



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL CASE 261 OF 2009**

**WILMOSE KIPLAGAT & 3 OTHERS ..... PLAINTIFFS/APPLICANTS**

**VERSUS**

**JAMES DAVID REPPART & 8 OTHERS ..... DEFENDANTS/RESPONDENTS**

**RULING**

The Plaintiffs/Applicants herein filed a plaint on the 18<sup>th</sup> of May, 2009, simultaneously with the suit was filed a Chamber Summons under the Provisions of XXXIX Rule 1(a) 2 & Order XI Rule 1 of the Civil Procedure Rules.

In response to the said application the Defendant/Respondent filed a notice of Preliminary Objection which notice was argued before me on the 28<sup>th</sup> May, 2009 and is the subject of this ruling.

I have considered the issues raised in the Preliminary Objection and submissions by both learned counsels. I decline to uphold the Preliminary Objection raised first, in view of my ruling in H.C.C.C No.181/2009. Secondly this is a matter involving members of a church and in my view cannot be dismissed at a Preliminary stage, having said that I pose to wonder why the Plaintiffs/Applicants' counsel who is the counsel in H.C.C.C No.181/2009 where the 1<sup>st</sup> Plaintiff is the 1<sup>st</sup> Defendant; where the subject matter and orders sought are more or less similar to the ones being sought in this suit opted to file this current suit. That as it may and in the interest of justice, fair play & expeditious disposal of these matters namely H.C.C.C No. 181/2009 and the current suit I will exercise my discretion and invoke order XI rule (1) which provides –

**“1. Where two or more suits are pending in the same court in which the same or similar questions of law or fact are involved the court may either, upon the application of one of the parties, or of its own motion, at its discretion, and upon such terms as may seem fit.**

**(a) Order a consolidation of such suits and ....”**

I accordingly order for consolidation of this suit with H.C.C.C No. 181 of 2009, proceedings to proceed under H.C.C.C No.181 of 2009.

Dated and delivered at Nairobi this 14<sup>th</sup> day of July, 2009.

**ALI- ARONI**

**JUDGE**