



**Mission SOS International Incorporation v Mission SOS Africa Incorporation & 3 others  
(Environment & Land Case E012 of 2023) [2024] KEELC 7152 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7152 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT & LAND CASE E012 OF 2023**

**EM WASHE, J**

**OCTOBER 3, 2024**

**BETWEEN**

**MISSION SOS INTERNATIONAL INCORPORATION ..... PLAINTIFF**

**AND**

**MISSION SOS AFRICA INCORPORATION ..... 1<sup>ST</sup> DEFENDANT**

**DISHON MBUGWA ..... 2<sup>ND</sup> DEFENDANT**

**GABRIEL G CHARO ..... 3<sup>RD</sup> DEFENDANT**

**MARGARET NABWORA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> to 4<sup>th</sup> Defendants (hereinafter referred to as “the Applicants”) filed a Notice of Preliminary Objection dated 08.03.2024 (hereinafter referred to as “the present PO”) against the Plaintiff’s (hereinafter referred to as “the Respondent”) Plaint dated 20.11.2024 (hereinafter referred to as “the present suit”) on the following grounds; -
  - a. That the suit as mounted is legally untenable because the Plaintiff and the 1<sup>st</sup> Defendant are registered under the [Societies Act](#) Cap 108.
  - b. That Section 41 (1) of the [Societies Act](#) specifies that a society can only appear in a suit through an appointed representative acting on its behalf. The present Plaintiff and the 1<sup>st</sup> Defendant therefore has no locus standi.
  - c. That the suit as mounted is fatally defective, incomplete and bad in law and the same ought to be struck out ex- debito justitiae.
  - d. That the Notice of Motion dated 20<sup>th</sup> November 2023 and the accompanying prayers are defective as they are premised on a suit which is a non-starter.



- e. That the entire suit is otherwise an abuse of the due process of court.
2. The present PO was duly served on the Respondents who informed the Court that the same would be opposed.
3. The Court directed that the present PO be canvassed by way of written submissions to which the Applicants filed their submissions dated 25.04.2024 while the Respondents opposed the same through their submissions dated 06.05.2024.
4. The Court has gone through the present PO, the submissions by the Applicants and the Respondent and the issues for determination are as follows; -

Issue No. 1- Does The Present Po Constitute A Pure Issue Of Law Capable Of Being Determined Through A Preliminary Objection?

Issue No. 2- Is The Plaintiff/respondent Herein An Organisation Under The [Societies Act](#), Cap 108?

Issue No.3- Has The Plaint Dated 20.11.2024 Been Filed With Non-compliance To The [Societies Act](#), Cap 108?

Issue No. 4- Is The Present Po Merited?

Issue No. 5- Who Bears The Costs Of The Present Po?

5. The Court having identified the above issues for determination, the same will now be discussed as herein below.

**Issue No. 1- Does the present po constitute a pure issue of law capable of being determined through a preliminary objection?**

6. The first issue for determination is whether the present PO as drawn raises a pure point of law capable of determining the present suit at this point in time.
7. The Applicants point of law being raised in the present PO is that the Respondent does not have the locus standi to initiate any legal proceedings in the Kenyan jurisdiction as he is registered in the United States of America and not in the Republic of Kenya.
8. The Applicants in their original submissions dated 25.04.2024 as well as the supplementary submissions dated 08.03.2024 relied on Section 9 of the [Societies Act](#), Cap 108 as well as Section 974 of the [Companies Act](#) to be the foundation of their point of law.
9. The Applicants submitted that a foreign organisation be it a company and/or any other organisation can not institute legal proceedings before any Court of law in the Republic of Kenya without first having registered itself using the local statutes within the Republic of Kenya.
10. Consequently, the Respondent herein did not have the locus standi to institute any legal proceedings because it was not a registered entity in Kenya and had on registered officials whom can bring such a suit before any Kenyan Court of law.
11. In essence, the present suit as well as the pending Application were bad in law as they contravened the provisions of the [Societies Act](#), Cap 108 and/or the [Companies Act](#) and should be struck out forthwith.
12. The Respondent on the other hand started that the present PO did not raise a pure issue of law and therefore cannot be sustained.



