



**Prophetic Ministries of East Africa (Suing Through its Registered Chairman Peter Lemmo Amugune) v African Kenya Sabcrynnsk of Soi (Being Sued Through its Registered Chairman Abraham Shikuku) & 3 others (Civil Case 189 of 2017) [2023] KEHC 18782 (KLR) (Civ) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18782 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE 189 OF 2017**

**AN ONGERI, J**

**JUNE 21, 2023**

**BETWEEN**

**PROPHETIC MINISTRIES OF EAST AFRICA (SUING THROUGH ITS REGISTERED CHAIRMAN PETER LEMMO AMUGUNE) ..... PLAINTIFF**

**AND**

**AFRICAN KENYA SABCRYNNSK OF SOI (BEING SUED THROUGH ITS REGISTERED CHAIRMAN ABRAHAM SHIKUKU) ..... 1<sup>ST</sup> DEFENDANT**

**AFRICAN KENYA SABCRYNNSK OF SOI PRAYING AND HEALING CHURCH (BEING SUED THROUGH ITS REGISTERED CHAIRMAN RONALD AMBULWA ) ..... 2<sup>ND</sup> DEFENDANT**

**GREEN YELLOW CROSS CHURCH (BEING SUED THROUGH ITS REGISTERED CHAIRMAN JARED AMUSAVA) ..... 3<sup>RD</sup> DEFENDANT**

**AFRICA KENYA WHITE STAR SABCRY OF SOI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The 3<sup>rd</sup> defendant raised a notice of preliminary objection dated 19/5/2022 in the following terms;
  - i. That the suit as drawn and filed is incompetent as against the purported 3<sup>rd</sup> defendant and cannot be sustained in law.
  - ii. That the suit has abated against the purported 3<sup>rd</sup> defendant by virtue of Order 24 rule 4(3) since the 3<sup>rd</sup> defendant passed away on March 8, 2019 and the court has no jurisdiction over a deceased defendant.



- iii. That the suit as a whole is incurably defective, bad in law as drawn and filed as against the purported 3<sup>rd</sup> defendant and should be struck out.
2. The parties filed written submissions as follows;
  3. The 3<sup>rd</sup> defendant submitted that a perusal of the plaint demonstrates that the third defendant has been described as a society duly registered under the [Societies Act](#). There is no description defining the capacity with which the said deceased has been sued.
  4. Further, that since the deceased has been indicated as the only representative of the 3<sup>rd</sup> defendant and since he is deceased, the 3<sup>rd</sup> defendant remains unrepresented. That the society as described and considering the circumstances of the demise of the representative, the 3<sup>rd</sup> defendant is not properly before this court as a party as it is not a body corporate capable of being sued as is.
  5. The 3<sup>rd</sup> defendant also submitted that since it is an indisputable fact that the said representative died sometime in 2019 and no substitution was undertaken, guided by the provisions of Order 24 of the [Civil Procedure Rules](#), and having been indicated as the sole representative of the 3<sup>rd</sup> defendant, the suit abated automatically. It is also not in issue that no application was ever made within a year as required under Order 24 Rule 4 of the [Civil Procedure Rules](#). This court therefore lacks the requisite jurisdiction under Order 24 Rule 7 of the [Civil Procedure Rules](#) to acquiesce to the plaintiff's request as raised in his response to the preliminary objection that he be granted leave to make an application. Firstly, a perusal of Order 24 of the [Civil Procedure Rules](#) in its entirety demonstrates that the law does not contemplate revival of the suit against the 3<sup>rd</sup> defendant upon abatement. Sitting courts derive their power to grant orders from the law. They cannot arrogate themselves powers not established in law as said action would be deemed to be baseless and without legal justification.
  6. That having established that the 3<sup>rd</sup> defendant is not a party before this court in light of the death of its representative, this court lacks jurisdiction to entertain this suit against the 3<sup>rd</sup> defendant as locus standi does go to the heart of this matter as was appreciated in [Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva \(Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased\)](#) [2016] eKLR, the court held:
 

