



Republic v Registrar of Societies & another; East Africa Pentecostal Churches (EAPC) (Ex parte Applicant); Muthinja & 2 others (Interested Parties) (Judicial Review E005 of 2022) [2025] KEHC 11523 (KLR) (29 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11523 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
JUDICIAL REVIEW E005 OF 2022
HM NYAGA, J
JULY 29, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

REGISTRAR OF SOCIETIES 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

AND

EAST AFRICA PENTECOSTAL CHURCHES (EAPC) ... EX PARTE APPLICANT

AND

BISHOP GEOFFREY MUTHINJA INTERESTED PARTY

BISHOP ROBERT BANDA NGOME INTERESTED PARTY

REV DANIEL KIROGI INTERESTED PARTY

RULING

1. Vide a Notice of Motion dated 12th September, 2024 brought under Order 51 Rule 1, Order 8 Rule 3 of the Civil Procedure Rules and Article 159[d] of *the Constitution*, the Ex- parte Applicant seeks for Orders: -
 1. Spent
 2. That this Honourable Court be pleased to grant leave to the Ex-parte Applicant to amend the Notice of Motion dated 26th June, 2022 as per the draft amended notice of motion annexed to this Application.



3. Costs of the Application be in the suit.
2. The Application is premised on the grounds on its face and supported by an affidavit of Henry Kinyua who describes himself as the Chairman of the Board of Registered Trustees of the Exparte Applicant sworn on the even date.
3. The Respondents opposed the application through the replying affidavit sworn by the 1st Respondent, Maria Goretti Nyariki, on 14th January,2025.
4. Similarly, the interested parties opposed the Application through the replying affidavit sworn by the 3rd Interested party, Daniel Kirogi, on 27th September,2024.
5. Henry Kinyua swore a further affidavit in response to the aforestated replying affidavits on 29th January,2025 & 23rd October,2024 respectively.

Ex-Parte Applicant's Case

6. The said Ex-parte Applicant's affiant deposed that the Ex-parte Applicant was granted certificate of registration as a corporate body by the minister for Lands, under the name, "the trustees of East Africa Pentecostal Churches" registered on the 14th February,1964. On 22nd June,2022, he swore an affidavit in his capacity as the chairman of the Board of Trustees in support of the Ex-parte application dated 22nd June,2022 seeking leave of the court to commence Judicial Review proceedings seeking orders of mandamus against the Respondents herein.
7. That the Ex-parte Applicant herein is registered through registered trustees and that after leave was granted, the typist who prepared the Notice of Motion in these proceedings omitted the words "through registered trustees" in the heading of the Notice of Motion, which according to it is a typing error that can be corrected through the amendment sought herein.
8. The Ex-parte Applicant contended that no prejudice will be occasioned to the respondents or the interested parties if the amendment is allowed.

Respondents' Case

9. The respondents averred that all registered societies are supposed to conduct elections in accordance with their constitutions and submit returns to the office of the 1st Respondent.
10. That the last undisputed and valid elections conducted by the Ex-parte Applicant was in 2005 and that all other subsequent elections have been disputed and the office of the 1st respondent has not recognized them for being unprocedural.
11. It is the respondents' averment that there is unresolved dispute as to who are the legitimate officials of the Ex-parte Applicant following the first botched elections that took place on 19th August,2010.
12. They contended that following the said botched elections, two leadership factions emerged and the Ex-parte Applicant has been embroiled in numerous court cases since the year 2010 being Meru High Court Constitutional Petition No. 14 of 2014 which was appealed vide Nyeri Civil Appeal No.10 of 2015 and Meru High Court Civil Suit No.1 of 2016.
13. They deposed that the parties were referred to mediation in Meru High Court Civil Case No. 1 of 2016 but the mediation did not materialize since the parties did not reach a consensus on who were the legitimate officials. Thereafter, the 1st respondent received returns from two factions of the Ex-



parte Applicant each purporting to have held elections and seeking registration of their respective notification of change of officials.

