



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 190 of 2006

LIVING WATER CHURCH INTERNATIONAL.....PLAINTIFF/APPELLANT

VERSUS

CITY COUNCIL OF NAIROBI.....DEFENDANT/RESPONDENT

RULING

On record herein, there is a plaint dated 1st day of March 2006 and filed the same 1st day of March 2006. In this plaint, the plaintiff is described as a registered church under the Societies Act Cap. 108 Laws of Kenya, while the defendant is described as the city council of Nairobi a local Authority, created under the Local Government Act Cap 265 Laws. The source of the grievance is based on the averment that the plaintiffs were allocated plot No 107/384 Umoja II by the defendants vide an allotment letter dated the 11th August 1998. By reason of the said allotment, the plaintiffs were required to pay Kshs 60,000.00 as acceptance fee and stand premium which was dully paid.

In pursuance of the said allotment and payment of the stamp duty, and commitment fee, the plaintiffs put up a church, office block, and a school on the said plot which has baby class to standard 8.

In addition to the payments of the above mentioned, the plaintiff went further to pay a further 19,980.00 as plans inspection fee for the inspection of plans for the construction of the church, and the office block. The grievance that led to the plaintiff moving to court, arose from the service of an enforcement notice on them ordering them to stop the construction, and demolish alleged illegal structures and for them to vacate the plot for community development, remove all dumpiness and cease to operate from the said plot within 48 hours.

When the plaintiffs failed to heed, the enforcement notice, the defendant has continually and consistently put the plaintiff, under threat of forceful entry to the premises, and enforcement of the enforcement notice. Their refusal to comply is because they contend that the enforcement notice is wrongful, unlawful and illegal as the plaintiff is threatened with demolition and yet the demolition notice relates to plot No 107/382 Umoja Phase II where as the plaintiffs plot is plot No 107/384 Umoja phase II.

Despite the plaintiff bringing to the defendants notice the discrepancy in the plot numbers, the defendant on 28th February 2006 sent its servants, agents and or employees to demolish the plaintiffs said structures, but were resisted and then they deferred the demolition to 1st March 2006 when they were to come back on to the site accompanied by Administration Police officers.

By reason of matters afore stated, the plaintiff felt aggrieved as they would suffer irreparable harm,

and damage if the demolition took place and this would inconvenience the over 200 school children and the 2,500 worshippers who patronize the facilities in the premises. The plaintiff sought as reliefs a permanent injunction, restraining the defendants or its servants, agents or nominees from demolishing, trespassing, destroying or in any way from interfering with plot number 107/384 Umoja II, a declaration that the plaintiff is the bonafide legal proprietor of plot number 107/384 Umoja II, general damages, costs of the suit and any other relief this Honourable court, may deem fit to grant.

On the basis of the averments in the plaint, the plaintiff anchored an application by way of chamber summons, brought under order XXXIX rules 1, 2 and 3 of the CPR and Section 3A of the CPA. It is dated 1st March 2006 and filed the same date. It sought:-

(1) A temporary injunction issued restraining the defendant by itself and or through its servants/agents/nominees from demolishing, trespassing, destroying or in any way from interfering with all buildings or any of the buildings or structures or property on plot Number 107/384 Umoja II, until the hearing and the determination of the interim application in the first instance, and in the second instance, until the hearing and determination of the main suit.

A perusal of the record reveals that the said interim application was argued inter parties before Aganyanya J as he then was (now JA) on 12/6/2007. His lordship delivered a ruling on its merits on the 5th day of July 2007. Some of the salient features relevant to this ruling are as follows: at page 10 of the hand written ruling line 6 from the bottom, the learned judge made the following observations:

“ If this be so, then it is both illegal and totally unwise to issue a party with an enforcement notice giving him 48 hours to demolish all structures, including a school from baby class to standard 8, tailoring school, HIV Counseling training centre and orphans programme center which the deponent in the further replying affidavit refers to as illegal structures.”

This kind of notice is tantamount to deliberately denying an aggrieved party of a right to be heard on appeal as laid down under Section 38 (4) of the Physical Planning Act.

I also want to believe that the respondent knows very well that whenever a church exists, a school, dispensary, an entertainment hall living quarters for staff and even HIV and orphans programme centre naturally follow.

If then one were to call such vital facilities at a church ground illegal structures, then I don't know what to say. Surely these cannot be called illegal structures.

