



**Mbija (Deceased) & 5 others v Jeremiah Omolo Ambuso, John Olonde ,
Leonard Orayo, Maurice Ngere, Joshua Samo, John Opeme (Sued as Office
Bearers of the Children of God Regeneration Church) & another (Civil Case
843 of 2002) [2025] KEHC 16042 (KLR) (Civ) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16042 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 843 OF 2002

JN MULWA, J

NOVEMBER 6, 2025

BETWEEN

**PAUL OGOLA MBIJA (DECEASED) 1ST PLAINTIFF
JARED OMONDI MITIAWRE 2ND PLAINTIFF
JOHN BENSON OGUTU 3RD PLAINTIFF
GEORGE ODINDO MULO 4TH PLAINTIFF
GABRIEL AMBOSO 5TH PLAINTIFF
AUGUSTINE OKETCH 6TH PLAINTIFF**

AND

**JEREMIAH OMOLO AMBUSO, JOHN OLONDE , LEONARD ORAYO,
MAURICE NGERE, JOSHUA SAMO, JOHN OPEME (SUED AS
OFFICE BEARERS OF THE CHILDREN OF GOD REGENERATION
CHURCH) 1ST DEFENDANT
REGISTRAR OF SOCIETIES 2ND DEFENDANT**

JUDGMENT

1. By way of a plaint dated 16/05/2002, Paul Ogola Mbija (deceased), Jared Omondi Mitiware, John Benson Ogutu, Gerge Odindo Mulo, Gabriel Ambuso & Augustine Oketch (hereafter the Plaintiffs) filed suit as against Jeremiah Omolo Ambuso, John Olonde, Leonard Orayo, Maurice Ngere, Joshua



Samo & John Opeme (office bearers of the Children of God Regeneration Church) (hereafter 1st Defendant) and Register of Societies (hereafter 2nd Defendant) seeking judgment in terms of -;

- a. A declaration that the purported special general meeting of the 1st Defendant was ultra vires, the 1st Defendant constitution and all resolutions resulting therefrom are therefore null and void.
 - b. A permanent mandatory injunction do issue compelling the removal from office of the current office bearers of the 1st Defendant.
 - c. A permanent mandatory injunction do issue compelling the 2nd Defendant by herself, her agents and or servants or otherwise to forthwith revoke and withdraw the registration and confirmation of the new office bearers dated 29/04/2002.
 - d. Costs of the suit.
 - e. Any other or further relief this Court deems fit to grant.
2. The gist of the Plaintiff's averment was that sometime in 2002, John Ogutu (General Secretary) having called for an annual general meeting, cancelled the same however was to be slated for a future date by the governing council. That the 1st Defendant nevertheless went ahead to hold a special general meeting and in contravention of the church's constitution went ahead to call for an unwarranted election of officials knowing fully well that there was no need for filling of the position of office bearers and committees, of which had not been declared vacant.
 3. That the said 1st Defendant's illegal meeting contravened the churches constitution such as-. the method it employed in electing official; the member and official who were allegedly in the meeting were not tabulated towards establishing quorum; failure to notify members in writing within 21 days and provide statement of accounts prior to the meeting; and the 1st Defendant writing to the 2nd Defendant vide two (2) letters dated 22/04/2002 & 23/04/2002 informing it of the purported change of office bearers knowing all too well that the change was unlawful and unconstitutional.
 4. It was further averred that the Plaintiff's vide two (2) letters dated 01/05/2002 & 03/05/2002 wrote to the 2nd Defendant requiring of it to revoke the confirmation of the change of office bearers however the latter refused therefore the unlawful occupation of the aforementioned offices by the 1st Defendant is grossly prejudicial, to wit, the same has created a rift in the church therefore the suit ought to be allowed as prayed.
 5. The 1st Defendant filed a statement of defence denying the key averments in the plaint meanwhile averred that in respect of the meeting in question *the constitution* was followed with dissolution of former offices and change of office bearer being lawful therefore the Court ought to dismiss the suit with costs.
 6. On 20/05/2008, this Court was informed of Paul Ogola Mbija untimely demise, to wit, the remaining Plaintiffs proposed to proceed with the suit as is. No objection was raised by the 1st Defendant.
 7. On 28/02/2012, the counsel for the Plaintiff's intimated his intention to abandon his case as against the 2nd Defendant, however it seems from the record the same was never endorsed and or recorded as an order of this Court.
 8. The foregoing, thus formed the state of pleadings and the suit prior to hearing.



