



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**LAND CASE NO. 130 OF 2013**

**THE REGISTERED TRUSTEES OF**

**MAXIMUM MIRACLE CENTER.....PLAINTIFF**

**=VERSUS=**

**ANDREW MLEWA MKARE.....DEFENDANT**

**R U L I N G**

1. The Plaintiff moved this court by way of a Plaint dated 1<sup>st</sup> August 2013. The Defendant filed his defence and Notice of Preliminary Objection on 19<sup>th</sup> August 2013. The Notice of Preliminary Objection is the subject of this Ruling.
2. In the Notice of Preliminary Objection dated 19<sup>th</sup> August 2013, the Defendant has raised a Preliminary Objection as a point of law to the effect that the Plaintiff's suit as against the Defendant is bad in law as the Plaintiff is not a legal person capable of suing or being sued and as such, the said suit ought to be struck out.
3. Ms Rono, counsel for the Defendant submitted that under the Societies Act, a registered Society is not a legal person capable of suing or being sued.
4. When a Society is suing, it was submitted, the Society can only do so in the names of its officials, which according to counsel, has not been done in the instant case. Counsel relied on the cases of **Jane Nyambura Joshua VS Apostolic Faith Church; HCCC No.2924 of 1997 and Geoffrey Ndirangu & 5 others VS The Chairman of Mariakani Juakali Association & 2 others, Mombasa HCCC NO. 3 of 2004.**
5. In opposing the Preliminary Objection, Ms Ngige, counsel for the Plaintiff submitted that the Defendant has admitted in his defence the description of the Plaintiff given in the Plaint.
6. According to counsel, the Plaintiff is an incorporate body duly registered under the Trustees (Perpetual Succession) Act, Cap 164. Counsel submitted that the Plaintiff is not a Society as argued by the Defendant's Counsel.
7. Ms Ngige finally submitted that pursuant to the provisions of Section 3 (3) of the Trustees (Perpetual Succession) Act Cap 164, once Trustees have been registered under the Act, they become a body corporate capable of suing and being sued.
8. The Plaintiff has described itself at paragraph one of the Plaint as a body incorporated under the Trustees (Perpetual Succession) Act Cap 164. The Defendant has admitted that description at paragraph 2 of his defence.
9. The Defendant did not lay any basis on his proposition that the Plaintiff is a Society registered

- under the Societies Act.
10. Having admitted in its defence that the Plaintiff is a body incorporated under the Trustees (Perpetual Succession) Act Cap 164, the Defendant cannot turn around and argue by way of a Notice of Preliminary Objection that the Plaintiff is a Society registered under the Societies Act.
  11. Section 3(2) and (3) of the Trustees (Perpetual Succession) Act, Cap 164 clearly stipulates that once the Trustees who have been appointed by any body or association of persons established for any religious, educational, literacy, scientific, social, athletic or charitable purpose have been incorporated and a certificate of incorporation of the trustees has been issued, the trustees shall thereupon become a body corporate by the name described in the certificate and shall have the power to sue and be sued in their corporate name.
  12. Had the Defendant's counsel read the said Act, she would not have raised the Preliminary Objection.
  13. In the circumstances, and for the reasons I have given above, the Defendant's Notice of Preliminary Objection dated 19<sup>th</sup> August 2013 is dismissed with costs.

Dated and Delivered in Malindi this **23<sup>rd</sup>** day of **August** 2013

**O. A. Angote**

**Judge**