However, all these said and done, both parties agree that the enforcement notice was meant for plot Number 107/382 Umoja S.S.S and not plot Number 107/384 Umoja II which the applicant claims to own. If this is the position then the applicant has no rights over or interest in plot number 107/382 Umoja S.S.S and has not told this court whose interest it was advancing by rushing to this court, with this suit and/or application.

Could the applicant not have found out from the respondent administratively in the first place what the notice was all about, given that it was not the owner of the plot quoted there in.

That the officers of the Respondent visited the applicants premises with this notice once or twice with a threat of a demolition, this was not enough. In the event, it is not necessary to discuss the conditions necessary for the grant of injunctive order: GIELLA VERSUS CASSMAN BROWN & CO. LTD (1973) EA 358, given these sort of circumstances, I form the view that this is not a proper case where an order of injunction sought can be granted.

I therefore dismiss the application dated and filed in court on 1st March, 2007 with costs”

The reason for setting out in extensor the findings of the learned judge was simply to demonstrate that the issue of the merits as to whether an injunction should issue or not issue in the manner sought were not gone

into, and as such this court is perfectly in order to go over those issues in the subsequent application which basically seeks the same reliefs, save that the events complained of have changed from 1st March 2006 to 22nd August 2007 prompting application dated 22nd and filed on 23rd August 2007.

The application is brought under the same provisions of law, namely, order XXXIX Rule 1, 2 and 3 of the CPR and section 3A of the CPA. It is also by way of chamber summons. It seeks the same restraint orders, in prayer 3 & 4, namely *“for a temporary injunction to be issued restraining the defendant by itself and or its servants, agents or nominees from interfering in any way with the applicants quiet possession of plot Number L.R 107/384 Umoja II. Until after the final determination of the application, as per prayer 3, and there after until the determination of the suit as per prayer 4.”*

The grounds in support of the application are set out, in the body of the application, supporting affidavit, annexures, written skeleton arguments, oral high lights in court, and case law. The salient points put forward by the plaintiff/applicant in support of the application are a reiteration of the averments in the plaint namely:-

- The applicant is a bonafide allocatee of plot Number 107/384 Umoja II
- On 3rd August 2007 the defendant through its agents or servants demolished buildings, and destroyed other properties on plot No LRNO 107/384 Umoja II without any valid notice.
- That the applicant stands to suffer irreparable harm and damages if the respondent continues to destroy its property and or further demolish the remaining buildings or continues to interfere with the applicants quiet possession of plot L.R No 107/384 Umoja II
- That they have a prima facie case with a probability of success.
- They reiterate the content of their averments in the plaint, that they were duly allocated the suit land, they paid stand premium and as such they are the lawful owners of the suit property.
- That the Respondent purports to have revoked the said allotment to the applicants but this was never communicated to the applicant until 3rd August 2007, when the defendants respondents’ instructed its officer and or agents to demolish buildings and other property owned by the applicant which stood on the plot in issue.
- They concede that indeed they had filed a similar application dated 1/3/2006 which was subsequently dismissed by Aganyanya J as he then was (now JA) on 5th July 2007 on the grounds that the enforcement notice was found to have been in respect of plot No 107/382 Umoja S.S.S and not plot 107/384 Umoja II, and as such merits of their complaint has not gone into and as such they are perfectly in order to ask this court, to revisit that issue and then rule on the same on its merits.
- They also contend that by reason of what has been stated above, the doctrine of Res judicata does not apply.
- Since the applicants’ name appears in the allotment letter, the respondent cannot be heard to argue that the applicant is not a bonafide allottee.
- They deny the Respondents allegation that the suit plot was grabbed and acquired illegally and irregularly allotted.
- The court, is also urged not to be persuaded by the respondents’ arguments that the said allocation was revoked, as this was never brought to the notice of the applicant in the first instance, and in the second instance it was never raised in their replying papers in opposition of the earlier application.
- They maintain that the applicant is still in occupation of the said premises and for this reason, they are

entitled to protection, otherwise the respondent will go a head to waste and damage the suit property and all that stands on it.

- They contend that the Respondent should not receive any money from the court, because they flouted the law, by moving in to demolish the structures, on the suit property without first of all issuing an enforcement notice and secondly without a court order.
- Lastly that the facts presented by them, satisfy the ingredients for granting of an injunctive relief as set out in the case of GIELLA VERSUS CASSMAN BROWN (1973) EA 558.