Plaintiff's Case and Evidence

9. During the trial, John Benson Ogutu testified as PW1. The gist of his evidence was that at the time of filing suit he was serving as the Secretary General of The Children of God Resurrection Church whereas Paul Ogala Mbiya was serving as Chairman, Jeremiah Omolo Ambuso as Vice Chairman, John Omollo as Vice Secretary and Gabriello Amboso as Treasurer. That sometime 03/04/2002, Paul Ogola (deceased) had called a meeting and stated that Jeremiah Omolo Ambuso wanted to resign, to wit, he informed members of the same. That later that month, they travelled to Nairobi, to attend at the Registrar's office in Sheria House wherein he met two persons who informed him that they wanted to investigate him and George Odimo Mulo, who was his assistant.
10. When travelled back to Awendo, he met and informed his colleagues, to wit, they informed the District Officer of the letter he had received in Nairobi concerning investigations. As a consequence of the aforesaid, the intended general meeting was cancelled. That later on 29/04/2002, upon travelling back to Sheria House, he found Jeremiah Omolo Ambuso, whereupon locating The Children of God Resurrection Church file, found that there was a meeting that had been held by other members of the Church. That the Plaintiffs wrote to the Registrar of Societies objecting to the new office bearers. It was his evidence that the AGM was done once a year in the month of March with a meeting to elect new office bearers being held in April of the same year.
11. He went on to adduce into evidence as PExh.1 – Certificate of Registration, PExh.2 – Letter from Register dated 24/01/2000 capturing The Children of God Resurrection Church Office Bearers, PExh.3 – Minutes dated 12/01/2002, PExh.4 – Minutes dated 03/03/2002, PExh.5(a) – Notice cancelling AGM, PExh.5(b) – Letter to Registrar dated 10/04/2002 protesting to Change of Office Bearers, PExh.6 – Letter dated 17/04/2002 to District Officer Awendo seeking to stop meeting of 20/04/2002, PExh.7 – Minutes of Governing Council, PExh.8(a) – Letter to Registrar dated 01/05/2002 objecting to election of office bearers in meeting held on 20/04/2002, PExh.8(b) – Letter to Registrar dated 03/05/2002 objecting to election of office bearer in meeting held on 20/04/2002, PExh.9(a) – The Children of God Resurrection Church (Old Constitution), PExh.9(b) – The Children of God Resurrection Church (New Constitution), PExh.10(a) – Letter dated 08/12/2011 seeking confirmation of office bearers, PExh.10(b) – Letter from Registrar dated 04/01/2012 confirming The Children of God Resurrection Church Office Bearers, PExh.11 – Annual Returns, PExh.12(a) – Letter to Registrar dated 03/03/2002, PExh.12(b) – Notification of Change of Officer Bearer in The Children of God Resurrection Church, PExh.13 – Minutes of Governing Council held on 27/04/2002, PExh.14(a) – Paul Ogola Death Certificate, PExh.14(b) – Minutes of AGM held on 10/01/2007 and PExh.15 – Letter to Registrar dated 19/07/1996.
12. George Odindo Mulo testified as PW2. He identified himself as the Assistant Secretary of The Children of God Resurrection Church from the year 2000. He confirmed that elections were conducted every year in January, returns filed, whereas Jeremiah was removed in March by the governing council. That the Registrar of Societies was notified of the change of their constitution meanwhile the old constitution allows for special general meetings at any time when there is an urgent matter to attend to, of which Jeremiah failed to attend. That a recommendation was made to expel Jeremiah, to wit, the Registrar was notified meanwhile the latter was confirmed as having been done.
13. Abraham Gachie testified as PW3. He identified himself as the Assistant Registrar of the Registrar of Societies. He stated that the Registrar has no statutory power to issue confirmation of officials whereas the latter may issue an extract of a record already held upon receiving a request meanwhile upon examination of the records issue an extract thereof. Records are usually due for returns by 31/3 each year. The record pertaining to The Children of God Resurrection Church in the year 2000 show



