of Preliminary Objection has been given.] There are two grounds:

1. *The 5 petitioners have no **locus standi** to institute the petition.*
2. *Nature of the petition not in the realm of rights and fundamental rights and if they are, there is no denial, infringement or threat of infringement.*

Petitioners describe themselves as members of Jesus Celebration Centre, at p.3 for members of JCC. They admit that it is a Ministry within the Respondent Church. A ministry is part and parcel of the mother church. JCC stands for Jesus Celebration Centre and it is part of

the Redeemed Gospel Church, the 1st Respondent. I refer to the Replying Affidavit of the Respondent by Dr. Stephen Makau at pp. 1-5 of the annexures. The petitioners are members of the 1st respondent. One cannot sue a mother church when one is part and parcel of the organization.

Paragraph 2 of the Petition

1st Respondent is a society, as a church. At p.8 paragraph 29 as autonomous ministry of the 1st respondent. It is not a separate entity from the 1st Respondent. Paragraphs 38 39 at p.12- The petitioners have no qualms with the registration of properties in the 1st respondent.

The thrust is on the properties not on the faith of the Church. At paragraph 49 at p.14 power struggle between JCC and the 1st respondent. The Petitioners seek to establish themselves as a separate church from the mother church, the 1st respondent.

Prayers of the Petition (a) [seeks] Declaration of breach of property rights and consequential orders of registration.

A ministry cannot state that it bought the properties for itself. The petitioners do not state that they are denied opportunity to pray.

Locus standi

As a member of the faithful one cannot sue the church for properties. The properties were bought by contributions of all the members of the church and well wishers including Muslims. I refer to the Replying affidavit at p.8.

The applicants have not shown that they are capable of owning any property because JCC is not a registered body outside the Redeemed Gospel Church (RGC), the 1st Respondent. I refer to the Act. There is no registration certificate. The constitution of JCC. Section 4 of the Societies Act, JCC is not a lawful society because they are not registered.

I refer to section 2 of the Act on the meaning of 'society' and 'unlawful society'. I also refer to section 6 of the Act. A person who has not shown that they are covered by Societies Act cannot petition to bar or injunct any person including the 1st respondent.

There are no constitutional rights which have been violated and there is no threat which justifies the present proceedings being called a constitutional petition. The petitioners have nothing to show that their rights are being breached. They do not have any proprietary rights in the properties that they seek to have registered in their names.

The 1st Respondent is just doing what it is entitled to do with their properties. The registered owners have an indefeasible title, and others have letters of allocation. They have not stopped anyone from accessing the properties for prayers.

The petition is not brought under breach of fundamental rights. The thrust of the petition is Article 40 of the Constitution on the right to own property. The petitioner has not shown that the respondents have interfered with their rights under Article 40. For as long as they are JCC they are confessing that they belong to the 1st respondent church.

The issue of the name of the 1st respondent as unknown entities in law. If the 1st respondent cannot in law own a church, how can JCC which is an unknown legal entity claim that its rights to property has been breached by the mother church.

The RGC and the RGC Kavutiri are alternative names, short forms of RGC Incorporated. JCC is a member of the 1st respondent.

The 5 petitioners own property within the family of RGC incorporated. For lack of their legal identity of the petitioners they have no locus standi.

Article 22 – They have not sued as individuals. The Petitioners do not sue outside the JCC. The petitioners cannot sue as a group which is not a legal entity or an unlawful society or unregistered society or grouping. If they sued as individuals they could sustain a case for all members as individuals and not as JCC. The petitioners claim right to property not right to access the church.

Dr. Khaminwa

Mukisa Biscuits' case.

Petition, affidavits and replying affidavits show facts are disputed. A Preliminary Objection is only valid where facts are not disputed.

Property ownership, disposition etc. is a constitutional issue under article 40 of the Constitution.

Article 22 is very broad. An individual has a right to commence proceedings before the High Court under Article 23 with respect to a bundle of Rights in the Bill of Rights.

The Petitioners claim that their property rights are under threat of being violated by the 1-3 Respondents. They pray to be heard on the merits. The factual position is set out in the petition and Notice of Motion. The Constitutional Court may ask parties to adduce evidence if necessary

The legal authorities by the petitioners show that jurisdiction of the court in fundamental rights can be extended by the court by the Court. Property rights are fundamental rights. I specifically refer to **Farooque v. Secretary Ministry of Immigration** (2001) LRC. Fundamental rights and **locus standi** courts prefer to hear the matter in full. I refer to Susan Marks and Andrew Clapham, **International Human Rights Lexicon** international law is against mass evictions. Religion matters at p.5 is also Human Rights.