13. The Applicant submitted that where the Court must look into dispute facts, then a preliminary objection cannot be sustained.
14. Secondly, the Respondents submitted that a Preliminary Objection can only be raised only if all the facts have been admitted by the parties and the only dispute is one that touches a pure point of law.
15. To establish whether the present PO meets the ingredients of a Preliminary Objection, the Court must look at the pleadings filed by the parties.
16. To begin with, the Respondent in the Plaint dated 20.11.2024 pleaded to be an organisation duly registered in the United States of American as a non-profitable organisation.
17. Thereafter, the Respondent described the 1<sup>st</sup> Applicant to be a non-profitable organisation registered in Kenya under the [Societies Act](#) under registration number SOC/31445.
18. Further to the above, the Respondent also indicated that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants were the registered officials of the 1<sup>st</sup> Applicant within the Republic of Kenya.
19. In the Defence filed by the 1<sup>st</sup> to 4<sup>th</sup> Applicants dated 29.02.2024, the description of the Respondent as well as the 1<sup>st</sup> to 4<sup>th</sup> Applicants was duly admitted to be true.
20. It is therefore clear in the mind of this Court that the present PO meets the threshold of being a Preliminary Objection as the facts appertaining the registration of the Respondent who is the Plaintiff and the 1<sup>st</sup> to 4<sup>th</sup> Applicants who are the Defendants have been admitted by the parties and are not in dispute according to the pleadings.

**Issue No. 2- IS the plaintiff/respondent herein an organisation under the [Societies Act](#), Cap 108?**

21. The second issue for determination is the legality of the Respondent within the Kenyan jurisdiction.
22. According to the present PO, the 1<sup>st</sup> to 4<sup>th</sup> Applicants submit that the Respondent herein is a body entity registered under the [Societies Act](#), Cap 108.
23. The 1<sup>st</sup> to 4<sup>th</sup> Applicants therefore state that based on Section 41 (1) of the [Societies Act](#), Cap 108, the Respondent is not a body corporate that can file proceedings on its own without the office bearers duly acknowledged by the Registrar of Societies.
24. According to the 1<sup>st</sup> to 4<sup>th</sup> Applicants, the officials of the Plaintiff entity should have been included as Plaintiffs in addition to the Respondent as required by the [Societies Act](#), Cap 108.
25. The failure to include the office bearers to the Respondent as Plaintiffs then renders the present suit bad in law as the Respondent entity does not have capacity to file any legal proceedings.
26. The Respondent on the other hand states that it is not an entity registered in Kenya and therefore the provisions of Section 41 (1) of the [Societies Act](#), Cap 108 do not apply.
27. The Respondent submitted that it is a body corporate duly registered by the Pennsylvania Department of State Bureau of Corporations and Charitable Organisations in the United States of America.
28. Based on this registration, the Plaintiff had the capacity to institute any legal proceedings against the 1<sup>st</sup> to 4<sup>th</sup> Applicants resident in Kenya.
29. Based on the determination of Issue No. 1, the 1<sup>st</sup> to 4<sup>th</sup> Applicants have admitted in their Defence that the Respondent is a body corporate registered in the United States of America.



30. Unfortunately, for one reason or another, the 1<sup>st</sup> to 4<sup>th</sup> Applicants in the present PO have abandoned the admission and now state that the Respondent is a registered entity under the [Societies Act](#), Cap 108.
31. However, the 1<sup>st</sup> to 4<sup>th</sup> Applicants did not produce any registration documents of the Respondent to show that it has been registered in Kenya under the [Societies Act](#), Cap 108.
32. Similarly, the 1<sup>st</sup> to 4<sup>th</sup> Applicants did not dispute the registration documents attached to the Plaint filed by the Respondent as the true and valid registration documents.
33. Clearly, it is not correct to allege in the present PO that the Respondent is a body corporate registered in Kenya as has been done by the 1<sup>st</sup> to 4<sup>th</sup> Applicants.

