



Njuguna & 9 others (Suing as the Registered Trustees of Christian Outreach Ministries Worldwide) v Pesa (Civil Suit E417 of 2025) [2025] KEMC 155 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEMC 155 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL SUIT E417 OF 2025
PA NDEGE, SPM
JULY 10, 2025**

BETWEEN

**JONAH NDUNGU NJUGUNA 1ST PLAINTIFF
TONKEI OLE KETON 2ND PLAINTIFF
ROBERT AURA 3RD PLAINTIFF
JAMES MUHIA 4TH PLAINTIFF
ANDREW OGUTU MUMA 5TH PLAINTIFF
PAUL MBURU BEDAN 6TH PLAINTIFF
FRANCIS KAMAU MAINA 7TH PLAINTIFF
JOSEPH KAMAU NDIRITU 8TH PLAINTIFF
SALLY JEBIWOTT KIPKEMOI 9TH PLAINTIFF
GEORGE WACHIRA MACHARIA 10TH PLAINTIFF
SUING AS THE REGISTERED TRUSTEES OF CHRISTIAN OUTREACH
MINISTRIES WORLDWIDE**

AND

AARON MBICHI SHAYO PESA DEFENDANT

RULING

1. Before me is a Notice of Preliminary Objection dated 14/04/2025, filed by the defendant herein, and which has raised the following 7 grounds: -
 - i. That the application and this suit as a whole is an abuse of the process of court and a violation of Section 6 of the [Civil Procedure Act](#) which provides: -



6. No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.
- ii. That the issues raised in this suit are the subject of concurrent proceedings in Chief Magistrates Court At Siaya Civil Suit Number E079 Of 2024 between Jonah Ndungu Njuguna, Tonkei Ole Keton, Robert Aura, James Muhia, Andrew Ogutu Muma, Paul Mburu Bedan, Francis Kamau Maina, Joseph Kamau Nderitu, Sally Jebiwot Kipkemoi, George Wachira Macharia
 - iii. (Suing as the registered trustees of Christian Outreach Ministries Worldwide) v Mark Otieno Otieno, William Ndiranguas defendants and Bishop Aaron Shayoas an interested party.
 - iv. That in the said SIAYA CMCC Civil Suit Number E079 of 2024 the defendant had raised a preliminary objection that the Chief Magistrates Court lacks jurisdiction to hear and determine this case pursuant to Section 18 of the *Societies Act* and that in view of the above, the suit is bad in law, duplex, incompetent, unsustainable and a total abuse of the court process.
 - v. That in order to circumvent the issues that are pending before the Chief Magistrates Court in Siaya, the Plaintiffs have filed the present suit in this court.
 - vi. That the present suit seeks to address the very same issues that are in contention in the suit before the Chief Magistrate in Siaya.
 - vii. That in particular, the prayers sought in the present application are an exact replica of a previous application that are in contention in the suit before the Chief Magistrate in Siaya.
 - viii. That for the above reason, the present application is fatally defective, bad in law, improper and ought to be struck out with costs.
2. This court on 23/05/2025, directed that the Preliminary Objection be canvassed by way of written submissions. I have looked at the written submissions as filed in the e-filing portal and I do confirm that none was filed by the plaintiffs, notwithstanding the fact that physical copies of their submissions were placed in the file. The physical copies in the file have therefore not been filed as required and there is no evidence that the same was paid for. I therefore only have the submissions by the defendant to consider herein.
 3. In his written submissions dated 24/05/2025, the defendant contends that the because *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, and the legislature would then be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law. That in the present suit, the Plaintiff's main prayer is for an order of injunction restraining the defendant/Respondent acting as a bishop/member of Christian Outreach Ministries Worldwide, conducting services & ordinations entering church premises or acting in any manner whatsoever likely to interfere with the affairs of Christian Outreach Ministries Worldwide. That it is alleged in the Plaintiff that the Plaintiff is a church registered under the *Societies Act*. That it is further contended that the defendant is a former member of the said church having been excommunicated on 3rd April, 2024 and therefore rendered persona non grata in the said church. That from the plain reading of the above, it is apparent that the dispute herein derives for a disagreement on alleged membership or non-membership of the Defendant in the Plaintiff society being the Christian Outreach Worldwide Church. That this is therefore a suit in which the matters in dispute relate to a dispute between persons purporting to be the current officials of the Christian Outreach Ministries Worldwide and the defendant who has been