that the Chairperson was Ogola, Vice Jehemiah. In the year 2002, there were two (2) sets of returns, in the year 2003 Jeremiah's group did not file returns, in the year Chair was 2004 Ogola, in the year 2005 Ambosho whereas all groups filed returns. He went on to state that the Registrar is unable to confirm whether an election was conducted meanwhile in 2002 the 1st Defendant were the Societies officials. That he has not seen an approved constitution by the Registrar save for the one registered when the society was registered in 2002. He however stated that he cannot confirm PExh.2 despite the letter originating from his office.

14. Joshua Samuel testified as PW4. He identified himself as the Assistant Treasurer of The Children of God Resurrection Church as at the time. In April 2002 he received information that Church members were to meet. That upon meeting up with Jeremiah who was the Vice Chairperson, their meeting was declared illegal whereupon the latter suggested that they meet up somewhere else where there were about 60 members. That the Chairperson was Paul Ogola who appointed him as Treasurer wherein he served in the said position from 2002 to 2007. He left the said position and at the time of his evidence was serving under the Gabriel Ambosho led group.

Defendant's Case and Evidence

15. On behalf of the Defendant, Polycarp Odera testified as DW1. He identified himself as the Assistant Chief Kogero West Sub Location East Sakwa Awendo District. He confirmed being present during the Church meeting held on 20/04/2002. That his immediate boss had requested of him to attend the said meeting in order to observe how attendees would conduct their election. He proceeded to adduce into evidence a report dated 23/05/2002 as DExh.1 in respect of the said meeting. It was his evidence further that he was unaware that the meeting had been cancelled since the notice cancelling the same –PExh.5(a) – had not been addressed to him. In summation he confirmed that a meeting took place on 20/04/2002.
16. Leonard Ochengo Orayo testified as DW2. He identified himself at the time that he was serving as the Secretary to the Church having been elected on 20/04/2002. He stated that two (2) Jeremiah and Samo had not been expelled under the Church's constitution meanwhile the Church decided to refer to its constitution under Article 8 to hold the SGM held on 20/04/2002. The meeting was to be held at Umoja Plaza however upon reaching the said venue they were advised that it had been moved. That the Chairperson was not present whereas Article 9 of *the constitution* provided that they could get the Vice Chairperson to chair the meeting. He went on to state that after the elections they sent the notification to the Registrar to confirm the registration. That as at his testimony they were still in office whereas no new elections had been conducted as it is difficult to reconcile the two (2) factions.
17. Samson Otieno Odek testified as DW3. He began by identifying himself as a bishop in Migori, thereafter proceeded to adopt his witness statement dated 30/01/2023 as his evidence in chief. The gist of his evidence was that PW1 had called for a AGM on 20/04/2022 however on approach of the latter date he attempted to call off the same. Despite his attempts, a meeting was held of which was chaired by Jeremiah in accordance with the Church's constitution and given that the Chairperson was absent. That a resolution was passed to elect new officials of the Church whereas the elected official names were submitted to the Registrar for confirmation. That since 2002, the Plaintiffs have been running a parallel local Church on accord of the fact that the instant matter has been pending before Court since 2002. He went on to state that the 1st Defendant who are the office bearers have been running the Church in accordance with its Constitution since 2003 however the Church has not been able to do anything which would require the Register's consent given the pendency of the instant suit. Despite the above, the 1st Defendants have been filing returns annually with the Registrar. He nevertheless stated that he is no longer a member of the Church.



18. It necessitates mentioning that the respective counsel for the parties had the opportunity to cross-examine and re-examine the witnesses.
19. That said, at the close of the trial parties filed submissions, of which, respective counsel equally had the opportunity to highlight. The Court has duly considered the said submissions alongside the authorities relied in support thereof.

Analysis and Determination

20. At the risk of repetition, the Court has considered the pleadings by the respective parties, the evidence and the submissions filed in respect of the matter.