Jurisdiction in Human Rights Litigation and Remedies.

Petition seeks declaratory orders. I refer to interpretation of Bill of Rights authority that the court should not interpret the Bill of Rights in a narrow manner. I refer to **Modern Land Law** by Mark Thomson. Registered owner may be challenged. People in possession may claim rights. People who have made contributions to purchase land can claim rights.

Law Lexicon to show definition of property. I rely on the authorities filed by the Petitioner before the court. I also refer to two decision in **Rev. Bishop Samuel Muriithi Mugo v. Hon. Njoroge Michuki** Pet. No. 681 of 2006 and **Jackson Kipkemboi Kosgey v. Mugo** CA No. 145 of 2007 for the proposition that matters of the church are sensitive and should be heard on the merits to avoid any violence that may result.

The JCC is a trust deed dated 2/12/13 and registered on 10/12/13. The Petitioner shall continue to make payment to the Bank with respect to 3 properties under charge. The properties involved are vast in the billion of shillings throughout the country. The court should hear the petitioner's side of the story. The P.O. is not based on any section of the law. Locus in fundamental rights – the courts are required to expand jurisdiction to hear the parties. The question of locus may call for adducing evidence on facts which are on dispute.

Mr. Ogamba:

We are not involved in the dispute between the Petitioner and the 1-3 respondents. The loan by the bank was given (at Paragraph 7 of replying affidavit of the Interested Party) to both the Petitioners and the 1-3 respondents as one entity redeemed Gospel Church Incorporated where JCC was at the time part and parcel of the Church. The last document of the Petitioner is a Bank Statement from Equity RGC JCC Account. The Bank does not see the petitioners and the respondents as separate entities. I do not consider that the petitioner has locus. The letter annexed to the bundle in the Petition, there is bar to the petitioners from accessing the church. Article 40 – property does not vest in the petitioners. There is no document in the petition saying that they do not wish to be members of members. Declarations will affect the Bank’s position vis a vis the charge.

*I refer to **Leree & 800 Ors. v. AG.**, HCCC NO. 115 of 2006 Nairobi, Ole Keiwua, J. locus standi depends on evidence that they have been denied access to the property. The removal of the lender does not affect the members of the Society.*

Dr. Khaminwa:

The authority of Ole Keiwua, J. has no standing. It is of 2006 before the new constitution of Kenya 2010.

Mr. Adere

The issue of locus is the relevant matter at this moment. The church wrangle before the court is what the court should consider not other wrangles in the country. The Petitioners have no locus standi. The trust deed at the petition does not give the petitioners standing outside the RGC. The trust deed enables persons to own property for the church. The trust deed does not support any church.

The authorities of Court of Appeal No. 145 of 2007 does not relate to locus standi. Nyamu, J in the High Court at p.12 – substance of the main petition was security and order in Full Gospel Church. It is not about locus standi as in the present case. I agree with Farooque v. Secretary Ministry of Immigration – there was sufficient locus as secretary General. The case related to sufficient interest. Constitutional issue of grave importance. The applicants had locus standi as a registered society. In the present case, the petitioners have no complaints against the mother church. JCC is part of RGC, the respondent.

Kenya has its own standards. The land laws have given the direction as to how one can challenge Article 40 and the Land registration act and the Land Act. Title is indefeasible. The rights of the petitioners have not been violated. I pray for the striking out of the Petition with costs to the 1-3 respondents.”

ISSUE FOR DETERMINATION

[6] Whether the Petition and Application made there-under will be struck out on the grounds of the Preliminary Objection that the petitioners lack **locus standi** and the matters raised do not belong to the realms of fundamental rights and there are no incidents of denial or violation or threats thereof.

DETERMINATION

[7] In my considered view the issue raised in this preliminary objection has a simple answer that the objection is improperly based on disputed facts. In the **locus classicus** on preliminary objections, **Mukisa Biscuits Co. v. West End Distributors Ltd**, (1969) EA 696, 701, Newbold, P. with whom Duffus, V-P

and Law JA. agreed:

“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 issues. This improper practice should stop.”

[8] At paragraph 1 of the petition the petitioners describe themselves as follows:

“1. The petitioners are all adult males and females citizens of the Republic of Kenya resident and working for gain in Mombasa within the republic of Kenya. The petitioners institute this Petition pursuant to the provisions of Article 22 of the Constitution that allows for individuals to petition this Honourable Court on behalf of others for the petitioners and those they represent are all God fearing citizens who ascribe to Jesus Celebration Centre a Christian Ministry that was formally under the Umbrella of the 1st respondent which was registered under the Societies Act (cap 108) of Laws of Kenya (“SA”) and who exercise and propagate their religious practices and operations both nationally and internationally”.

