



Editorial Note

Registered Societies

- Suit to be brought by or against registered officials in their proper names if not suit incompetent and ought to be struck out
- Costs not awarded to a non-existent defendant or a defendant without capacity to be sued.

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO 2824 OF 1997 (OS)**

**IN THE MATTER OF SECTION 7 AND 38 OF THE LIMITATION OF
ACTIONS ACT**

AND

IN THE MATTER OF LAND REFERENCE NO NGONG/NGONG/406

JANE NYAMBURA JOSHUA PLAINTIFF

VERSUS

APOSTOLIC FAITH CHURCH DEFENDANT

RULING

The application dated 26th January 2004 seeks to strike out the suit which was commenced by way of an Originating Summons. The grounds relied on are that the suit is incompetent scandalous, frivolous and an abuse of the process of the court.

The main ground is that although the plaintiff acknowledges to have sued the wrong defendant or defendants he has failed to amend the Originating Summons in order to rectify the error. Following an application to amend dated 10th June, 2003 the plaintiff was given leave to file an amended Originating Summons on 19th June, 2003. She has failed to comply with the court order to amend. In the application to amend the plaintiff acknowledges that the Apostolic Faith Church can in law only be sued through its registered Trustees and she has described the names of the three Trustees. The church is registered under the Societies Act and the plaintiff had not attached a list of the registered trustees from the Registrar of Societies. The three names given do not tally with the list of the registered Trustees exhibited as PG II in the affidavit in support of the application sworn by Rev Peter Gatimu on 29th January 2004.

It is the applicant's contention that the O S as it stands does not disclose a party capable of being sued in that the subject matter of the suit is a claim relating to property. Such property can only be registered in the names of the trustees in law and since they have not been joined the application is incompetent.

The respondent concedes that an Amended Originating Summons has not been filed as per the court

order giving leave but says that the property is registered in the name of the Apostolic Faith Church who were still defendants and at least one of the churches registered trustee who is the chairman is still in office. He further contends that since he is still in the process of waiting to file the amended Originating summons the relief sought should not be denied because amendment can legally be filed any time. He does not indicate when this will be done although this is a 1997 suit where an injunction had been sought.

In the case of **FRANCIS KARANI ELIJAH & 2 OTHERS CHAIRMAN (KANU) & 2 OTHERS MISC 238 of 2002** (unreported) this court in its capacity as a Constitutional Court did rule on a similar point concerning the party KANU as a registered Society under the Societies Act. In this case although three party officials namely the Chairman, Secretary General and the National Treasurer were described as such, their proper names were not given and the court struck out the constitutional application on this ground among others. Similarly HALSBURY'S LAWS OF ENGLAND 3rd Edition vol 18 para 239 concerning legal proceedings states:

“The trustees of a registered society or branch or officers authorized by its rules, may bring or defend actual or legal proceedings with respect to any property, right or claim of the society or branch and may sue and be sued in their proper names without other description than the title of their office. The liability of trustees to be sued in proceedings with respect to a right or claim of the society or branch is restricted to cases in which the right or claim concerns the property of a society or branch.” ...

In view of the above I find and hold that the Originating Summons is incompetent since the defendant sued lacks the necessary legal capacity. The Originating Summons hangs in the air and the same is accordingly struck out.

As regards costs I decline to award costs in favour a nonexistent defendant or defendants.

DATED AND DELIVERED at Nairobi this 14th day of May 2004.

J G NYAMU

JUDGE