described by the Plaintiff as ‘former members of Christian Outreach Ministries Worldwide (hereinafter referred to as the church) having allegedly been excommunicated as per the Society’s constitution’ and who are purported to have proceeded to hold themselves out as officials of the Christian Outreach Ministries Worldwide and who proceeded to organize and preside over the society’s events. That it is apparent therefore that the dispute is between the Plaintiffs who describe themselves as current trustees/officials and the defendant is that the defendant is accused of holding himself out as an officials of a society and the members of the society.

4. Learned counsel for the defendant referred the court to the provisions of Section 18 of the [Societies Act](#) which provides as follows;

18. Disputes as to officers

- 1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of a registered society as a result of which the Registrar is not satisfied as to the identity of the persons who have been properly constituted as officers of the society, the Registrar may, by order in writing, require the society to produce to him, within one month of the service of the order, evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the society or of the institution of proceedings for the settlement of such dispute.
- 2) If an order under subsection (1) of this section is not complied with to the satisfaction of the Registrar within the period of one month or any longer period which the Registrar may allow, the Registrar may cancel the registration of the society.
- 3) A society aggrieved by the cancellation of its registration under subsection (2) may appeal to the High Court within thirty days of such cancellation.

5. Learned counsel further referred to a decision of the High Court which considered the import of this provision of the [Societies Act](#), that is, the case of Republic v Registrar Of Societies & 7 Others Ex Parte Njuri Ncheke Supreme Council Of Ameru Elders [2015] eKLR and held that in the

“61. “The first Respondent (the Registrar of Societies) in this matter has remained neutral and has ensured that the status quo is maintained. It has not received any complaint or disputes from the Applicants and the interested parties. It has not been demonstrated that the first Respondent has applied its jurisdiction in excess or in contravention of the Laws of the land nor has it departed from the rules of natural justice. It is yet to make a decision. I agree with the 1st Respondent submission that the orders sought against it are premature, misplaced and an abuse of the Court process.

event of as to whether certain official are, or should continue or cease to hold themselves out as officials of a society, such a dispute should in the first instance be either resolved through the society’s internal dispute resolution mechanism or be referred in the first instance to the Registrar of Societies for resolution before the parties can approach the court and stated as follows:-

62. Section 18 of the Society Act deals with disputes as to officers of a registered society and provides as follows: -

18. If the Registrar is of the opinion that a dispute has occurred
- (1) among the members or officers of a registered society as a result for which the Registrar is not satisfied as to the identity of the



persons who have been properly constituted as officers of the society, the Register may, be ordered in writing, require the society to produce to him, within one month of the service of the order, evidence of the settlement of the dispute and of the property appointment of the lawful officers of the society or of the institution of proceedings for the settlement of such dispute.