The respondents on the other hand, have opposed the application, on the basis of the replying affidavit sworn by one Peter Kibinda sworn on the 30th day of August 2007 and filed on 31st day of August 2007, annexures written skeleton arguments as well as case law. The salient features of the same are as follows:

- The deponent is the Director of planning in the employment of the defendant and has requisite authority to swear the said affidavit on behalf of the defendant.
- That according to records, held by them, plot No 107/384 Umoja measuring 0.5 hectares was set aside by the defendants' housing development department, and city planning department, for building of a community social centre for Umoja II residents and with the help of funds from U.S.A.I.D namely 1 million. They put up the said social hall but the project stalled due to lack of funds. They are now however desirous of resuming the development.
- It is their contention that the said plot was grabbed illegally, and irregularly allotted to the Redeemed Gospel Church – Living Water Church International, at grossly understated valuation of stand premium of Kshs 60,000 and nil annual rent as the property is fully served and could not have been valued at that rate.
- Contend that the applicant is not a bonafide allottee as it is not a legal entity, registered at the registrar of societies and therefore has no locus standi to bring the suit against the defence.
- That on 23rd August 2006 the allotment of Nairobi/Umoja Block 107/384 the suit property to Redeemed Gospel Church – Living Water Church International, was revoked in a full council meeting and the allottees have not challenged the same.
- Contend that the applicants are no longer in possession and cannot seek to protect quiet possession, since the property has reverted back to the defendant/Respondents, which plans to resume construction of the social hall and will not allow the applicant to stand in their way.
- They contend the orders sought cannot be granted as similar orders were, sought on a similar application dated 1st March 2006 and were declined and as such the application is Res judicata and offends the provision of section 7 of the CPA Cap 21 laws of Kenya.
- The only remedies available to the applicants were an appeal, or application for review, none of which were taken up.
- They assert, the applicant, has no right to question, the validity of the notice, as the right forum for raising that issue is in judicial review proceedings.
- They contend that on the facts presented, the applicant has not demonstrated sufficient grounds to enable this court, grant them the reliefs sought.
- Add that even the structures that had been illegally erected by the applicants, and used as classroom were unfit for occupation and posed danger to the young pupils and worshippers who must be protected.
- They contend the action taken by the Defendant/Respondent was simply routine and statutory which

the applicant cannot curtail.

On case law, the applicant referred the court, to the case of GIELLA VERSUS CASMAN BROWN (1973) EA 358 which this court has judicial notice of as a land mark case, setting out the ingredients that need to be established in order for a litigant to earn an injunctive relief. The applicant has to come within the ambit of the following ingredients.

-that he has demonstrated existence of a prima facie case with a high probability of success.

That if the injunction is not granted, the applicant might suffer irreparable harm, which can not be adequately compensated for by an award of damages.

-If the court, is in doubt, it will decide the matter on a balance of convenience.

The Respondents on the other hand referred the court, to the case of NAIROBI PERMANENT MARKETS SOCIETY AND OTHERS VERSUS SALIMA ENTERPRISES AND OTHERS (1995-1998) IEA 232. The brief facts of the case are that, the second to twelfth appellants were permanent and temporary stall owners within the west lands permanent city council market, situated on a parcel of land known as land registration number 1870/45/IX. A portion of the land was subdivided and leased to the first Respondent, which lease was subsequently registered under the Registration of Titles Act on 9/8/1995. The 1st to the twelfth appellants sued the respondents seeking a declaration that the lease of the suit land by the Nairobi City Council, to the first respondent and its subsequent registration by the Registrar of Lands were unlawful.

On appeal it was held inter alia that “*the appellants had not disclosed or established any right or interest that they might have in the suit land and in the absence of that, they could not expect a court, to interfere with the first respondents’ right of ownership. They therefore had no right to be heard and had no locus standi, prima facie to bring an action against the Respondents*”.

