



**Diocese of Eldoret Trustees Registered v ACK Diocese of Kapsabet
Nandi Hills Paris (Environment and Land Miscellaneous Application
E001 of 2023) [2024] KEELC 5131 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5131 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2023
MN MWANYALE, J
JULY 11, 2024**

**BETWEEN
DIOCESE OF ELDORET TRUSTEES REGISTERED APPLICANT
AND
ACK DIOCESE OF KAPSABET NANDI HILLS PARIS RESPONDENT**

RULING

1. The Applicant vide his application dated 23/10/2023 seeks; -
 - i. Order to compel the Nandi County Land Surveyor to survey and fix beacons to mark boundary and all boundary fixtures in respect thereof between the parcels of land known as Nandi Hills Township/291 and L. R NO. 7830/90.
 - ii. An order do issue directing OCS Nandi Hills Police Station within whose area of jurisdiction the suit land is situate to provide security during the survey and fixing of beacons exercise.
2. The grounds in support of the application is that the Applicant is the registered owner of Nandi Hills Township/291, and that the existing boundaries on the ground do not conform with the survey records.
3. That despite summons by the County Land Surveyor, the Respondent has not been co-operative in the exercise.
4. The application was supported by the of Fr. Michael Langat, the father in charge of Our lady of Peace Catholic Mission, Nandi Hills Paris who reiterated the grounds thereof and annexed a copy of certificate of official search of Nandi Hills Township/291, copy of letters to county Surveyor dated 18/5/2022, and letter from County Surveyor dated 31/5/2022, letter from Deputy County Commissioner, dated 19/6/2023 and letter from County Surveyor dated 18/9/2023.



5. In response to the application, a replying affidavit by Venerable Elijah Rotich the Arch Deacon of Nandi Hills ACK Parish was filed. In the response the Deponent stated that L. R. NO. 7830/60 and 7830/62 belong to the Defendant and were registered under its trustees, the church Commissioners for Kenya, and that the Defendant was not a legal person.
6. The Respondent contested the ownership by the Applicant of Nandi Hills/township 291 which they described as a public utility set aside for Kenya Power and Lighting in accordance to the approved development plan No. 21 of Nandi Hills.
7. Thus, the Applicant suit in so far as it involves public land was unsustainable. There is no common boundary for the property belonging to the Applicant and the Respondent so as to invite a boundary dispute.
8. That the Book of 1st Corinthians Chapter 1 of the Holy Bible, does not allow resolution of dispute between two churches in a Court of Law.
9. The Respondent equally took out a preliminary objection raising the issue which it had raised in the replying affidavit.

Applicants Submission:

10. The application was argued orally with the Applicant Advocates restating that other than the boundary dispute which the Respondent had refused to co-operate to resolve, no substantial issue of ownership had been raised hence the miscellaneous application sufficed in terms of the orders sought.
11. The Applicants Advocates termed the issue that the Respondent was non-existent in law as a technicality issue, which could be resolved under Article 159 of the Constitution.

Respondents Submissions:

12. The Respondent though its Advocates condensed the issue it had raised in tis response with the issues raised in the preliminary objection.
13. It was Mr. Torrorei's submission that under the Societies Act, in which the Respondent was registered, only the Registered Trustees could sue or be sued and in the case of the Respondent its Registered Trustees were known as the Church Commissioners of Kenya who owned the suit property. The Respondent further argued that the Applicant itself having been registered under the Societies Act, had filed the Application through its recognized Trustees, hence as sued the Respondent was a non-legal party not capable of being sued.
14. The Respondent placing reliance on Section 18 of the Land Act submitted that the first port of call in a boundary dispute was the Land Registrar and that the jurisdiction of the Court could only be triggered after exhaustion of Section 79, 80, 86 and 91 of the Land Registration Act and that since there was a clear procedure the same ought to be followed.
15. Placing reliance in the decision in the case of Reuben Kioko Mutiane v Hellen Ndunda (2021) eKLR. The Respondent urged the Court to down its tools until the determination of the Registrar is made.
16. In brief response, Mr. Tallam submitted that there was no proof of registration of parcel No. 7830/60 and 7830/62 to the Respondent.
17. He further submitted that the Applicant had invoked the provision of Section 19 of the Land Act for the dispute to be resolved by the Land Registrar; but the Respondent was not Co-operative hence the instant application.



Issues for Determination: -

- i. Whether the Respondent is a Legal person capable of being sued
- ii. Whether there is a dispute before Court to be commenced by substantive suit.
- iii. Whether Court's jurisdiction has been properly invoked
- iv. What application is merited?
- v. What reliefs ought to issue?

Analysis and Determination: -

19. The first issue being a point of law has the capacity to terminate the proceedings.
20. It is not in doubt that the Respondent as a church is incorporated under the *societies act*. Mr. Tororei submits that a suit can only be brought against the Registered Trustees and not the against the Respondent Trustees of the Respondent are the Church Commissioners of Kenya.
21. Mr. Tallam's response is that the same is an issue of technicality, capable of being cured under the provisions Article 159 of the *Constitution*.
22. It is trite law that a non – legal person cannot be sued, and hence legal capacity to sue or be sued is thus a substantive issue of law and not an issue of technicality.
23. The issue of whether church can sue on their name or otherwise was considered by the Courts in the decision in the case of *African Orthodox Church of Kenya v Charles Omuruka & another* 2014 (eKLR) where, Justice E. C. Mwita held as follows and I fully agree with him

“7 ... there is no doubt therefore, that both the Plaintiff and the 2nd Defendant as societies or associations registered under the *Societies Act* are not legal entities capable of suing and being sued in their own names. They have no legal capacity to institute proceedings in any Court in their own names and cannot maintain such proceedings. They can only sue through Trustees, if they have one, or in the names of their officials in a representative capacity...”
24. That being the position of the law, the Court agrees with the submission of Mr. Tororei, that the Applicant is non-suited against the Respondent and having found so, proceeds to strike out the application without consideration of the other issues, which are the merits or otherwise of the application.
25. The application is thus struck out with no orders as to costs.

RULING, DATED AND DELIVERED AND KAPSABET THIS 11TH DAY OF JULY 2024.

HON. M. N. MWANYALE,

JUDGE.

In the presence of;

Mr. Tallam for the Applicant