14. That in light of the above, the 1st respondent pursuant to Section 18 of the *Societies Act* wrote to the two factions vide a letter dated 29th March, 2022 to resolve the aforesaid dispute but to date the same is yet to be resolved.
15. The respondents thus contended that it is misleading for the Ex-parte Applicant's deponent to state that he is the chairman of the board of trustees of the Ex-parte Applicant. According to them, the certificate of notification sought to be relied on by the said deponent in support of his position is suspect as no valid elections have taken place since the year 2005.
16. They urged this court to dismiss the instant application.

Interested parties' case

17. The 3rd Interested party deponed that he has been a trustee of the Ex-parte Applicant since the year 2005 and that the Ex-parte Applicant's trustees are elected by the National delegates alongside the National Officials of the Church on the same date.
18. The interested parties concurred with the respondents that the last valid election conducted by the Ex-parte Applicant was in the year 2005 and all the subsequent ones have been disputed and not recognized by the 1st respondent.
19. They equally asserted that the certificate of notification showing that some changes on the trustees were effected on 16th September, 2020 and which the Ex-parte Applicant's deponent seeks to rely on is a fraudulent document since no valid elections of the trustees have taken place since the year 2005 and consequently the trustees could not have changed in the year 2020.
20. The 3rd Interested party contended that this suit together with the intended amendment have been sought without his authority as one of the trustees.
21. The interested parties thus urged this court to reject this application as it is based on a fraudulent document.

The exparte Applicant reply to the Respondents' and interested parties' cases

22. The Ex-parte Applicant's deponent, Henry Kinyua, asserted that the 3rd Interested party was elected as a trustee of the Ex-parte Applicant in 2005 but was voted out in the year 2010 thereby ceasing from being its trustee.
23. According to him valid elections were conducted not only in 2005 but also in 2010, 2017, and 2022, and none of these have ever been invalidated by the court.
24. He deposed that following the elections of February, 2017, which were conducted under the supervision of the Registrar of Societies pursuant to a court order, the national officials of the Ex-parte Applicant and the National Trustees were registered with the office of the Registrar of societies.
25. It was his averment that the national leadership of the Ex-parte Applicant remains unchanged as evidenced by a letter from the Registrar of Societies dated 14.10.2024 addressed to the Director of Criminal Investigation [DCI] in connection with the ongoing investigation into criminal activities involving some members of the Ex-parte Applicant.



26. He averred that the Ex-parte Applicant conducted its elections on 19th August, 2010 which were contested by the interested parties through multiple suits. However, all of them except for HCC No. 30 of 2013 were struck out by the court in Constitutional Petition No. 14 of 2014.
27. He asserted that the Interested parties Appeal against the striking out of the suits vide Nyeri COA No. 10 of 2015 was equally dismissed on the 28th October, 2015 and that after the said dismissal the officials who were elected in the year 2010 continued to serve their full time.
28. It was his deposition that the Ex-parte Applicant's election of 2015 was protested by the interested parties through HCCC NO.1 of 2016 whereby the court directed inter alia the registrar of societies to call, oversee and conduct elections for the national committee of the Ex-parte Applicant within 60 days.
29. He stated that thereafter, the 1st respondent took up the matter and filed an interim report before this court on the progress of conducting the elections and sought for extension of time to conclude the elections and submit a final report.
30. That the office of the 1st Respondent completed the elections and made a final report dated 13.3.2017 which was filed in court on the 16.3.2017.
31. He contended that as seen on page 5 he was elected as one of the trustees and that the office of the 1st respondent wrote a letter dated 14.2.2017 to the Ex-parte Applicant spelling out the results of the elections, the National Office bearers and the trustees elected during the successful elections held on 8.2.2017.
32. He further contended that in October 2024, the registrar wrote to the Director of criminal investigations relating to fraudulent dealing with the society's land, indicating the status of the National officials of the EAPC and that the Registrar clearly stated the officials according to records in the office are Samuel Muguna Henry, John Jembe, Musyimi Josia, Malachi Njagi and Alois Miriti M'arauki who are presiding General Overseer, General Secretary, Assistant General Secretary, National Treasurer and Assistant National Treasurer respectively.
33. He averred that following the elections carried out and supervised by the 1st Respondent the names of the trustees were forwarded to the registrar of documents for registration resulting in annexure HK1.
34. That indeed the interested parties wrote a letter dated 2.3.2017 to the duly elected General Secretary congratulating him and the other officials on their election and that in the letter they also appreciated the office of the 1st Respondent for conducting peaceful elections.
35. It was his averment that the 1st Respondent issued another official search dated 25.1.2018 clearly indicating the elected officials in the election it supervised and registered in February 2018.
36. He thus reiterated that he is a duly elected trustee of the Ex-parte Applicant and has powers to bring this application on its behalf.