[9] Article 22 has an expanded regime of *locus standi* in constitutional matters of enforcement of rights, as with constitutional interpretation matters under Article 285, as follows:

“22. (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by–

(a) a person acting on behalf of another person who cannot acting their own name;

(b) a person acting as a member of, or in the interest of, a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members.”

[Emphasis mine]

[10] The facts giving arise to the cause of action are set in paragraphs 29-37 of the petition as follows:

“THE FACTS LEADING TO GIVING RISE TO THE PETITION HEREWITH

29.AT all material times and Petitioners and congregation they represent who are Kenyan men and women of various ages are all members of the Christian faith were members of a autonomous Ministry of the 1st Respondent called Jesus Celebration Centre (“JSC”) which Ministry was conceived and is the brain child of one Pastor Wilfred Lai, as he then was, the originated in the City of Mombasa within the Republic.

30.THAT the 1st Respondent being a society has a Constitution that allows for the creation and management of the 1st Respondent in a structure in which local Church’s were responsible for all aspects of their operation including management, development and the generation of their own income and set parameters on how a percentage of the income generated was to be distributed to the 1st Respondent’s headquarters in Nairobi.

31.THAT under the Constitution of the 1st Respondent each church was required to raise its own

- funds from its members by way of tithes and offerings made by the Church's members and well wishers and that a portion of the money generated should be forwarded to the 1st Respondent's head office in Nairobi on a monthly basis.*
32. **THAT** *the money generated was for among other things meetings the overheads of the Local Church, salaries, the purchase of property and equipment to be used by the members of the local Church to further develop the infrastructure of their respective local Church.*
33. **THE** *Petitioners aver that they received no assistance from the 1st Respondent's head office to acquire the properties and infrastructure that their respective Church's used.*
34. **THE** *Petitioners aver and hold that in essence each local Church was a franchise of the 1st Respondent for each local Church received no financial support from the 1st Respondent's Headquarters in Nairobi and as such as to what assets to purchase to further develop the local Church was done at the instigation of the local Church congregation without any assistance from the 1st Respondent's Headquarters in Nairobi.*
35. **THE** *Petitioners aver that as a result of their contributions and fund raising the congregation of the Jesus Celebration Centre were able to acquire the following properties [suit properties set out]*
36. **THE** *Petitioners aver that there is no legal registered body called Redeemed Gospel Church or Redeemed Gospel Church Kavutiri and as such the properties have been irregularly registered in the names of non-existent bodies.*
37. **THE** *Petitioners state that on the said properties they the congregation of JCC proceeded to construct lasting permanent structures in further development of their respective local Churches."*

[11] The thrust of the petitioners' claim is set out in Ground No. 3 of the Notice of Motion as follows:

3. The Petitioners and the congregation of Jesus Celebration Centre were until recently, though autonomous, affiliated to the 1st respondent and they preached under the banner of the 1st Respondent however the property the acquired was without contribution and or help of the 1st and 2nd respondents and or its officials was registered in the name of the said 1st and 2nd respondents and nonexistent legal entities called redeemed Gospel Church and redeemed Gospel Church Kavutiri as the petitioners and the congregation of Jesus Celebration Centre believed that the properties being registered in the names of the 1st and 2nd respondents was to the benefit of the congregation and that the 1st and 2nd Respondents would hold the properties in trust on behalf of the congregation who contributed to the acquisition of the said properties.

[12] The 1-3 Respondents filed a Replying Affidavit sworn by Dr. Stephen Makau Kanyia, the General Secretary of Redeemed Gospel Church Inc the 1st respondent, on 25th July 2014 in which it is set out their principal defence at paragraphs 2-7 as follows:

"AFFIDAVIT IN REPLY

2. **THAT** *I am advised by our advocates on record that:-*
- a. *The issues raised in the petition and subsequent application as presented to this Honourable Court are neither constitutional nor relate to Bill of Rights or breach of fundamental freedoms, but about properties of our church.*
- b. *The petitioners have no locus standi to sustain the petition/application.*
3. **THAT** *there is no autonomous society organization or association with independent registration or existence known as Jesus Celebration Centre outside Redeemed Gospel.*
4. **THAT** *as a church Redeemed Gospel Church Inc has acquired and owns and/or is in the process of acquiring and owning a number of properties in several parts of Kenya and some are registered or will be registered in its name and those premises are open to all and sundry who profess, as we do, the Statement of Faith and all that is set out in our church's constitution as*

amended from time to time. The relevant Articles of our current constitution are in the bundle of documents annexed hereto.

