



**Thuo & 2 others (Suing as Trustees of Victorious Gospel International Church of Kenya)
v Mwangi & 3 others (Operating as Victorious Community Church) (Environment
& Land Case 104 of 2024 & Land Case 452 (NKR) of 2013 & 431(NKR) of 2016
(Consolidated)) [2025] KEELC 3796 (KLR) (Environment and Land) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3796 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT & LAND CASE 104 OF 2024 & LAND CASE
452 (NKR) OF 2013 & 431(NKR) OF 2016 (CONSOLIDATED)**

MC OUNDO, J

MAY 15, 2025

BETWEEN

**HENRY KIGERA THUO 1ST PLAINTIFF
PAUL MURAGU MWANGI 2ND PLAINTIFF
FRANCIS KARIUKI NJOROGE 3RD PLAINTIFF
SUING AS TRUSTEES OF VICTORIOUS GOSPEL INTERNATIONAL
CHURCH OF KENYA**

AND

**JACKSON MAINA MWANGI 1ST DEFENDANT
PENINA WANJIRU MWANGI 2ND DEFENDANT
OBED K KIMANI 3RD DEFENDANT
SAMUEL NGIGI 4TH DEFENDANT
OPERATING AS VICTORIOUS COMMUNITY CHURCH**

RULING

1. What is before me for determination is a Notice of Motion Application dated 15th November 2024 brought under the provisions of Section 1A, 1B, 3, 3A and 63 of the [Civil Procedure Act](#) where the Defendants/Applicants herein have sought that the Court makes a finding that the Plaintiffs have



- no locus standi to institute, sustain and prosecute the instant case for and on behalf of Victorious International Church of Kenya and thereafter strike out the instant case. They also sought for costs.
2. The said Application was supported by the grounds therein as well as the Supporting Affidavit of equal date sworn by Obed Kimani one of the Registered officials and the Secretary of Victorious Community Church who deponed that the instant suit had been instituted by the Plaintiffs herein on 20th July, 2011 through a Plaint dated 15th July 2011 allegedly in their capacities as the Registered Trustees of Victorious Gospel International Church of Kenya.
 3. That after the Defendants raised the issue of their locus standi vide their Defence dated 25th August 2011, the Plaintiffs amended their Plaint on 8th September, 2011.
 4. That the Plaintiffs herein had never been Trustees or officials of Victorious Gospel International Church of Kenya the registered officials having been John Mboi (Chairman), James King'ori (Secretary), Lawrence Kamutu (Treasurer) and David Kuria (Assistant Secretary). That Victorious Gospel International Church of Kenya was registered under the Societies Act as per the copy of the Certificate of Registration No. 6090 issued on 15th May, 1986 hence it could only sue or be sued through its Registered Officials or Registered Trustees.
 5. That as late as on 16th November 2023, the Assistant Registrar of Societies had confirmed that the Registered Officials of Victorious Gospel International Church of Kenya had been John Mboi (Chairman), James King'ori (Secretary), Lawrence Kamutu (Treasurer) and David Kuria (Assistant Secretary). That the Plaintiffs have never availed any Certificate of their Registration as the Trustees of Victorious Gospel International Church of Kenya.
 6. That the issue of the Plaintiffs' locus standi to institute, sustain and prosecute the instant case was an attack to the Court's jurisdiction and as such, should be dealt with at the earliest as it could either sustain or collapse the case hence it was very crucial for the motion to be heard on a priority basis.
 7. In response to the Application, the Plaintiffs/Respondents, through their Replying Affidavit dated 23rd December, 2024 sworn by Henry Kigera Thuo, the 1st Plaintiff deponed that the Application was misconceived, incompetent, an abuse of the court process and lacked merit to warrant any discretion of the Court. That they were the legitimate trustees of Victorious Gospel International Church of Kenya by virtue of which they had filed the instant suit in that capacity. That they had served their list of documents to the Defendants/Applicants inclusive of a duly registered declaration of trust.
 8. That a suit had been filed in Nakuru HCC No. 150 of 2011 (Victorious Gospel International Church of Kenya (Suing through John Mboi & 3 Others in their capacities as officials) vs Cyrus Njoroje Karanja & 9 others over the leadership and management of Victorious Gospel International Church. That vide a Judgement delivered on 28th September, 2023, the said suit had been dismissed with costs to the Defendants whom the Court had confirmed were the legitimate officials of the Victorious Gospel International Church of Kenya and not the Plaintiffs. That the Plaintiff's Application dated 23rd November 2023 seeking among other orders stay of execution of the judgement had been dismissed vide by a ruling of 14th March 2024 wherein they had moved to the Court of Appeal vide Nakuru COA Application No. E040 of 2024 dated 10th April 2024 seeking an order of injunction to restrain the Respondents therein from interfering with the pastoral and religious affairs of Victorious Gospel International Churches of Kenya but by consent the said application was withdrawn.
 9. That subsequently, the decision that had been made by the Court on 28th September 2023 has not been set aside, a fact that had been well known to the Defendants especially the 1st Defendant who had been mentioned numerously in the Judgement in Nakuru HCC No. 150 of 2011.