Issues for determination

- (a) Whether Plaintiffs have established their case as against the 1st Defendant on a balance of probabilities, and if so,
- (b) whether the Court ought to grant the relief(s) as sought in the plaint.

21. Having condensed the matter before this Court as set out above, it necessitates restating that I have on occasion addressed myself and or emphasized the importance of pleadings in determining the issues before as pleadings form the thrust of the respective parties' cases. See Court of Appeal decision in Wareham t/a A.F. Wareham & 2 Others Kenya Post Office Savings Bank [2004] 2 KLR 91. Palpably, the gist of the respective parties' pleadings had earlier been highlighted in this judgment thus negating the need for regurgitation.
22. It is equally well-trodden that the applicable law on burden of proof, in civil cases, can be clasped by reading of the provisions of Section 107, 108 and 109 of the *Evidence Act*. The impetus of the forestated provisions and the standard of proof in civil liability claims in our jurisdiction, being on a balance of probabilities, was reasonably discussed by the Court of Appeal in Mumbi M'Nabea v David M.Wachira [2016] KECA 773 (KLR).
23. Ordinarily, the duty of proving the rival averments contained in the respective parties' pleadings lies squarely with the parties themselves. In Karugi & Another v Kabiya & 3 Others (1987) KLR 347 the Court of Appeal stated that:

“The burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof. We would therefore venture to suggest that before the trial court can conclude that the plaintiff's case is not controverted or is proved on a balance of probabilities by reason of the defendants' failure to call evidence, the Court must be satisfied that the plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence by the defendant...-. The plaintiff must adduce evidence which, in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities it proves the claim.” (Emphasis added)

24. The undisputed fact in the matter is that the Plaintiffs and 1st Defendants, as at the time of filing suit, were all members of The Children of God Resurrection Church. The Plaintiffs borne of contention is that the purported special general meeting held by the 1st Defendant, consequently electing officials of the Church, was contrary to the Church's constitution and any decision emanating therefrom was null and void. With the above in reserve core to the dispute herein concerns whether the meeting held on



- 20/04/2002, wit, the Plaintiffs contend was illegal and the attendant decisions emanating therefrom being null and void.
25. By PExh.2, as at 24/01/2000, it can be garnered therefrom that the Registrar of Societies confirmed that one Paul Ogola Mbeja (now deceased) was the Chairman of the Church, Jeremiah Omolo Ambuso - its Vice Chairman, John Ogutu (PW1) - its Secretary, George Odindo Mulo - its Vice Secretary, Gabriel Amboso - its Treasurer and Joshua Samo - its Vice Treasurer.
 26. It can further be garnered from PExh.4 that Jeremiah Omolo and Joshua Samo were the subject of a purported agenda item of Church's Governing Council minutes of 03/03/2002, of which, concerned the latter's purported dissertation of their respective positions. It would appear that PW1 took exception with the latter and wrote a protest letter to the Registrar of Societies vide a letter dated 10/04/2002 - PExh.5(b) and PExh.12(a)&(b).
 27. Earlier and importantly as concerns the churches Constitution, in 1996, the board of trustees of The Children of God Resurrection Church had written - PExh.15 - to the Register of Societies seeking to replace the old constitution PExh.9(a) with a new constitution PExh.9(b), in compliance with Section 20(1) & (2) of the *Societies Act*. While PW2 confirmed in his evidence that the Registrar of Societies was notified of the said changes PW3 did not dispute the contents of - PExh.15 -. Therefore, for all intents and purposes as may concern the dispute before this Court and the Church, the new Constitution PExh.9(b) had been ratified by the Church, the Registrar duly notified and thus its application to the instant dispute.
 28. Under Clause 6 of the new Constitution, it provided for Meetings. I find it useful to set out verbatim the contents of the said clause for the benefit of the Court and parties herein.
 Meetings: The governing council shall convene its meeting as it deems necessary.
 - 6.1 The governing council shall not meet less than 4 times a year.
 - 6.2 The quorum at any meeting shall be ½ membership of the governing council.
 - 6.3 Resolutions at the governing council meeting shall be passed by a simple majority with the chairman having casting vote in case of a tie.
 - 6.4 The general meetings shall be convened at any time whenever necessary. This includes special general meetings.
 - 6.5 Annual general meetings shall be held every January of the year.
 - 6.6 Any member of the governing council shall be ready for any call and attend emergency meetings because they hold key decisions on behalf of all Christian community of this Church.
 29. Meanwhile, Clause 10 concerns the procedure of General Meetings provides that-;
 - 10.1 If a general meeting fails due to lack of quorum, a second one may be arranged not less than 21 days from the date of the first one. The quorum may not be considered for the second meeting.
 - 10.2. The quorum for the general meeting shall be half of the governing council members.
 30. Whereas Clause 11 provides for The Agenda of the Annual General Meeting, Clause 15 provides for Voting.
 31. Notably, as at filing of the suit, Section 29(1) of the *Societies Act* provided that-;