63. In the instant case there is no dispute that the Registrar has powers to intervene in a matter involving members of a Society that is registered under the Society Act. The ex parte applicants and the interested parties are members of Njuri Njoke Society and are currently disputing on leadership of their society. That none of the parties had registered the dispute with the Registrar of the Societies before the filing of this matter in this court. Section 18 of the Societies Act provides for internal Disputes resolution mechanism. That where a statutory provides for internal disputes resolution mechanism the procedure provided should first be exhausted before a matter can be filed in Court.
 64. In view of the foregoing. I find and hold that the ex-parte applicant's application is premature and misplaced as the internal dispute resolution mechanism provided by the Societies Act has not been exhausted. In view of the above reasons. I find and hold that orders of prohibition cannot issue against the first respondent from registering the interested, however, this cannot be taken as a license for the Registrar of Societies to proceed to register the interested parties without proceeding to comply with Section 18 of the Societies Act as there is a dispute existing between the ex parte Applicants and the interested parties as to who are the legitimate officials of the ex parte Applicant. The Registrar should be proactive by taking steps forthwith to resolve the parties dispute in terms of Section 18 of the Societies Act.
6. Learned counsel went further to submit that when filing the Plaintiff in this case, the Plaintiffs attached a copy of *the constitution* of the Christian Outreach Worldwide which sets out an elaborate dispute resolution mechanism which has not been shown was exhausted. That neither is it suggested that the dispute has been referred to the Registrar of Societies. That in the case of Speaker Of The National Assembly v Karume [1992] KECA 42 (KLR) (29 May 1992) (Ruling) the Court of Appeal held that that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed by holding as follows: -
- "In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. We observe without expressing a concluded view that order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions."
7. Counsel continued to submit that in this case, Section 18 of the *Societies Act* sets out a clear procedure for the resolution of disputes between past or present officials of a society. That this procedure should be fist exhausted before this case is referred to this court. That unless and until this is done, this court does not have jurisdiction to entertain this suit and should strike out the suit and order that the suit as this suit should only be brought back to this court once it is clearly demonstrated that the mechanisms set out under Section 18 of the *Societies act* have been exhausted.



8. It is thus the Defendant's position that this Honorable Court lacks jurisdiction to hear and determine this case pursuant to Section 18 of the Societies Act. That the suit as filed is premature and misplaced as the internal dispute resolution mechanism provided by the Societies Act has not been exhausted and that this suit should therefore be struck with costs.

9. On the second issue, that of sub-judice, learned counsel referred the court to the provisions of Section 6 of the Civil Procedure Act which provides: -

“No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

10. Counsel then submitted that the issues raised in this suit are the subject of concurrent proceedings in Chief Magistrates Court At Siaya Civil Suit Number E079 Of 2024 Between Jonah Ndungu Njuguna, Tonkei Ole Keton, Robert Aura, James Muhia, Andrew Ogutu Muma, Paul Mburu Bedan, Francis Kamau Maina, Joseph Kamau Nderitu, Sally Jebiwot Kipkemoi, George Wachira Macharia(Suing as the registered trustees of Christian Outreach Ministries Worldwide) v Mark Otieno Otieno, William Ndiranguas defendants and Bishop Aaron Shayoas an interested party.

11. That this is self-evident from the copies of the pleadings attached to the Defendants affidavit. That in order to circumvent the orders and directions given in the said suits, the Plaintiffs have filed the present suit in this court. That the present suit seeks to address the very same issues that are in contention in the suit before the Chief Magistrate in Siaya. That, in particular, the prayers sought in the present application are an exact replica of a previous application that are in contention in the suit before the Chief Magistrate in Siaya. That in the present suit, the Plaintiff's main prayer is for an order of injunction restraining the defendant/Respondent acting as a bishop/member of Christian Outreach Ministries Worldwide, conducting services and ordinations, entering church premises or acting in any manner whatsoever likely to interfere with the affairs of Christian Outreach Ministries Worldwide. That it is alleged in the Plaint that the Plaintiff is a church registered under the Societies Act. It is further contended that the defendant is a former member of the said church having been excommunicated on 3rd April,2024 and therefore rendered persona non grata in the said church. There is a further prayer seeking a permanent injunction restraining the defendant herein from acting as a bishop/member of Christian Outreach Ministries Worldwide, attending services entering church premises or acting in any manner whatsoever likely to interfere with the affairs of Christian Outreach Ministries Worldwide. That a further order is sought compelling the defendant to surrender all documents, title deeds, certificates and allotment letters held on behalf of Christian Outreach Ministries Worldwide.