“...Further the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without *locus standi* in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without *locus standi* can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is also worth-noting that the issue of *locus standi* becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.”
  7. The plaintiff on the other hand submitted that that all laws emanate from the [constitution](#). By dint of Article 259(1) of the [constitution](#), the courts in interpreting this constitution shall do so in a manner that (b) advances the rule of law and the human rights and fundamental freedoms in the Bill of Rights and (c) permits the development of the law.
  8. The plaintiff submitted that it is not in dispute that the 3<sup>rd</sup> defendant is deceased. In fact, the cause of action has not died and/or abated with the 3<sup>rd</sup> defendant rather the right being sought to be enforced by the plaintiff survives against the surviving defendants. That advocate for the 3<sup>rd</sup> defendant is misdirecting himself and this Honourable court by applying the wrong provision of the law under



Order 24 rule 4 of the Civil Procedure Rules, 2010 when instead the advocate ought to apply the provisions under Order 24 rule 2 of the Civil Procedure Rules, 2010.

9. The plaintiff further argued that the 3<sup>rd</sup> defendant's preliminary objection is therefore misplaced, misconceived, arises from misappreciation of the law and lack of appreciation of the impact of the plaint. That if the history of this case is anything to go by, then the 3<sup>rd</sup> defendant has not acted in good faith. The 3<sup>rd</sup> defendant and their advocates were unavailable for the most part of 2021 and the plaintiff had to seek leave to serve the 1<sup>st</sup>, 3<sup>rd</sup> & 4<sup>th</sup> defendants by way of substituted service.
10. The plaintiff indicated that they were in total darkness regarding the death of the 3<sup>rd</sup> defendant's chairman as no such communication had been made or attempted to be raised by the advocate on record for the 3<sup>rd</sup> defendant despite having full knowledge of the same. That the constitution under Article 50(1) provides that every party deserves a fair trial and it is arguable that a trial will not be fair if a party is allowed to hide information that would be crucial to the other party and ambush that party at the hearing and/or in the course of trial.
11. That further the 3<sup>rd</sup> defendant has indicated that the Honourable court lacks the requisite jurisdiction to grant the plaintiff's request of being granted leave to make an application of substitution placing its reliance on Order 24 rule 7 of the Civil Procedure Rules. The plaintiff therefore seeks reliance on the inherent powers of the court in order to meet the ends of justice and/or avoid the abuse of the process of the court under Section 3A of the Civil Procedure Act. That this court in exercising its inherent jurisdiction has a discretion in regard to its own procedure and may in fact condone any procedural mistakes or determine any point of procedure.
12. The 1<sup>st</sup> defendants also opposed the PO and submitted that the 3<sup>rd</sup> defendant is a church registered under the Societies Act which at the time of being sued the chairman was Jared Amusava who is since deceased. The suit is therefore not incompetent as the 3<sup>rd</sup> defendant is still operational. That further the 3<sup>rd</sup> defendant is in fact Green Yellow Cross Church which is not deceased and therefore the issue of abatement does not arise.
13. The sole issue for determination in this preliminary objection is whether the suit has abated against the 3<sup>rd</sup> defendant since the 3<sup>rd</sup> defendant's registered chairman passed away on March 8, 2019
14. The legal provision for abatement of suits is Order 24 rule 4 of the Civil Procedure Rules which states as follows;  
Procedure in case of death of one of several defendants or of sole defendant [Order 24, rule 4.]
  - (1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.
  - (2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.
  - (3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.
15. I find that the 3<sup>rd</sup> defendant was sued in his capacity as the chairman of the Green Yellow Cross Church and not in his personal capacity.



16. The plaint clearly states that the 3<sup>rd</sup> Defendant is a registered religious society which was sued through its registered chairman one Jared Amusava.
17. If the said Jared Amusava is now deceased what is required is substitution and the issue of abatement of the suit does not arise.
18. I accordingly find that the cause of action against the church is still alive.
19. The preliminary objection is dismissed.
20. The costs to abide the suit.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21<sup>ST</sup> DAY OF JUNE, 2023.**

.....

**A. N. ONGERI**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the 1<sup>st</sup> Defendant

..... for the 2<sup>nd</sup> Defendant

