



**Mwanyagetinge Monontwa Welfare Association v Cabinet Secretary  
Ministry of Interior & Coordination of National Government & 2 others  
(Petition E009 of 2023) [2024] KEHC 8337 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8337 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
PETITION E009 OF 2023**

**TA ODERA, J  
JUNE 6, 2024**

**BETWEEN**

**MWANYAGETINGE MONONTWA WELFARE ASSOCIATION ... PETITIONER**

**AND**

**CABINET SECRETARY MINISTRY OF INTERIOR & COORDINATION OF  
NATIONAL GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL OF KENYA ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL CHAIRMAN NYANZA – WESTERN KENYA CAUCUS IDP’S  
NETWORK ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Mwanagetinge Monontwa Welfare Association filed the petition herein against the respondents seeking declaration of violation of their Constitutional rights.
2. In paragraph 1 of the petition the petitioner described its self as a community based organization registered on 7.5.2019.
3. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed Notice of preliminary objection dated 23.6.23 on the grounds that
  - a. The petitioner lacks locus standi to institute and maintain this petition since it is not a body corporate capable of suing in its own name by virtue of registration under the *Societies Act* and as such the suit is a nonstarter, incurable defective, bad in law and an abuse of the court process.
  - b. The 1<sup>st</sup> and 2<sup>nd</sup> respondents will be greatly prejudiced if the petition is heard and determined as filed before the determination of the preliminary objection.
  - c. They sought striking out of the petition.



4. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed submissions dated 6.4.24 in support of their preliminary objection.
5. They submitted that a preliminary objection consists of points which can dispose of the suit as was held in the case of *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors* (1969) EA 696. It was submitted that the petitioner has no capacity to institute the suit in its own name as it is not a legal entity with a capacity to sue and be sued. This was by virtue of its registration under Section 10 of the *Societies Act* which is not disputed. They cited the case of *Islamia Madrassa Society v Zafar Niaz and 8 others* (2021) eKLR where it was held that registered societies are not legal persons with capacity to sue and be sued. This was cited among other cases where similar views were held.

It was submitted that lack of capacity cannot be cured under Article 159 of the *Constitution* as it goes to the substance of the case as was held in the case of *Phare Omondi Okech & 3 others v victory Construction Co. Ltd and Kisumu water and another* (2015) eKLR.

6. The petitioners replied by filing affidavit of its chairman Mr. Samuel Tumbo and admitted that it is a registered society and that he preliminary objection is being raised to delay the petitioner's compensation and sought its dismissal.

The Petitioner is a society registered under Section 10 of the *Society Act* and the position in Kenya as that under the Common Law is that unincorporated bodies are not legal persons and thus cannot sue or be sued in their own names but in the names of its officials. (see *Free Pentecostal Fellowship in Kenya v Kenya Commercial Bank* Nairobi HCCC No 4116 of 1992 where it was held: "The position at common law is that a suit by or against unincorporated bodies of persons must be brought in the names of or against all the members of the body or bodies where there are numerous members the suit may be instituted by or against one or more such persons in a representative capacity pursuant to the provisions or order 1 rule 8 Civil procedure Rules."

7. The petitioner sued its own name instead of the names of the officials. The petitioner got it wrong when its chair said that it is duly registered, however it's registration is not in issue what questioned is the fact that it has sued in its own name instead of the officials. I agree with the 1<sup>st</sup> and 2<sup>nd</sup> respondents that the petitioner being a society has no capacity to sue in its own name as it is not a legal person. The petition is thus struck out.

**T.A ODERA**

**JUDGE**

**6.6.24**

Delivered virtually via teams platform in the presence of:

Mr. Orangi for Petitioner

N/A for the Respondents

Court Assistant: Oigo