12. That in Chief Magistrates Court At Siaya Civil Suit Number E079 Of 2024 between Jonah Ndungu Njuguna, Tonkei Ole Keton, Robert Aura, James Muhia, Andrew Ogutu Muma, Paul Mburu Bedan, Francis Kamau Maina, Joseph Kamau Nderitu, Sally Jebiwot Kipkemoi, George Wachira Macharia(Suing as the registered trustees of Christian Outreach Ministries Worldwide) v Mark Otieno Otieno, William Ndiranguas defendants and Bishop Aaron Shayoas an interested party in which the Defendant is enjoined as party, the exact wording of the reliefs sought in the Plaint are:-

Reasons Wherefore the Plaintiff prays for judgment jointly and severally against the Defendants for orders of:-

a) A declaration that the Plaintiff being the Bishop Christian Outreach Ministries World Wide Nyanza Diocese is and continues to hold office legally.



- b) An order of permanent injunction directed at the Defendants their agents and or servants from unlawfully removing the Plaintiff from office and or interfering with the Plaintiff in the discharge of his functions as the Bishop Christian Outreach Ministries World Wide Nyanza Diocese.
 - c) The officer commanding police station Yala or any nearby police station within the Nyanza Region to assist in enforcement of this order.
 - d) Costs of the suit.
13. That looking at the wording of the reliefs sought in the SIAYA CMCC E079 of 2024 and comparing them with the prayers sought in the present suit, it is apparent that the Plaintiff is only employing legal gymnastics to try the same issues that are before the court in Siaya in the present suit. That it is therefore for this reason that the Defendant contends that the present application and the entire suit is an abuse of the process of court, is improper, is fatally Analysis And Determination defective, bad in law, improper and ought to be struck out with costs.
14. The threshold of a preliminary objection was set in the case of *Mukisa Biscuit Manufacturing Co Limited v West End Distributors Limited*[1969] E.A 696. In the case the Court held that: -
- ...a Preliminary Objection consists a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may disposed of the suit. Examples are on objection to the jurisdiction of the court or plea of limitation or a submission that the parties are bound by contract giving rise to the suit to refer the dispute to arbitration.
15. The Court further held that:
- “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.”
16. From the foregoing decision, a preliminary objection must be based on pure points of law, must arise from the pleadings, may dispose of the suit if argued as a preliminary point and must be argued on the assumption that all facts pleaded by the opposite party are correct; it cannot succeed if any fact has to be ascertained; or if what is sought is the exercise of the court’s discretion. Being a point of law a preliminary objection can be raised at any point of the proceedings. Legally speaking, therefore the preliminary objection raised herein by the defendant passes as one that is based on pure law.
17. Having addressed my mind to the grounds in the Notice of Preliminary Objection filed herein, the pleadings as well as the submissions by defendant, I find two issues arising for determination. First, is whether this suit is barred for being sub judice. And second, whether this court lacked jurisdiction to determine the suit.
18. Starting with the issue of sub judice, section 6 of the *Civil Procedure Act* indeed provides as follows:
- “No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”



19. The Supreme Court in *Kenya National Commission On Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others (interested Parties)*[202] eKLR) had an opportunity to render itself on the issue of sub-judice and stated as follows:

“The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives. (Emphasis mine)

20. From the foregoing, it is imperative that I subject the Plaint dated 09/05/2025 and the Notice of Motion dated 09/05/2025 to the three-tier test as established by the Supreme Court above. Having gone through the plaint and the motion and the annexures, it is evidently clear that both this suit and the one at Siaya Chief Magistrate’s court, CC NO E079 OF 2024, concern the exercise of powers and or roles of certain individuals who are alleged to have been ex-communicated from the church by the plaintiffs. In Siaya case, the defendant herein had been joined as an interested party and I see no reason why the plaintiffs had to file this separate suit against him. As correctly argued by the learned counsel for the defendants, these two cases find convergence in the reliefs sought.

