

REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MERU

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO. E027 OF 2025

**IN THE MATTER OF ARTICLES 10, 22, 23, 27, 28, 32, 36, 40,
47, 48, 73, 165 AND 258 OF THE CONSTITUTION**

AND

SECTION 8 OF THE LAW REFORM ACT

AND

SECTIONS 34, 35 AND 38 OF THE UNIVERSITIES ACT

AND

**IN THE MATTER OF THE METHODIST CHURCH IN KENYA DEED
OF FOUNDATION & DEED OF CHURCH ORDER 1967**

AND

**IN THE MATTER OF THE METHODIST CHURCH IN KENYA
STANDING ORDERS AND AGENDA 1966**

AND

IN THE MATTER OF: Order 53 of the Civil Procedure Rules

AND

**IN THE MATTER OF: Alleged Violation of Constitutional
Rights and Fundamental Freedoms under the Bill of Rights**

BETWEEN

DR. HIRAM MURITHI MUCHEKE.....1ST
PETITIONER

JACOB MBAABU.....2ND
PETITIONER

EMMANUEL MAINGI RUKARIA.....3RD
PETITIONER

VERSUS

METHODIST CHURCH IN KENYA TRUSTEES REGISTERED....
.....1ST RESPONDENT

REV. DR. STEPHEN KANYARU IMPWI.....2ND
RESPONDENT

REV. DR. JOHN MAROMBA.....3RD
RESPONDENT

REV. DR. LAWI IMATHU.....4TH
RESPONDENT

AND

REV. ISAYA DEYE.....1ST INTERESTED PARTY

KENYA METHODIST UNIVERSITY.....2ND INTERESTED
PARTY

RULING

1. The 1st and 2nd Respondents filed a Notice of Preliminary Objection on 31/10/2025 raising 6 grounds that:

1. *The Notice of Motion is defective and untenable in law, on account that it fails to disclose the basis upon which the relief sought is founded as per the mandatory provisions of Order 51 Rule 4 of the Civil Procedure Rules, 2010.*
2. *The Notice of Motion is defective and untenable in law, on account that it offends the mandatory provisions of Order 51 Rule 13 (2).*
3. *The Notice of Motion is defective and untenable in law, on account that it offends the mandatory provisions of Order 18 Rule 3.*
4. *The status of the former Presiding Bishop, Rev. Isaya Deye, within the Methodist Church in Kenya, is res judicata, his tenure having been conclusively determined by the Honourable Lady Justice Janet Mulwa in HCCC No. E092 of 2025, a court of concurrent jurisdiction with this Honourable Court.*
5. *The Petition discloses no reasonable cause of action against the 1st and 2nd Respondents under the Constitution of Kenya, 2010, and more particularly under the Articles cited therein, as it fails to demonstrate with the requisite degree of precision the manner in which the alleged constitutional violations were occasioned, as required in Anarita Karimi Njeru v Republic (No. 1) [1979] KLR 154.*
6. *The petition is incompetent for misjoinder of parties, as the 2nd Respondent, the Presiding Bishop, is sued in a representative*

capacity and cannot be personally liable for acts done on behalf of the 1st Respondent.

Disposition

2. The issue for determination is whether the preliminary objection has been properly raised.
3. What properly constitutes a preliminary objection has been defined times over including in the *locus classicus* case of **Mukisa Biscuit**

Company v Westend Distributor Limited (1969) EA 696 as follows:-***“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.”***

4. Whereas the 1st and 2nd Respondents contend that the Petition is incompetent, the Petitioners contend that the Preliminary Objection must fail.
5. I note that the Petition is not supported by an affidavit. In **Peter Njogu Karanu & 4 others v Nyakinyua Mugumo Trees Co. Ltd & 3 others [2020] KEELC 2179 (KLR)**, the court (Mwangi Njoroge J) enunciated that; ***“It is therefore clear that by the enactment of rules 10 and 11 of the Constitution Of Kenya (Protection Of Rights And Fundamental Freedoms) Practice And***

Procedure Rules, 2013 the mandatory requirement of filing of an affidavit with the petition has been waived. It appears to have been left to the petitioner to determine if they require to file any affidavit evidence with their petition or not. However that does not necessarily imply that a petition bereft of any evidence is properly before the court...In this court's view however, that waiver does not completely absolve a petitioner from filing a supporting affidavit with the petition if the statements in the petition are merely conclusory and require evidence to support them to establish their correctness."

6. Whilst Rule 11 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules permits the filing of a Petition without a supporting affidavit, it is categorical that supporting documentation must be annexed to the petition as follows;

"(2) If a party wishes to rely on any document, the document shall be annexed to the supporting affidavit or the petition where there is no supporting affidavit."

7. I find that, in the absence of a supporting affidavit, the averments in the Petition amount to bare allegations bereft of any evidentiary backing, and the same cannot stand.

8. The inevitable conclusion is that the 1st and 2nd Respondents' Preliminary Objection dated 12/11/2023 has been properly raised.

9. The upshot from the foregoing analysis is that the Petition dated 15/10/2025 lacks merit and is hereby struck out with no order as to costs.

DATED AND DELIVERED AT MERU THIS 24TH DAY OF FEBRUARY, 2026.

S.M. GITHINJI
JUDGE

In the Presence of:-

Mr. Charles Kimathi for the 4th Respondent

Mr. Narangwi for 1st & 2nd Respondents.

Ms. Immaculate Muthoni for the Petitioners.

Mr. Michuki for the 1st Interested Party.

Mr. Moses Masai for the 2nd Interested Party.