



Registered Trustees of Child Welfare Society of Kenya v Diocese of Embu Trustees, Registered & another (Environment and Land Case 10 of 2022) [2025] KEELC 5879 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELC 5879 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE 10 OF 2022**

**AK BOR, J
JUNE 25, 2025**

BETWEEN

THE REGISTERED TRUSTEES OF CHILD WELFARE SOCIETY OF KENYA PLAINTIFF

AND

DIOCESE OF EMBU TRUSTEES, REGISTERED 1ST DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 2ND DEFENDANT

RULING

1. The Diocese of Embu Trustees, the 1st defendant in this case raised a preliminary objection to the suit on the grounds that the Registered Trustees of Child Welfare Society of Kenya who instituted this suit are not the trustees registered and named by their names in the instrument of incorporation dated the 29/5/1970 filed by the plaintiff in the Plaintiff's further supplementary list of documents No. 35 on 12/9/2024.
2. It stated that at paragraph 1 of the plaint, the litigant severally described the plaintiff as the Child Welfare Society of Kenya ("CWSK"), a trust, body corporate, mandated for the care, protection welfare and control of children.
3. Further, that it was a national emergency response and rescue organization for children and the national adoption society.
4. According to the 1st Defendant, these descriptions do not confer any legal status on the plaintiff and that it was therefore an amorphous body incapable of suing or being sued, and incapable of owning any property.



5. The other point taken up was that the litigant filed a document identified as Government Notice No. 1768 relating to the Prevention of Cruelty to and Neglect of Children Ordinance (No. 12 of 1955) vide which a Notice of Approval of the Child Welfare Society of Kenya was made in support of its claims to legal existence. The notice stated that pursuant to Section 9 of the Prevention of Cruelty to and Neglect of Children Ordinance, 1955, the Minister for Local Government, Health and Housing approved the Child Welfare Society of Kenya as a Society working for the purpose of the care, protection or control of the children and has issued a certificate of approval accordingly. The notice was signed at Nairobi on 9/12/1955 by the Minister for Local Government, Health and Housing.
6. The other documents were the Kenya Gazette Notice No. 1356 dated 28/4/1969 which approving the Child Welfare Society of Kenya as an Adoption Society for the purposes of the *Adoption Act*; Certificate of Registration of a Charitable Children's Institution issued by the Ministry of Gender, Children and Social Development confirming that CWSK Embu Children's home of P.o Box 211-60100 Embu had been granted registration as Charitable Children's institution under regulation 3(1) of the *Children's Institution, Regulations 2005* for a period of 3 years.
7. The 1st Defendant argued that registration as a body under a Government department as demonstrated by the documents listed above did not confer any *locus standi* on the plaintiff to sue or be sued.
8. Further, that the verifying affidavit by one Penina Wairima on 1/3/2024 was a nullity as well as the witness statement of Irene Mureithi because both Penina Wairima and Irene Mureithi were not registered trustees. According to the 1st Defendant, they therefore lack the *locus standi* to institute this suit. The 1st Defendant contended that the mended plaint and the entire suit were null and void and should be struck out and dismissed with costs.
9. The court directed parties to file and exchange written submissions which it has considered. The plaintiff submitted that the preliminary objection was misconceived for raising contested factual issues rather than pure points of law contrary to the legal threshold established in *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors* [1969] EA 696 which was reiterated in this court's ruling of 21/12/2023. It added that the objections, particularly grounds 1 to 5 required the court to ascertain disputed facts which could not be determined through a preliminary objection.
10. It was its contention that through its list of documents dated 10/2/2025, it had established that it was an exempted society and a body corporate duly incorporated with capacity to sue and be sued. That this status is confirmed by the plaintiff's Certificate of Incorporation and prior recognition by the 1st Defendant as such in Embu ELC Constitutional Petition 1 of 2018.
11. The Plaintiff submitted that it can sue in its corporate name in accordance with Section 3(2) and (3) of the *Trustees (Perpetual Succession) Act*, as the Court observed in *Registered Trustees of Maximum Miracle Centre v Andrew Mlewa Mkare* (2013) KEHC 2553 (KLR). It urged the court to find that the objection lacked merit and should be dismissed with costs.
12. The 1st defendant canvassed the objection under one head, that is, that the plaintiff under the name and title of "The Registered Trustees of Child Welfare Society of Kenya" did not have *locus standi* to institute this claim and that the plaint was incurably defective and the entire suit null.
13. It submitted that according to Section 3 of the *Trustees (Perpetual Succession) Act*, it is the trustees and not the selected registered name who become incorporated for the purposes of suing and being sued. It contended that the suit should have been filed by the trustees in their names and the name of their trust as per their certificate of incorporation, document no. 35 on the list of their documents. The 1st Defendant cited various authorities in support of its submissions.



14. The issue for determination is whether the preliminary objection has merit. The 1st defendant's objection is anchored on the ground that the plaintiff does not have the *locus standi* to bring the suit. It argued that Section 3 of the *Trustees (Perpetual Succession) Act* requires trustees to institute suits in their names and not in the name of the registered corporation. The plaintiff submitted that it had demonstrated its legal existence as a corporate entity with the requisite legal capacity to institute these proceedings.
15. Section 3 of the *Trustees (Perpetual Succession) Act*, Cap 164, expressly provides for the incorporation of trustees, and once a certificate of incorporation is issued under subsection (2), subsection (3) confers upon them corporate status with the capacity to sue and be sued in their corporate name. Section 3(3) provides that the trustees shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in their corporate name and, subject to the conditions and directions contained in the certificate, to hold and acquire, and by instruments under the common seal to convey, transfer, assign, charge and demise any movable or immovable property or any interest therein now or hereafter belonging to, or held for the benefit of, the trust concerned in the same manner and subject to such restrictions and provisions as trustees might so do without incorporation.
16. The court found useful guidance in *Registered Trustees of Maximum Miracle Centre v Andrew Mlewa Mkare* [2013] KEHC 2553 (KLR) cited by the plaintiffs, and which restated the position that once the trustees have been incorporated and a certificate of incorporation, they become a body corporate by the name described in the certificate and have power to sue or be sued in their corporate name.
17. The preliminary objection lacks merit and is dismissed with costs to the plaintiffs.

DELIVERED VIRTUALLY AT EMBU THIS 25TH DAY OF JUNE 2025.

K. BOR

JUDGE

In the presence of: -

Ms. E. Olao holding brief for Mr. R. Abubakar for the Plaintiff

Ms. D. Chepkorir holding brief for Mr. M. Njage for the 1st Defendant

Mr. I. Kiplimo holding brief for Mr. J. Kiongo for the 2nd Defendant

Diana Kemboi - Court Assistant