5. **THAT** while the registered name of the 1st respondent is as stated in the title above same has in various documents including land titles have been referred to in common parlance as simply Redeemed Gospel Church, or by its initials of RGC, or even as Redeemed Gospel Church Kavutiri to identify the geographical situate of that particular branch of the same church, or as Redeemed Gospel Church JCC to mean the same church at Jesus Celebration Centre.
6. **THAT** the acquisition and developments of various properties named or not named in these proceedings that are in the name of the church (RGC) were done with the material and non-material support by and contributions of members of the church everywhere within the outside Kenya and a fortiori by nation and regional officials of the church and by people of goodwill from all over the world.
7. **THAT** the 1st, 2nd and 3rd respondents have not sent out or denied anybody access to our church premises or places of worship, and not even the bishops or pastors who have openly declared hostilities to us or on their own accord left our church have been barred from so accessing our church facilities.”

[13] It is clear that the facts of the case as set out by the petitioners are disputed by the respondents: the autonomous nature of the Jesus Celebration Centre and or its registered status; the issue of registration status of the 1st and 2nd respondents; the acquisition and developments on the suit properties and whether the petitioners have been denied occupation and or access to the suit property. In such circumstances it is, in accordance with authority of **Mukisa Biscuits**, improper to raise a preliminary objection.

[14] The question in the second limb of the Preliminary Objection, that is whether the matters raised in the petition belong to the realm of fundamental rights and whether there has been violations of such rights, requires the court to take evidence from the parties. At the outset, it is indubitable that a claim for property on the ground of contribution to its acquisition is a claim to a right in property protected under the Constitution of Kenya. Whether on the facts such acquisition is proved is another matter.

[15] On the question of standing, it is sought to have the properties in which the petitioners claim ownership registered in the name of Jesus Celebration Centre Trust and a Trust deed was alleged to have been registered. Whether the registration of the trust is sufficient for purposes of giving legal entity to Jesus Celebration Centre is a matter for determination upon full argument.

[16] Moreover, the petition is expressed to be brought by the petitioners as members of the JCC congregation. As properly conceded by counsel for the 1-3 respondents, Mr. Adere, the petitioners “*could sustain a case for all members as individuals...*” It is counsel’s submission that JCC must be registered under the Society’s Act for the petitioners, as members of its congregation, to sustain this petition that, for reasons shown below, the court is unable to accept.

[17] A Congregation is different from the institution at which it worships, and members of a Church may as distinguished from the Church itself bring proceedings under the Bill of Rights for enforcement of their rights even against the church itself especially where denial or threat freedom to use or access church property, as in this case, is asserted by the members and denied by the church. Indeed, such a dispute on the facts calls for the hearing of the suit on its merits rather than determination at preliminary stage level.

[18] Further, in view of the liberalized rules on **locus standi** under Article 22 of the Constitution the respondents’ objection cannot succeed. Article 22 grants standing to “**a person acting as a member of, or in the interest of, a group or class of persons**”. There is no requirement under Article 22 that the group of persons on whose behalf the petition is brought be registered under the Society’s Act or other legislation or rules. Indeed, it is conceivable that such a group or class of person will be an unregistered group of, say, a congregation in a church, parents in a school, patients in a hospital, hawkers or traders in a market, persons with certain disabilities, pupils or students in a school or college or university, etc. It would be wholly to disenfranchise such groups by taking away their constitutional right to access justice under Article 48 and 50 (1) of the Constitution of Kenya to deny them standing before the court on account of their unregistered status. The test in my view is in the common interest of the group or class in

the enforcement of their rights under the Bill of rights which are identifiable, irrespective of whether the group is formally registered or not.

[19] As shown by the Tanzanian decision of *Rev. Christopher Mtikila v. The Attorney General*, High Court of Tanzania at Dodoma, Civil Case No. 5 of 1993 (Unreported), where Lugakingira, J. spectacularly dealt with a question of standing in constitutional litigation, the broadening of *locus standi* rules started long before the Constitution of Kenya 2010, it may be observed that the court will not lightly deny standing in constitutional matters. Case-law authorities before the promulgation of the Constitution of Kenya 2010 limiting standing must be taken to be perfected to the extent of their inconsistency by the provisions of the Article 22 of the Constitution

[20] With respect, I consider that to subject the right to approach the Constitutional Court under Article 22 of the Constitution of Kenya 2010 to requirements of registration as a society under the Society's Act would be to erode or dilute the said constitutional right. As Lugakingira, J. in the *Mtikila* said of a law that required permits of District Commissioner to enable exercise of constitutional right to peaceful assembly and procession –