The holding above was drawn from the reasoning found at page 235 paragraph c-e thus:

“The appellants have not disclosed what right or interest they had in the suit land. In the absence of that, they could not expect the court, to interfere with the company’s right of ownership by putting on hold development of the suit land. We fully agree with the learned trial judge that in the circumstance, the appellant prima facie did not have locus standi to bring the said action for an injunction against the respondents----- We do not therefore agree with Miss Weru that her clients had any right to be heard unless of course they were in a position to establish some right or interest in the suit land which they have failed to do”

The case of NJILUX MOTORS LTD VERSUS KENYA POWER AND LIGHTING COMPANY LTD AND NAIROBI CITY COMMISSION NAI CA 206/1998. In the judgment of Shah JA (as he then was) at page 8 of the judgement line 1 from the top the learned Judge of Appeal as he then was made observation that:- “ *The appellant has no registered title to the suit land, what so ever and that the appellant claims right to possession of suit property by virtue of allotment to it of the suit land and payment by it of the stand premium.....(page 9 line 1 from the top). If he had registered his title pursuant to the allocation, from the council, the position may be different. He did not so register himself. He cannot therefore rely on section 23 afore said. (At page 10 line 11 from the bottom). The appellant has no legal rights to the suit land and now.....the grant to KP&L is being challenged by the appellant who has no locus standi so to do.....(At page 12 line 13 from the top). There are many such allocations which are un questioned, daily by members of the public. Public utility lands are being parceled out depriving residents of Nairobi of their right to enjoy such facilities”*. On the basis of that reasoning among other, the appeal was dismissed.

The judgment of Omolo JA in the same case is also annexed at page 2 line 2 from the bottom. The learned judge made the following observations:-

“Again as I pointed out earlier, the land involved is the city park and the terms upon which the commissioner of lands leased it to the 2nd respondent were clear. The 2nd respondent was to use it only as an open space, a park, a sports ground, and any other municipal purposes approved of by the commissioner in writing, nor was the 2nd respondent allowed to sub-divide it without the prior approval of the commissioner and so on.....to put it crudely, the purported sub lease between the 2nd respondent and the appellant amounted to what Kenyans would derisively call it “land-grabbing” which I understand to mean the taking away of land meant for public utility or benefit by an individual without following the laid down legal processes.----. Has the applicant got any legal basis upon which it can challenge the title of the 1st respondent? The answer to that question is that the appellant had so such basis”.

Due consideration has been made by this court, of the oral arguments advanced by the parties herein, and against the application herein, and in this court’s opinion, the following issues have arisen for determination by this court namely:

- (1) Whether the applicants’ application dated 22nd August 2007 and filed on 23rd day of August 2007 is Res judicata.
- (2) Whether the applicant was allotted the said plot and what is the legal effect of that allotment
- (3) Whether there is valid opposition to the applicants’ application and if not, what are the legal implication of that non opposition.
- (4) Whether the applicant has locus standi to file the suit as well as the interim application
- (5) What are the final orders herein.

On Res judicata, all that the respondent has to do, is to bring the facts complained of within the ingredients set out in section 7 of Cap 21 of the Laws of Kenya. It reads:-

“ No court, shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit, between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court, competent to try such subsequent suit, or the suit, in which such issue has been subsequently raised, and has been heard and finally decided by such a court.”

In this court’s opinion, the ingredients that need to be complied with by a party seeking to avail himself of that provision are as follows:

- The matter complained of must have been directly and substantially in issue in a former suit, between the same parties or between parties under whom they or any of them claim or litigate under the same title.
- The litigation must have been in a court, of competent jurisdiction, to try such subsequent suit.
- It must have been heard and fully determined and or decided by such a court.

The claim of Res judicata arises by reason of the fact that the applicant had presented a similar application dated 1/3/2006 which was ruled upon by Aganyanya J as he then was, (now JA). It is the finding of this court, that the issues raised in the application of 1/3/2006 and those raised herein are similar, in that the applicant had moved to court, to prevent the defendant/respondent from demolishing its structures on plot No 107/384 S.S.S Umoja II.

- The right to so protect, was based on the same letter of allotment, and payment of the same stand premium.

- The facilities sought to be protected are the same ones that the applicant seeks to protect in the current application.
- The parties were and are still litigating under the same titles.

What remains to be determined, is whether, the issues were finally determined. The respondent has asserted that they were, where as the applicant says they were not. As mentioned earlier, by this court, the salient features of the said ruling has already been set out earlier on in this ruling. The observations made by this court, are to the effect that when the applicant moved to this court on 1/3/2006, the respondent was moving on the suit premises to enforce an enforcement order. The move was not successful because it transpired that the enforcement order, relied upon by them, related to a different plot. It is further noted that the learned judge made observations concerning the facilities being run on the premises but did not pronounce on the merits of the complaint as to whether the applicant had a legal right to the suit premises or not. For this reason, the plea of Res judicata does not operate to shield the respondent and so this court, is entitled to rule on the matter on its merits.

