



Odhiambo v Trustees, Full Gospel Church of Kenya & 2 others (Constitutional Petition E008 of 2023) [2025] KEELC 7409 (KLR) (27 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7409 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
CONSTITUTIONAL PETITION E008 OF 2023**

JM ONYANGO, J

OCTOBER 27, 2025

**IN THE MATTER OF ARTICLES 2, 3, 19, 20, 21, 22, 23, 27, 70, 165 (3)
(B), 232, 258 AND 259 OF THE CONSTITUTION OF KENYA AND IN
THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS UNDER ARTICLES 10, 26, 28, 40, 42, 43, 69 AND SCHEDULE 4
(PART 2) OF THE CONSTITUTION OF KENYA**

AND

**AND IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PRECEDURE RULES, 2013**

AND

**IN THE MATTER OF THE ENVIRONMENTAL
MANAGEMENT AND COORDINATION ACT**

AND

**IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION
(NOISE AND EXCESSIVE VIBRATION POLLUTION CONTROL REGULATIONS)**

BETWEEN

JUSTIN PETER ODHIAMBO PETITIONER

AND

THE TRUSTEES, FULL GOSPEL CHURCH OF KENYA 1ST RESPONDENT

KIAMBU COUNTY GOVERNMENT 2ND RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 3RD
RESPONDENT**



RULING

1. This ruling is in respect of the 1st Respondent's Notice of Preliminary Objection dated 4th April 2025 in which he contends that the Petition is incompetent and fatally defective as the 1st Respondent, namely, the Trustees, Full Gospel Church of Kenya is not a legal or juristic person capable of being sued in its own name.
2. The court directed that the Preliminary Objection be disposed of by way of written submissions and the 1st Respondent and Petitioner duly filed their submissions.

1st Respondent's Submissions

3. Learned counsel for the Petitioner submitted that the Preliminary objection raises a pure point of law as it challenges the locus standi of the 1st Respondent. She relied on Section 3(3) of the Trustees (Perpetual Succession) Act, Cap 164 which provides that a body Corporate seeking legal personality for purposes of owning property and instituting or defending legal proceedings must be registered under the Act through its appointed trustees. It was her contention that upon registration, it is only the trustees that acquire the status of a body corporate with the legal capacity to sue and be sued, not the church.
4. Counsel placed reliance on the case of African Christian Church & Schools Registered Trustees v Macharia & 2 Others ELC Case No. 162 of 2017 [2023] KEELC 120 (KLR) where the court held that a suit instituted against an un-incorporated body rather than its registered trustees was legally untenable.
5. She submitted that the Petition which was instituted against the Trustees, Full Gospel Church of Kenya without naming the actual registered trustees was vague, non-specific and unsustainable for misjoinder or non-joinder of necessary parties. She argued that such a defect was grave as a party that does not legally exist cannot be expected to respond to proceedings, file pleadings or be bound by court orders.
6. Relying on the case of Supreme Counsel of Kenya Muslims (SUPKEM) & Another v Registrar of Societies; Omar & 2 Others (Interested Parties) (Judicial Review E104 of 2023) [2024]KEHC 1320 (KLR) Judicial Review (16 February 2024) (Ruling), she submitted that a suit filed against a non-existent or unrecognized legal person is a nullity ab initio and cannot be amended or cured through joinder at a later stage as it offends the foundational requirement of legal capacity.
7. Counsel therefore prayed that the Preliminary objection be upheld as the suit is incurably defective and amounts to an abuse of the process of the court.

Petitioner's Submissions

8. On his part, learned counsel for the Petitioner submitted that the Preliminary Objection is fundamentally flawed and devoid of merit as it implies that the 1st Respondent as named in the Petition is not properly joined in the suit and therefore lacks locus standi, despite the pleadings having been amended pursuant to the court's leave.
9. It was counsel's submission that the amendment reflects the correct party being the Trustees of the Full Gospel Church of Kenya and the 1st Respondent's objection was confusing and illogical.
10. Counsel argued that section 3(3) stipulates that after incorporation, the trustees become a body corporate by the name described in the certificate and have perpetual succession and a common seal



and power to sue in their corporate name. He maintained that after amendment of the Petition, the 1st Respondent had been properly joined to the suit.

11. Counsel was of the view that the Preliminary Objection was a delaying tactic and a waste of the court's time. He added that after the amended Petition was served upon the 1st Respondent, the latter formally approached the Petitioner with a view to settling the matter out of court and he wondered whether the 1st Respondent was genuinely interested in resolving the matter expeditiously.
12. He concluded that the Preliminary Objection was devoid of merit as it is not a valid point of law and the same ought to be dismissed.

Analysis and Determination

13. Having considered the Preliminary Objection and the rival submissions of the 1st Respondent and the Petitioner, the singular issue for determination is whether the Preliminary Objection should be upheld.
14. The main ground upon which the Preliminary Objection is based is that the Trustees, Full Gospel Church of Kenya is not a legal or juristic person capable of being sued in its own name. It has been submitted on behalf of the 1st Respondent that in accordance with Section 3(3) of the *Trustees (Perpetual Succession) Act*, Cap 164, it is only the trustees that acquire the status of a body corporate with the legal capacity to sue and be sued and therefore the trustees should have been sued in their names.
15. Section 3 of the *Trustees (Perpetual Succession) Act*, Cap 164, provides that:
 - (1) "Trustees who have been appointed by anybody or association of persons for any religious or educational, literary, scientific, athletic or charitable purpose or who have constituted themselves for any such purpose or the trustees of a pension fund or provident fund may apply to the Minister in the manner provided in this Act for a certificate of incorporation of the trustees as a body corporate.
 - (2) If the Minister having regard to the extent, nature and objects and other circumstances of the trust considers incorporation expedient, he may grant a certificate accordingly subject to such conditions or directions generally as he thinks fit to insert in the certificate and particularly relating the qualifications and number of trustees, their tenure and avoidance of office, the mode of appointing new trustees, the custody and use of the common seal, the amount of movable or immovable property which the trustees may hold and the purpose for which that property may be applied.
 - (3) 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..."
16. A plain reading of the Section 3(3) shows that the provision does not envisage that the trustees should sue or be sued in their individual names as argued by counsel for the 1st Respondent. In the instant case, "Trustees, Full Gospel Church of Kenya" is the corporate name by which the trustees are described and is therefore the Name under which they ought to be sued. See the case of *Registered Trustees of Maximum Miracle Centre v Andrew Mlewa Mkare* (2013) KEHC 2553 KLR. That being the position, it is my finding that the 1st Respondent has been properly sued.
17. The upshot is that the Preliminary Objection lacks merit and it is hereby dismissed with costs to the Petitioner.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 27TH DAY OF OCTOBER
2025**

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J. M ONYANGO

JUDGE

In the presence of:

1. Mr Ometo for the Petitioner
2. No appearance for the Respondents

Court Assistant: Hinga