21. The Supreme Court in *John Florence Maritime Services Limited v Cabinet Secretary Transport & Infrastructure & 3 Others*[2021] KESC 39 (KLR) urged Courts to be vigilant and warned against this practice thus:

“In the case of *Omondi v National Bank of Kenya Limited and others*, (2001) EA 177 the court held that, ‘parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.’ In that case the court quoted Kuloba J, in the case of *Njangu v Wambugu and another* Nairobi HCCC No 2340 of 1991 (unreported) where he stated, ‘If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face-lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata....”

22. Quite clearly, the Plaintiffs/Applicants herein were privy to and knowledgeable of the fact that there is or was in existence a suit [in any event filed by themselves] which touches on and concerns the same facts and transactions in which the defendant herein was an interested party and had raised a PO as to the jurisdiction of a court of similar status as the present court to hear and determine the matter.

23. Nevertheless, even though the Plaintiffs/Applicants are privy to and knowledgeable of the existence of the said suit namely SIAYA CMCC No. E079/2024, the Plaintiffs/Applicants still had the audacity [brevity] to file and/or originate yet another suit, the instant one, pertaining to and concerning the same set of facts.



24. To my mind, the fact of filing the subsequent suit, namely the instant suit, whilst being alive to the existence of the previous suit which was also filed by the same Plaintiffs, constitutes and/or amounts to an abuse of the due process of the court, the Court of Appeal had occasion to consider the import, tenor and scope of the concept of abuse of the due process of the court in the case of Muchanga Investemnts Ltd v Safaris Unlimited (africa) Ltd & 2 Others[2009] eKLR, where the court held thus:

“In the Nigerian Case of Karibu-whytie J Sc in Sarak v Kotoye[1992] 9 NWLR 9pt 264) 156 at 188-189 (e) the concept of abuse of judicial process was defined: -

“The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. It’s one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice ...”

25. The same Court went on to give the understated circumstances, as examples or illustrations of the abuse of the judicial process: -

- (a) Instituting multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.
- (b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.
- (c) Where two similar processes are used in respect of the exercise of the same right for example, a cross appeal and a respondent’s notice.
- (d) (sic meaning not clear))
- (e) Where there is no loti of law supporting a Court process or where it is premised on frivolity or recklessness.

26. In my view therefore, I do find that this suit is barred by sub judice and is an abuse of the Court process.

27. Turning to the preliminary objection raised in relation to this Court’s jurisdiction, I again do agree with the learned counsel for the defendant’s that the suit as filed is premature and misplaced as the internal dispute resolution mechanism provided by the Societies Act has not been exhausted and that this suit should therefore be struck with costs. The arguments and the authorities cited by the learned counsel are notorious and spot on pn the issue and need no further elaboration herein. Thus the preliminary objection filed herein has merit and is hereby upheld and the suit herein is herein struck out.

28. Turning to the question of costs, ordinarily, costs follow the event and are at the discretion of the court. This court can only depart from that norm if sufficient reasons are advanced to warrant a departure thereof. I find no sufficient reasons advanced. The defendant/respondent shall have the cost.

23. Orders accordingly

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 10TH DAY OF July, 2025 IN OPEN COURT AT NAKURU.

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiffs’/ Applicants’ Counsel: Bor h/b Mwangi



Defendant's/ Respondent's Counsel: Bosire

1st Plaintiff/ Applicant: n/a

2nd Plaintiff/ Applicant: n/a

3rd Plaintiff/ Applicant: n/a

4th Plaintiff/ Applicant: n/a

5th Plaintiff/ Applicant: n/a

6th Plaintiff/ Applicant: n/a

7th Plaintiff/ Applicant: n/a

8th Plaintiff/ Applicant: n/a

9th Plaintiff/ Applicant: n/a

10th Plaintiff/ Applicant: n/a

11th Plaintiff/ Applicant: n/a

Defendant/ Respondent: n/a