10. That the Applicants herein vide their Application dated 15th November 2024 had approached the Court with unclean hands, the issue of who were the true officials of Victorious Gospel International Church of Kenya having been determined by a court of competent jurisdiction.
11. That the records from the Registrar of Societies were subject to amendment to align with the judgement of the court that had been delivered on 28th September 2023. That accordingly, this being a court of justice and equity, it was only fair that the Application herein be dismissed.
12. The Application dated 15th November 2024 was canvassed by way of written submissions, wherein the Plaintiffs/Respondents founded their submissions on the definition of Locus Standi as defined in the Blacks's Law Dictionary, 9th Edition (page 1026) as well as the decisions in the case of Law Society of Kenya v Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000 and Alfred Njau and Others v City Council of Nairobi (1982) KAR 229.
13. They submitted that the Trust Deed dated 22nd March 2011 annexed to their Replying Affidavit showed who the registered trustees of Victorious Gospel International Church of Kenya were.
14. That further, they had attached pleadings in Nakuru HCC No. 150 of 2011 (Victorious Gospel International Church of Kenya (Suing through John Mboi & 3 others suing in their capacities as officials) vs Cyrus Njoroge Karanja & 9 others which pleadings had been over the leadership and management of Victorious Gospel International Church. That mischievously, the Applicants herein had deliberately failed and/or refused to disclose to the court that Nakuru HCC No. 150 of 2011 had been heard, determined and a judgement delivered on 28th September 2023 where it had been determined that the Defendants in the said suit were the legitimate officials of the Victorious Gospel International Church of Kenya.
15. That the said judgment had not been set aside despite there being a pending appeal in the Court of Appeal to wit, Civil Appeal No. E040 of 2024. That further, no order of stay had been issued barring the Plaintiffs herein from representing Victorious Gospel International Church of Kenya in the instant suit or any other suit.
16. That the Application filed herein was an attempt to forum shop and/or to indirectly set aside and overturn the judgement of the High Court. That the letters relied upon by the Applicants herein had no basis over the determination of a court of law. That it was clear that the records at the Registrar of Societies were yet to be corrected to give effect to the judgement of the court in Nakuru HCC No. 150 of 2011. That accordingly, it could not be said that the Plaintiff/Respondents herein had no locus when a judgement of the court had validated them.
17. It was their submission that the Applicants herein had moved the court with unclean hands and that the instant Application had been made in bad faith, was scandalous and intended to delay the hearing and determination of the present suit. They thus urged the court to dismiss the same with costs.

Determination.

18. I have considered the Defendants/Applicants application herein which seeks to have the Plaintiff's suit struck out for reason that they were not the Registered Trustees of Victorious Gospel International Church of Kenya and therefore had no locus standi to institute, sustain and prosecute the instant case for and on behalf of Victorious International Church of Kenya.
19. In response the Plaintiff/Respondent opposed the Application stating that the issue of leadership and management of Victorious Gospel International Church had been determined vide a Judgement that had been delivered on 28th September, 2023 in Nakuru HCC No. 150 of 2011 (Victorious Gospel



International Church of Kenya (Suing through John Mboi & 3 Others in their capacities as officials) vs Cyrus Njoroge Karanja & 9 others over the leadership and therefore the Application before court was brought with unclean hands and in bad faith and should be dismissed.

20. It is worth noting that despite parties having taken directions that the Application be disposed of by written submissions, only the Respondents had complied. It is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm as written submissions serve the purpose of expedience and amounts to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that an Applicant who fails to file his submissions on an application as ordered by the court is deemed as a party who has failed to prosecute his/her application and therefor that application is liable for dismissal.
21. The filing of submissions having been ordered, the failure by the Applicants to exercise the leave granted to them to file written submissions clearly demonstrates inertia and inordinate delay, lack of interest and/or seriousness on their part, in the prosecution of the matter.
22. The Court of Appeal in Rowlands Ndegwa and 4 Others v County Government of Nyeri and 3 Others; Agriculture, Fisheries and Food Authority & Another (Interested Parties) [2020] eKLR, citing with approval the decision of the High Court in, Winnie Wanjiku Mwai v Attorney General & 3 Others [2016] eKLR, observed as follows:

“With regard to dismissal for want of prosecution, there are indeed no hard and fast rules as to the manner in which the inherent power and discretion to dismiss an action for want of prosecution is to be exercised. It is however generally accepted that dismissal will be invited if there should be a delay in the prosecution of the action and the Respondent is prejudiced by the delay with attention also being paid to the reasons for the inactivity....”
23. The mode of hearing having been communicated to the parties and the Applicant having consented to the same and there having been no compliance, I am persuaded to dismiss the main motion but in case I am wrong, I find the main issue for determination herein being whether the Plaintiffs have locus Standi.
24. Attention of the court has been drawn to a decision of 28th September, 2023 by the High Court in Nakuru HCC No. 150 of 2011 that will help the court make an informed decision on this issue.
25. I have gained sight of the Judgment of the said case which was reported as Victorious Gospel International Church of Kenya (Suing Through John Mboi, James Kingori, Lawrence Kamutu and David Kuria) in their Capacities as Chairman, Secretary, Treasurer and Assistant Treasurer Respectively) v Karanja & 8 others [2023] KEHC 22733 (KLR) and notably at paragraph 3 of the same the court had stated as follows;

“..... The court has perused the said defence submissions and it is generally grounded on one issue, namely, leadership of the plaintiff’s church. Did the plaintiff prove its case on a balance of probabilities?
26. At paragraph 30 of the Judgement, the court held as follows;

‘In the premises this court is satisfied that the defendants as per the evidence produced both documentary and oral and the law governing societies were legitimate officials of the Victorious Gospel International Church of Kenya and not the plaintiffs.’



27. It is worth noting that the Plaintiffs herein had been the 7th, 8th and 6th Defendants in Nakuru HCC No. 150 of 2011. It is therefore a finding of this court that the Application before me was not only an abuse of the court process but was also Res judicata Nakuru HCC No. 150 of 2011 the issue of leadership wrangles within the church having been heard and determined by a court that had the jurisdiction over the same. There having been no evidence that the holding of the High Court had been varied or set aside, the Application dated the, 15th November 2024 lacks merit and is herein dismissed with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 15TH DAY OF MAY 2025

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

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