Ex-parte Applicant's submissions

37. Citing Section 100 of the *Civil Procedure Act*, the Ex-parte Applicant submitted that the application is merited.
38. It argued that the only amendment and which was omitted during typing were the words "suing through its registered trustees" which according to it is a very minor amendment that will neither change the cause of action nor prejudice any party.



39. The Ex-parte Applicant submitted that the issues raised by the respondents and interested parties concerning the registered trustees are matters that will be determined upon the hearing of the petition.
40. It therefore argued that the amendment sought satisfies the principles governing the amendment of pleadings. In buttressing its submissions, the Ex-parte Applicant relied on Order 8 Rule 3[5] of the Civil Procedure rules and the cases of Central Kenya Ltd v Trust Bank Ltd & 5 others [2002]eKLR ; Coffee Board of Kenya v Thika Coffee Mills Limited & 2 others[2014] eKLR & Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited [2013] eKLR.

Respondents' submissions

41. The Respondents submitted that the intended amendment seeks to introduce Henry Kinyua as a trustee yet the dispute on the validity of his elections as such remains unresolved.
42. They contended that allowing the prayer of amendment would be tantamount to giving legitimacy and validity to the election of Henry Kinyua as a trustee.
43. They argued that the said Henry Kinyua Lacks Locus standi to purport to plead for and on behalf of the Ex-parte Applicant.
44. The Respondents submitted that locus standi is the right to appear and be heard in court or other proceedings and that only party with the same has a right to be heard. In support of this position, the respondents relied on the cases of Law Society of Kenya v Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000 & Alfred Njau and others v City Council of Nairobi [1982] KAR 229.
45. The Respondents also referred this court to the case of Kassam v Bank of Baroda [Kenya] Ltd[2002] eKLR on the factors to be taken into account while determining an application for leave to amend pleadings and the case of Daniel Ngetich & Anor versus K-Rep Bank Limited [2013] eKLR for the proposition that courts should not grant leave to amend pleadings if its of the view that amendment would cause injustice or irreparable loss to the other side or if it is a devise to abuse the court process.
46. Flowing from above, they argued that the instant application is an abuse of the court process, incompetent and should be dismissed with costs.

Interested Parties' submissions

47. The interested parties submitted that persons who are purporting to sue on behalf of Ex-parte Applicant are not its legitimate trustees.
48. They asserted that Ex-parte Applicant's annexure marked as HK1 is a fraudulent document meant to mislead and invite the court to consider an application grounded on a fraudulent document.
49. They argued that the Ex parte Applicant is acting malafides and in an abuse of the court process.
50. The Interested parties therefore urged the court to dismiss the Application. To bolster their submissions, they referred this court to the case of Kassam v Bank of Baroda[supra]

Analysis & Determination

51. I have considered the application, the responses thereto, submissions and authorities cited by the parties. The issues which arise for determination are;
 1. Whether the Ex-parte Applicant's deponent has locus to institute this application.