[21] As the 5-Judge Bench of the High Court (Mwera J. (as he then was), Muriithi, Nzioka and Tuiyott JJ. and Mwongo J. (as he then was) in *Randu Nzai Ruwa & 2 others v The Secretary, Independent Electoral and Boundaries Commission & 9 Others* [2012] eKLR (MRC No. 2 case), in considering the scope of Article 22 of the Constitution of Kenya, 2010 said:

“79. As earlier noted, Article 22 (2) (b) entitles:

“a person acting as a member of, or in the interest of, a group or class of persons”

to seek enforcement of the Bill of Rights. The “Group” rights at a certain level may be distinguished from “association” rights under Article 22 (2) (d). An “association” is defined in the concise Oxford Dictionary as:

“[an] organised body for a joint purpose”

Thus, a group of persons who may not be organised for a joint purpose may bring an action through one or more of them under Article 22(2) (b). If they can be described as an organised body for a joint purpose, they will fall into the category of an association seeking to rely on Article 22 (2) (d), and may be limited by its organisational objects. The objects or purpose of a group may determine the locus standi of the Applicants. Under Article 3(1) of the Constitution “every person has an obligation to respect, uphold and defend this Constitution”. So, if the objects or purpose of a group or class of persons or association are contrary to the Constitution; their very existence would have to be tested under other parameters as to its constitutionality, because under Article 2 the Constitution is the “supreme law” and “any law...and any act or omission in contravention of this Constitution is invalid.”

A church congregation, in my view, while meeting for the joint purpose of worship may not be ‘organized’ as to become an organization which must be registered under the Societies Act to be able to litigate its members’ constitutional rights; it would have standing under Article 22 (2) (b) of the Constitution of Kenya, 2010..

[22] Of course, when it is sought to have property registered in the name of a non-person entity, such an entity must have some legal recognized existence. I am not prepared at this stage to accept a proposition that the registration of Jesus Celebration Centre as a Trust is insufficient for purposes of seeking registration of the suit properties in its name, as sought by the petitioners. The Jesus Celebration Centre is shown to have been registered as a Trust under Trust Deed dated 2nd December 2013 and registered by the Registrar of Documents on 23rd January 2014 upon payment of stamp with the Founding Trustees

being Bishop Wilfred Lai, Bishop Charles K. Muoki, Bishop Mark Kegochi, Bishop Kames K. Kimemia, and Pastor Justus Kimeu.

[23] It may be that for purposes of the prayer for registration of the properties in the name of the Jesus Celebration Centre Trust, the Trustees should be joined as co-petitioners and this may be achieved by amendment of the Petition but I do think that the petition should at this stage be struck out for their non-joinder. As it is the Petitioners have by Notice of Motion dated 25th July 2014 sought leave of court to amend the Petition to include more respondents and interested Parties.

[24] As stated by Madan, JA in *D. T. Dobie & Co. (K) Ltd. v. Muchina* [1982] KLR 1, 9 the court must aim to have a suit heard on its merits if it can be saved by amendment:

“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of the case before it.”

CONCLUSION

[25] As I have found above, the petitioners as members of congregation of the Jesus Celebration Centre have *locus standi* to file proceedings under Article 22 (2) (b) of the Constitution, even, I dare say, against the officials of the Jesus Celebration Centre Trust itself. To maintain the prayer for registration of the suit properties in the name of the Jesus Celebration Centre Trust, the founding trustees who must be registered the owners of the property on behalf of the Trust, should in my view be made co-petitioners but the default in this regard is remediable by amendment and, therefore, the court cannot strike out or dismiss the suit at this stage.

[26] The Interested Party’s interest in the matter is the security of the loans advanced, and this has no bearing on the preliminary points taken in the Objection.

ORDERS

[27] Accordingly, for the reasons set out above, the Respondent’s Preliminary Objection dated 31st July 2014 is declined with costs in the cause.

[28] The matter shall on the basis of urgency shown be listed for hearing on priority basis.

[29] In view of the nature of the ruling concerning the interpretation and application of the Constitution, leave to appeal, if necessary, is granted.

EDWARD M. MURIITHI

JUDGE

DATED AND DELIVERED THIS 17TH DAY OF APRIL 2015.

M. MUYA

JUDGE

In the presence of: -

Mr. Khaminwa for the Petitioners

Mr. Adere for the 1st, 2nd and 3rd Respondents

No appearance for the Interested Party

Mr. Musundi - Court Assistant.