As regards the allotment of the suit property, to the applicant, it is common ground from the deponements of both sides, that this was the correct position confirmed by the existence of BIK1, the allotment letter and BIK2 the receipt for payment of the stand premium.

As for the legal implication of the said allotment, this court, is guided by the court of appeal decision in the judgement quoted of NJILUX MOTORS LTD VERSUS KENYA POWER AND LIGHTING COMPANY LTD AND NAIROBI CITY COMMISSION (SUPRA) where the gist of the holding was that Registration of Titles Act Cap 281 laws of Kenya protects only the sanctity of titles, registered under it, but not an allotment letter which does not bar subsequent allotment to a 3rd party.

Turning to the question as to whether there is a valid opposition to the applicant's application, the court, has no alternative but to turn to the replying affidavit. As pointed out it has been deponed by on Peter .M. Kibinda with the requisite authority from the defendant. The authority has not been exhibited and issue arises as to whether the said deponement is valid. Order 1 rule 12(2) of the CPR is very clear on this. There is a requirement that “ *The authority shall be in writing, signed by the party giving it, and shall be filed in the case*” The court, of appeal has confirmed that this is the correct position in its decision in the case of RESEARCH INTERNATIONAL EAST AFRICA LTD VERSUS JULIUS ARISI AND 213 OTHERS NAIROBI CA NO 321 OF 2003 decided on the 27th day of April 2007. This being the case, it follows that the respondents' failure to annex the authority to so depone, or a letter of appointment to demonstrate that he is a Chief Officer of the City Council, is fatal to the affidavit, and this fatality makes it to be a proper candidate for striking out and it is accordingly struck out.

The question that arises after the Respondents replying affidavit has been struck out, is whether the applicant gets a clear bill of success. In this court's opinion, there is no clear bill of success, because the ingredients that the applicant is required to establish before earning an injunctive relief, are crystal clear and this court, cannot ignore them, whether the application for an injunctive relief is defended or not. They have to be present and or demonstrated before the relief can be granted.

There is also the issue of locus standi, of the applicant to present both the suit and the application. This is a legal issue. It can be raised orally. Therefore the striking out of the respondents replying affidavit, does not prevent the court, from considering it on the basis of the oral representations made to it by both counsels.

The issue of locus standi, is raised because the applicant described itself in the plaint, as a religious society registered under the societies Act Cap 108 Laws of Kenya. The registration certificate which had been annexed to the supporting affidavit, to the application dated 1/3/2006 has not been exhibited, to the current supporting affidavit. That not with standing the court, is not precluded from perusing the same as it is part of the record. A perusal of the record reveals that, the applicant was registered vide registration certificate No. 19335 at Nairobi on the 4th day of May 1999. Section 3 of the Societies Act Cap 208, Laws of Kenya, which establishes societies, established and registered for operation in Kenya, does not

mention, anything concerning the legal personality of the society.

Case law on the subject has however settled this issue and provided guide lines. This court in its consideration in the Case of KENYA BRIDGE AFRICA LTD VERSUS RAJ THANKER AND 12 OTHERS NAIROBI HCCC NO 325 OF 2004 decided on the 3rd day of October 2008, had occasion to deal with a similar issue. Case law on the subject is discussed at page 20 – 21 there of, there is cited with approval the case of FREE PENTECOSTAL FELLOWSHIP IN KENYA VERSUS KENYA COMMERCIAL BANK NAIROBI HCCC NO 4116 OF (1992). In which Bosire J as he then was (now JA) ruled that “*a religious organization is not a body corporate in order to sue as a legal personality..... on an incorporated body lacks the capability to own land.* In another own decision decided by this court, on the 7th day of November 2008, in the case of NDONGORO GENERAL CONTRACTORS VERSUS KENYA EPISCOPAL CONFERENCE SECRETARIAT, NAIROBI HCCC NO 2173 OF 2001, Case law on the subject is discussed at page 13 to 19 of the said ruling. There in, this court, cited with approval the case of SIMU VENDORS ASSOCIATION VERSUS TOWN CLERK CITY COUNCIL OF NAIROBI AND THE MINISTER FOR LOCAL GOVERNMENT MISC APP 427 OF 2005 decided by Ibrahim J on 6/6/2005. The holding by the learned judge is to the effect that “*It is strite law and fact that a society registered under the societies Act, is an un incorporated body, and does not have the capability to sue or be sued in its own name in legal proceedings*”.