2. Whether leave should be granted to the Ex-parte Applicant to amend its pleading.
Whether the Ex-parte Applicant's deponent has locus to institute this Application
52. Locus standi is defined in Black's Law Dictionary, 9th Edition [page 1026] as "the right to bring an action or to be heard in a given forum". In the case of Alfred Njau and Others v City Council of Nairobi [1982] KAR 229, the Court held that; -
- "the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings".
53. A claim that one has no locus standi therefore challenges a party's right to be heard before a court. A party without locus standi in a civil suit lacks the right to institute and/or maintain the suit even where a valid cause of action exists.
54. I have considered the respective parties averments and submissions in regard to this issue. In brief it is the Respondents' and Interested parties' position that the Ex-parte Applicant's purported trustee, Henry Kinyua, is not a trustee of the Ex-parte Applicant as no valid elections of the trustees have taken place since the year 2005 and consequently the trustees could not have changed in the year 2020. They asserted that the certificate of notification marked as "HK 1" indicating Henry Kinyua as one of the trustees of the Ex parte applicant is fraudulent.
55. Henry Kinyua, on his part maintains that he is the duly elected trustee of the Ex-parte Applicant. In support of this position, he has referred the Court to several documents i.e. the Certificate of Notification marked as HK 1, page 5 of a report dated 13th March 2017 by the 1st respondent marked as HK X and a letter from the office of the 1st Respondent dated 14th February 2017 marked as HK XI. I have perused these documents and they all confirm him as a trustee of the Ex-parte Applicant.
56. The respondents' allegation that annexure HN1 is fraudulent is entirely unsubstantiated as no evidence at all has been presented to support this claim. As pointed out above, the Ex-parte Applicant's deponent does not rely solely on annexure HN1. He has also submitted the aforementioned annexures that clearly demonstrate that he was duly elected as a trustee of the Ex-parte Applicant. These documents have not been challenged, disputed, or addressed by the respondents in their submissions.
57. In the circumstances, the allegation of fraud is speculative and cannot stand in the face of unrefuted documentary evidence. At this stage and on a balance of probabilities, I find that Henry Kinyua has demonstrated that he is a trustee. Consequently, the respondent's contention that he lacks locus is without merit and is hereby dismissed.

Whether leave should be granted to exparte applicant to amend its pleading

58. The general power to amend pleadings draws from section 100 of the *Civil Procedure Act*. Parties to a suit have a right to amend their pleadings at any stage of the proceedings albeit that right is not absolute, for it is dependent upon the discretion of the court. However, this discretion should be exercised judiciously and in line with the criteria set out under order 8 rule 3 of the Civil Procedure Rules which stipulates:-

"Subject to order 1, rules 9 and 10, order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings."



59. Further order 8, rule 5 gives the court the general power to amend or to allow amendment and provides:

“For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either on its own motion or on the application of any party order any document to be amended in such manner as it directs and, on such terms, as to costs or otherwise as are just.”

60. The Court of Appeal outlined the principles in amendment of pleadings in the case of *Central Kenya Limited v Trust Bank Limited & 5 Others* [2002] eKLR whilst referring to commentaries on the Indian Civil procedure Code by Chittaley and Rao as follows:-

“That a party is allowed to make such amendments as may be necessary for determining the real question controversy or to avoid a multiplicity of suits provided that there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.”

61. These principles have been elaborated in Mulla the Code of Civil Procedure, 18th Ed Vol 2 pages 1751 -1752 and cited in the case of *Coffee Board of Kenya v Thiks Coffee Mills Limited & 2 Others* [supra] where it stated as follows:-

- a. Amendments should be allowed which are necessary for determination of the real controversies in the suit;
- b. The proposed amendment should not alter and be a substitute of the cause of action on the basis of which the original list was raised;
- c. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of fact would not be allowed to be incorporate by means of amendments;
- d. Proposed amendments should not cause prejudice to the other side which cannot be compensated by means of costs;
- e. Amendments of a claim or relief barred by time should not be allowed;
- f. No amendment should be allowed which amounts to or results in defeating a legal right to the opposite party on account of lapse of time;
- g. No party should suffer on account of the technicalities of law and amendment should be allowed to minimize the litigation between the parties;
- h. The delay in filing the petitions for amendment should be properly compensated by costs;
- i. Error or mistake, which is not fraudulent, should not be made the ground for rejecting the application for amendment of pleadings.

62. I have considered the application in light of the principles set out above. It is evident that the Ex-parte Applicant wishes to amend its notice of motion dated 26th June,2022 for purpose of introducing the words “through Registered Trustees” which it has explained it was inadvertently omitted by its typist. Having looked at the said proposed amendment and being mindful of the legal position that a society can only institute legal proceedings or defend the same through its representatives, I am satisfied



that the same does not alter the character of the case between the parties and it will not occasion any prejudice to any party.

63. In view of the foregoing, I find the application dated 12th September, 2024 is merited and is hereby allowed.
64. The Ex-parte Applicant is granted leave of fourteen [14] days to file and serve the amended Notice of Motion.
65. The costs of this application shall abide in the suit.
66. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 29TH DAY OF JULY, 2025.

**H. M. NYAGA,
JUDGE.**