- (1) Every registered society shall, at least once in every year, hold a general meeting to which all its members shall be invited, and shall at such meeting—
 - (a) render a full and true account of the moneys received and paid by the society, such account being audited in accordance with the rules of the society; and
 - (b) cause to be elected or appointed all such officers, trustees and auditors and, where applicable, such committees as are required in accordance with the constitution and rules of the society.
32. With the above in reserve, on or about the 10/04/2002, PW1 being the Secretary General to the Church, wrote letters to members seeking to convene an urgent Annual General Meeting scheduled for 20/04/2002 at Omonge Plaza Hall, Awendo Market. Deductively, the latter meeting must have been informed by PExh.5(b) and PExh.12(a)&(b), given the agenda items that had been set out therein.
33. Subsequently, on or about 17/04/2002, PW1 wrote to members by way of Notice supposedly suspending the said meeting and instead advising members that the Church's governing council would meet on 27/04/2002 after which a new date would be set for the annual general meeting.
34. By his evidence, PW1 asserted that the said cancellation was informed by the factors and or information he had obtained having travelled to Nairobi, to attend to the Registrar's office in Sheria House.
35. The question that begs at this juncture is whether the meeting held on 20/04/2002 by the 1st Defendants can be considered lawful on the backdrop of the Church's constitution?.
36. Here, by the Church's new constitution PExh.9(b), it did not encapsulate how notices were to be delivered and or the timelines in which the same was to be done. That said, it is not disputed that as at 10/04/2002, PW1 had issued a notice for an urgent Annual General Meeting slated for 20/04/2002 and later vide a letter dated 17/04/2002 purportedly issued a notice canceling the said Annual General Meeting. It is further not in dispute that as at both letters PW1 was actively serving at the time, as the General Secretary of the Church.
37. That notwithstanding, despite the cancellation, the meeting appeared to have proceeded at a different venue, going by DW1, DW2 & DW3's evidence. The 1st Defendant case being that the said meeting held on 20/04/2002 was properly convened whereas there appeared to be a sinister motive by PW1 issuing a cancellation notice. The meeting having proceeded, new officials of the society were elected and duly communicated to the Registrar of the Societies.
38. In light of Clause 6.2 and Clause 10 of the Church's Constitution, a general meeting would only be quorate where half of the governing council members were in attendance of the General Meeting or Special Meeting.
39. Importantly, while the 1st Defendant referred to documents appearing in its list of documents, neither of the witnesses testifying on behalf of the 1st Defendant adduced the 1st Defendants' list of documents. The only document adduced by the 1st Defendant was by DW1 being a letter dated 23/05/2002 purportedly confirmed the occurrence of the meeting of 20/04/2002. As is, no minutes and or attendance for the purported meeting of 20/04/2002 were provided to this Court.
40. It is trite that pleadings cannot be relied on as a substitute for evidence. While counsel for the 1st Defendant referred to the latters' voluminous bundle of documents he failed to produce the documents therein in support of his pleadings. The Supreme Court in *Gatirau Peter Munya v Dickson*



Mwenda Kithinji & 3 Others [2014] eKLR wherein while discerning the question of legal and evidential burden, held inter alia that;

“The person who makes such allegation must lead evidence to prove the fact. She or he bears the initial legal burden of proof, which she or he must discharge. The legal burden in this regard is not just a notion behind which any party can hide. It is a vital requirement of the law. On the other hand, the evidential burden is a shifting one, and is a requisite response to an already discharged initial burden. The evidential burden is the obligation to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence or non-existence of a fact in issue”.