The case of CLASSICAL TRAVEL AND TOURS LIMITED VERSUS NDUNGU KAHUGU AND KENYA SCOUTS ASSOCIATION decided by Nyamu J on 7th day of May 2004, where the gist of the holding was that:-

“*The association itself has no legal capacity of being sued*’.

The case of MORRIS OOKO OTIENO VERSUS MATER MISERI ECODIGE HOSPITAL HCC NO 607 OF 1999 DECIDED BY ANG’AWA J ON THE 12TH DAY OF FEBRUARY 2004 AT NAIROBI. The gist of the ruling was that “*since the defendant had not been described as a limited liability company, it has no legal capability to be sued*”.

The case of Beth Wanjiru Kamau The legal representative of DAVID KAMAU NJOROGE (DECEASED) VERSUS SAVINGS AND LOAN (K) LTD NAIROBI MILIMANI HCCC NO 629 OF 2005 decided by Waweru J on the 14th day of May 2006, where the gist of the holding is that “*It is now trite law that a suit instituted by a person who has no capacity or locus to institute it, is a non suit such a suit is null and void from the beginning*”.

It is to be noted that all the decisions are high court, decisions and therefore not binding on this court, which is entitled to revisit the issue, and draw out its own conclusions. This court, has done so and considered the said decisions, in line with the provisions of section 3 of the Societies Act, Cap 108 Laws of Kenya, and also arrives at the conclusion that they state the correct position in law, and there is no reason for this court to depart from them. The net result of that assessment is, a finding that the plaintiff applicant lacks capacity or locus standi, not only to present the application, subject of this ruling but also the suit itself. This being the case, both are proper candidates for striking out. For this reason there is no need for this court, to embark on the determination as to whether the injunctive relief sought by the applicant is available or not.

One may ask that, if the society, has no legal status to sue or be sued in its name, then how can such a society move the court, for vindication of its rights. The answer is simple, it moves to vindicate its rights, through its registered officials, mandated to take action on its behalf as provided for in its constituting or creating instrument namely the, “constitution”.

For the reasons given in the body of the assessment in this ruling, the court, makes the following concluding orders:-

(1) The applicants application dated 22nd August 2007 and filed on 23rd August 2007 is not Res

judicata as the applicants' application dated 1/3/2006 which had sought similar orders was not decided on its merits. It was dismissed because the enforcement notice which had allegedly grieved the applicant, related to a property the applicant had no interest in and the court, felt that the applicant could have resolved that issue administratively with the respondent instead of moving the court, in the manner done.

- (2) There is no dispute that the applicant was allotted by the defendant the respondent the disputed land.
- (3) It is apparent from case law, cited as well as the provisions of the Registration of Titles Act Cap 281 laws of Kenya, that the said legislation only protects registered titles.
- (4) The replying affidavit of the respondent was struck out by reason of the fact that the authority to depone was not annexed to the said affidavit. Neither was the letter of appointment exhibited to show that the said deponent was a chief officer of the defendant respondent. In order for this court to hold that he had ostensible authority to act on behalf of the defendant generally, and filing of an authority wherever he needs to defend the Defendant/Respondent is not necessary.
- (5) The striking out of the respondents affidavit does not give the applicant a clean bill of success, in view of the fact that issue of locus standi had been raised, which issue could be dealt with on the basis of oral representations on the record since it is a legal issue.
- (6) A reading of section 3 of the Societies Act Cap 108 Laws of Kenya as well as the case law on the subject goes to show, that a religious society has no legal capacity to sue, and to be sued. This being the case, the plaintiff/applicant had no capacity to not only present the interim application, but the main suit as well. Both processes are therefore a nullity and proper candidates for striking out and are accordingly struck out.
- (7) The striking out of the application as well as the plaint, does not leave the applicant remediless, as it is at liberty to vindicate its rights, through its registered officials.
- (8) The courts power to strike out the entire suit on being discovered to be a nullity, is derived from its inherent jurisdiction in section 3A of the CPA invoked both at the instance of litigants, and at the courts' own instance. The striking out, of the suit is necessary because being a nullity, it will not benefit the plaintiff in any way as the plaintiff cannot vindicate its rights through it.
- (9) The costs of the struck out application as well as the entire suit to be paid to the respondent in the normal manner.

Dated, Read and delivered at Nairobi this 6th day of April 2008.

R.N.NAMBUYE

JUDGE