



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 958 OF 1999**

**BAPTIST CONVENTION OF KENYA.....PLAINTIFF**

**V E R S U S**

**BEDAN KANYOROKU.....1ST DEFENDANT**

**PASTOR JOSEPH KAMAU GITHEE.....2ND DEFENDANT**

**PASTOR FRANCIS MUCHERU .....3RD DEFENDANT**

**JOSEPH NJOROGE.....4TH DEFENDANT**

**JESSE NJOROGE THUO .....5TH DEFENDANT**

**NEHEMIAH KIGORO BEDAN.....6TH DEFENDANT**

**ELENA WANJA.....7TH DEFENDANT**

**JOSEPHINE WANJIRU BEDAN.....8TH DEFENDANT**

**RUTH NDUTA.....9TH DEFENDANT**

**PAUL NDUATI.....10TH DEFENDANT**

**R U L I N G**

In this Preliminary Objection Mr. Kimani for the Respondent raises the objection that this suit is incompetent because the 1st Plaintiff being a society merely cannot sue in its own name but only through its officials. That such cannot be amended, secondly, that this being a representative suit Order 1 Rule 8 ought to have been complied with, thirdly that there are pending two other suits on the same matter i.e. CMCC No. 3948 of 1994 and CMCC No. 8446 of 1993. In reply Mrs. Kiarie for Applicant/Respondent objects to the Preliminary Objection saying first that the plaint had been amended and there is an order by Deputy Registrar on 11.10.2000 hence objector is now estopped, secondly that any failure to comply with Order 1 Rule 8 does not nullify the plaint and lastly that matters in Chief Magistrate's Court were in fact consolidated under CMCC No. 3940/1994 and withdrawn so what remains is not factually same in issues with the present case. I have looked at these objections and the arguments presented to controvert them. There is evidence that the plaint in this suit is the amended one with Baptist Convention of Kenya Registered Trustees as 2nd Plaintiff. This is proper as it means that the Convention can now be sued under that name it being a body Corporate under Land (Perpetual Succession) Act Cap 286 of the Kenya

Laws. Having done that the first Plaintiff ought not be a Plaintiff any more in the form it is, I think the existence of paragraph 1 in the amended plaint an irritating superfluity and ought to be struck off which this Court can order on its own under Order 1 Rule 10(2) and I so order. As for 2nd objection I am not able to discern either representative suit in the plaint what I see is a number of Defendants joined as Defendants in the suit so is the plaint.

The last point is not a clear cut matter but still evidence is to be led to show that the two cases were consolidated and one withdrawn and more that the conditions of Section 6 of Cap 21 are existent. I think this Preliminary Objection cannot succeed. Preliminary Objection must be based on a clear indisputable point of fact and law. Objection refused but first Plaintiff be struck off. Costs in the cause.

**DATED this 5th day of August 2003.**

**Read to -**

**Mrs Kiarie for Plaintiff**

**Mr. Kimani for Defendant**

**On 5th August 2003**

**A.I. HAYANGA**

**JUDGE**

**A.I. HAYANGA**

**JUDGE**