REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ELC CASE NO. 90 OF 2017

METHODIST CHURCH IN KENYA.....PLAINTIFF

VERSUS

ZACHARY OMBONGI.....1ST DEFENDANT

GEOFFREY ONYIEGO ANGINA.....2ND DEFENDANT

THOMAS ONDIEKI.....3RD DEFENDANT

JOYCE MORAA SEBO.....4TH DEFENDANT

PHILI NYABUTO.....5TH DEFENDANT

RULING

INTRODUCTION

1. This ruling is in respect of the Defendant's Preliminary Objection filed on 9th June 2017. In the said Preliminary Objection the Defendants state that the Plaintiff's suit is a non-starter and ought to be struck out as the plaintiff does not have the locus standi to institute this suit.

2. The Preliminary Objection was canvassed by way of written submissions and both parties filed their submissions which I have considered.

ISSUE FOR DETERMINATION

3. The singular issue for determination is whether the plaintiff has locus standi to institute this suit.

ANALYSIS AND DETERMINATION9

4. The starting point is to examine whether the Preliminary Objection meets the principles of a P.O set out in the case of **Mukisa Biscuit Company Ltd v West End Distributors Limited (1969) E.A 696.** The court held as follows:

> ***So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded or which raises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration.....***
>
> ***A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of Preliminary objections does nothing but unnecessarily increase the costs and occasions confusion of the issues. This improper practice should stop.***

5. I have considered the submissions of both counsels. It is common ground that the Plaintiff, not being a juristic person lacks the locus standi to be sued. This fact cannot be cured by amendment. As observed by **Nambuye J in Living Water International v City Council:**

> "*A reading of section 3 of the Societies Act Cap 108 of the Laws of Kenya, as well as the case law on the subject shows that a religious society has no legal capacity to sue and to be sued. This being the case, the plaintiff/Applicant had no capacity, to not only present the interim application, but the main suit as well. Both processes were therefore a nullity and therefore proper candidates*

for striking out"

6. The P.O raised by the defendants touches on the issue of locus standi which is a pure a point of law and there for the P.O falls within the principle set out in the **Mukisa Biscuit** case.

In view of the foregoing, I have no choice but to strike out the plaintiff's suit in its entirety. This does not preclude the plaintiff from instituting a new suit against the proper defendants.

The defendant shall have the costs of this Preliminary Objection and the suit.

Dated, signed and delivered at Kisii this 24th day of January 2020

J.M ONYANGO

JUDGE