



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ELC NO. 551 OF 2008**

**CHARLES ZABLON**

**MWANIKI.....PLAINTIFF**

**VERSUS**

**JACOB NEYOLE.....1<sup>ST</sup> DEFENDANT**

**PHOEBE KARANI.....2<sup>ND</sup>**

**DEFENDANT**

**GLADYS KAMSA.....3<sup>RD</sup> DEFENDANT**

**PASTOR DAVID KIFUDE.....4<sup>TH</sup>**

**DEFENDANT**

**PEREZ OLINDO.....5<sup>TH</sup> DEFENDANT**

**(All sued as officials of Friends Church of Kenya (Quakers))**

**RULING**

The plaintiff brought this suit against the five defendants all sued as officials of Friends Church of Kenya (Quakers). The plaintiff has an interest in a property known as LR. No. 209/14641 and it is his case that the defendants, through their church which owns an adjacent plot, have interfered with the said property by erecting illegal structures which have extended to his property. He has moved the court for an order that the defendants do demolish all those structures, and be restrained from interfering with quiet enjoyment of his said property.

The defendants who have filed defences to the claim, have denied the plaintiff's allegations. There is now before me a Notice of preliminary objection to the effect that;

1. There is no competent suit before this honourable court for failure to comply with Order 1 Rule 8 of the Civil Procedure Rules as amended and consequently the suit is not maintainable.
2. The failure of the plaintiff to first obtain an order from this honourable court to serve the Notice of the Institution of the suit to all persons having the same interest in the suit to be joined as parties to it renders the suit unsustainable at law.  
As at the time this suit was filed, the old Civil Procedure Rules were applicable. The said Order 1 Rule 8 provided as follows,

***“8 (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued, or may be authorized by the court to defend in such suit, on behalf of or for the benefit of all persons so interested.***

***(2) The court shall in such case direct the plaintiff to give notice of the institution of the suit to all such persons either by personal service or, wherefrom the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct”.***

It is the defendant’s case that the plaintiff having failed to secure such orders then the suit should be struck out. It is instructive that this application has been brought by all those defendants who have been served and have entered appearance and filed defences. The defendants have not been sued as representatives of the church but officials of the church. Therefore, they have been cited in their official capacity. Indeed, paragraph 7 of the plaint says as much. In such a case, and where the parties have been identified by name, it is not necessary for the court to direct the plaintiff to give notice because it would appear, the said notice is intended to alert anyone who has an interest in a suit but who has not been either named or notified of the case. With respect therefore, that rule is inapplicable in this case.

Further to the foregoing, the defendants have not cited any prejudice that has befallen them or likely to affect them adversely by any omission on the part of the plaintiff. I consider the notice of preliminary objection misplaced and misconceived and is therefore dismissed with costs to the plaintiff.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 14<sup>th</sup> day of June, 2011***

**A. MBOGHOLI MSAGHA**

**JUDGE**