41. Further, the Court of Appeal in *Kenneth Nyaga Mwige v Austin Kiguta & 2 Others* [2015] eKLR while addressing the distinction between an exhibit and a document marked for identification during a trial observed that;-

“ 18. The mere marking of a document for identification does not dispense with the formal proof thereof.....

19. The marking of a document is only for purposes of identification and is not proof of the contents of the document. The reason for marking is that while reading the record, the parties and the court should be able to identify and know which was the document before the witness. The marking of a document for identification has no relation to its proof; a document is not proved merely because it has been marked for identification.

20. Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay the foundation for its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the document produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence and not formally produced and proved, the document would only be hearsay, untested and an unauthenticated account.

21.

22. a document marked for identification only becomes part of the evidence on record when formally produced as an exhibit by a witness. In not objecting to the marking of a document for identification, a party cannot be said to be accepting admissibility and proof of the contents of the document. Admissibility and proof of a document are to be determined at the time of production of the document as an exhibit and not at the point of marking it for identification. Until a document marked for identification is formally produced, it is of very little, if any, evidential value.

23. In the instant case, we are of the view that the failure or omission by the respondent to formally produce the documents marked for identification being MFI 1, MFI 2 and MFI 3 is fatal to the respondents' case. The documents did not become exhibits before the trial court; they had simply been marked for identification and they have no evidential weight. The record shows that the trial court relied on the document “MFI 2” that was marked for identification



in its analysis of the evidence and determination of the dispute before the court. We are persuaded by the dicta in the Nigerian case of Michael Hausa - v- The State (1994) 7-8 SCNJ 144 that a document marked for identification is not part of the evidence that a trial court can use in making its decision.

42. Why do I digress on the above? The 1st Defendant referred to minutes held on 20/04/2002 however did not properly adduce the same into evidence. The 1st Defendant attempted to lay justification that the meeting held on 20/04/2002 was procedural and quorate, yet failed to tender the requisite evidentiary material to justify the same.
43. Which then brings me back to the question whether the meeting of 20/04/2002 was a nullity in itself. As earlier noted, to justify the legality of the latter meeting it had to comply with Clause 6.2 and Clause 10 of the Church's Constitution - PExh.5(b). It appears the same did not, to wit, it may be difficult not to arrive at the finding that meeting held on 20/04/2002 as chaired by the Jeremiah Omolo was a nullity compounded by the fact that there was a notice of suspension of the meeting - PExh.5(a) earlier issued by PW1.
44. Consequently, any purported confirmation of office bearers, by the Registrar of societies on the premise of illegitimate meeting and defective minutes that did not comply with Clause 6.2 and Clause 10 of the Church's Constitution was a nullity in itself as well.
45. While I take reservation of any order that I may issue at this juncture in light of the duration taken since institution in year 2002, and final disposal of the suit, there may be some efficacy questions as pertains to the orders of this Court given the fact that there is possibility that some of the office holders as at 20/04/2002 may have passed on and or left the church. Taking due cognizance of the above, I will proceed to allow the Plaintiff's suit in the following terms-;
 - a. A declaration hereby issues that the purported general meeting of the 1st Defendant held on 20/04/2002 electing The Children of God Resurrection Church was ultra vires, in contravention of the Church's constitution, to wit, all resolutions resulting therefrom are therefore null and void.
 - b. An order compelling the 2nd Defendant by itself, her agents and or servants or otherwise to forthwith revoke and withdraw any confirmation of The Children of God Resurrection Church new office bearer's resultant from the purported general meeting of the 1st Defendant held on 20/04/2002.
 - c. On cost each party is directed to bear their own costs in light of the subject matter being a dispute involving members of the same Church.

Order Accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF NOVEMBER, 2025.

.....

JANET MULWA.

JUDGE