**Issue No.3- Has the plaint dated 20.11.2024 been filed with non-compliance to the [Societies Act](#), Cap 108?**

34. The third issue is whether or not the Plaint dated 20.11.2024 has been filed with non-compliance to the provisions of the [Societies Act](#), Cap 108.
35. The 1<sup>st</sup> to 4<sup>th</sup> Applicants in this issue submit that the Respondent is not capable of filing any legal proceedings on its own save through its registered officials.
36. The 1<sup>st</sup> to 4<sup>th</sup> Applicants submitted that any proceedings by the Respondent must be filed through the office bearers in line with Section 41 (1) of the [Societies Act](#), Cap 108.
37. In this present suit, the office bearers of the Respondent are not parties and therefore the suit has been filed by a party that does not have any legal recognition and/or capacity to do so in law.
38. The finding of the Court in Issue No. 2 hereinabove is that the Respondent is a body entity registered in the State of Pennsylvania within the United States of America and the provisions of the [Societies Act](#), Cap 108 does not apply to it.
39. If the 1<sup>st</sup> to 4<sup>th</sup> Applicants had any doubt of the Respondent's capacity to institute legal proceedings on its own name, then it was incumbent on them to provide the relevant Articles of Incorporation creating the Respondent that expressly require any legal action to be instituted by the Office Bearers at that time occupying the said offices.
40. In the alternative, the 1<sup>st</sup> to 4<sup>th</sup> Applicants had a duty under Section 107 of the [Evidence Act](#), Cap 80 to provide the relevant statutes from the State of Pennsylvania which are similar to the Section 41 (1) of the [Societies Act](#), Cap 108 requiring any action instituted by the Respondent to be done through its registered officials.
41. So far, the 1<sup>st</sup> to 4<sup>th</sup> Applicants have not provided the Articles of Incorporation of the Respondent that provide legal proceedings must be instituted through its registered office bearers.
42. Similarly, the 1<sup>st</sup> to 4<sup>th</sup> Applicants did not place before the Court any provision under the relevant Statutes in the State of Pennsylvania require any legal proceedings instituted by the Respondent must be done through the registered office bearers at that time holding office.
43. Lastly but not least, the 1<sup>st</sup> to 4<sup>th</sup> Applicants did not cite any legal provision either in [the Constitution](#) of Kenya, 2010 and/or any Statute within the Republic of Kenya that prohibits a foreign entity from instituting and/or pursuing legal proceedings in the Kenyan Court against a Kenyan registered entity and/or company.



44. It is important to point out that there is a difference between a foreign entity seeking justice through filing of legal proceedings before a Kenyan Court of Law and a foreign entity doing business within the Republic of Kenya.
45. It is therefore this Court's finding that the Respondent has the legal status and locus standi to institute legal proceedings in Kenya in its lawful and legal registered name in the United States of America unless otherwise held.
46. The Plaint dated 20.11.2023 is therefore lawful and proper before the Court.

**Issue No. 4- is the present PO merited?**

47. Based on the findings in Issue no. 2 & 3 hereinabove, this Court makes a finding that the present PO is not merited.

**Issue No. 5- Who bears the costs of the present PO?**

48. On the issue of costs, the present PO not being merited, then the 1<sup>st</sup> to 4<sup>th</sup> Applicants are condemned to pay costs of the same to the Respondent.

**Conclusion**

49. In conclusion, the following Orders are hereby made in determination of the Preliminary Objection dated 08.03.2024; -
- A. The preliminary objection dated 08.03.2024 is not merited and therefore dismissed forthwith.
- B. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants are condemned to pay the costs of the respondent herein.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 3<sup>RD</sup> OCTOBER 2024.**

**EMMANUEL.M.WASHE**

**JUDGE**

In The Presence Of:

Court Assistant: Mr. Ngeno

Advocate For The Applicants: Dr. Khakula

Advocate For The Respondent: Ms. Nafula H/b

Makallah

