



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 201 OF 2014

REGISTERED TRUSTEES OF THE EAST AFRICAN YEARLY MEETING OF FRIENDS' CHURCH KAIMOSI

THRO'

LUCAS MUDOGA.....1ST PLAINTIFF
DAVID EHAJI2ND PLAINTIFF
JAPHETH MUHASI3RD PLAINTIFF
EDWARD AGESA.....4TH PLAINTIFF
DAN OMIBO AGEVI.....5TH PLAINTIFF
NICHOLAS ANYANJE.....6TH PLAINTIFF
NATHAN MUKHWANA.....7TH PLAINTIFF

VERSUS

ANDREW INGANJI.....1ST DEFENDANT
APOLO AYUKU.....2ND DEFENDANT
CHARLES SHIKALAMA.....3RD DEFENDANT
FRED SHIJENJE.....4TH DEFENDANT
ERASTUS LITUNDA.....5TH DEFENDANT
VINCENT MATEKWA.....6TH DEFENDANT
OBADIA LISANZA.....7TH DEFENDANT
LIRHANDA MISSION STATION CHURCH.....8TH DEFENDANT

RULING

The 1st, 2nd, 4th, 7th and 8th defendants raised a Preliminary Objection on points of law that:-

1. That the plaintiff's suit and or claim cannot be sustained and or granted against the defendants since the defendants have no legal capacity and or locus standi to be sued. The defendants have been wrongly sued and the suit should be struck out with costs. The suit offends mandatory provisions of the Societies Act Cap 108 Laws of Kenya.

2. That the plaintiffs have no locus standin and or capacity to file, sustain and or maintain the suit herein in their individual capacity and or on their behalf or and on behalf of the alleged societies the East African Yearly Meeting of Friends Church Kaimosi and the

Central yearly Meeting of the Religious Society of Friends (Quakers). The suit should be struck out with costs.

3. That the plaintiffs are not registered trustees of the alleged societies the East African Yearly Meeting of Friends Church Kaimosi and the Central Yearly Meeting of the Religious Society of Friends (Quakers) and have no capacity in law to file or sustain the suit against the defendants. The suit offends the provisions of the Trustee Act Cap 167 laws of Kenya. The suit should be struck out with costs.

4. That the plaintiff's suit does not raise justiciable issues and is therefore incompetent and should be struck out with costs. The plaintiff's suit is thus incompetent an abuse of the due process of the court and the plaintiff's amended plaint dated 8th march, 2015 and or suit should be dismissed with costs.

The defendants submitted that there is no description of the parties in the pleadings and no Trust deed attached confirming the plaintiffs are trustees. They relied on several authorities.

It is the plaintiff's submissions that the defendant's preliminary objection does not amount to being a preliminary objection because a preliminary objection should be based on the presumption that the pleadings are correct and both parties agree on the truthfulness of the facts. It may also be based on agreed facts. A preliminary objection cannot be entertained where there is a dispute as to facts, for example, where it is alleged by the defendant and denied by the plaintiff. It is also based on a pure point of law. They plead that, at all material times to this suit, the plaintiffs are the registered trustees of East African yearly meeting of friends church under central yearly meeting or friends Lirhanda duly registered under the Societies Act. The defendant disputes this, so, it is obvious that the facts are not agreed as per the proceedings filed. The court will need evidence to be addressed to decide on the issue. To that extent the preliminary objection is misconceived. The amended plaint states that, the defendants, without any colour of right have purported to take over the plaintiff church premises, locking the church offices, breaking and replacing the sign posts of the church and threatening to visit violence on the plaintiffs.

The defendants deny the contents of the plaint and states that the said properties belong to Lirhanda Mission Station of Friends church and since the defendants are members and or officials of the said society they are the recognized beneficiaries of the said members and the plaintiffs have no basis in law to lay claim over the premises. Once again both parties do not agree on the facts concerning the several facts of the objection. The court needs evidence to decide on that issue.

I have perused the pleadings and find that the plaintiffs' are suing as trustees. On the defendants I agree with the defendants' submissions herein that the descriptions are not clear the 8th defendant being a society under the Societies Act. Be that as it may and in the interest of justice this objection is overruled and I give the plaintiffs 60 days to amend their pleadings.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 16TH DAY OCTOBER 2018.

N.A. MATHEKA

JUDGE