



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

PETITION NO. E002 OF 2020

**IN THE MATTER OF: A PETITION BY GIDEON ESTATE
RESIDENTIAL ASSOCIATION AND JOSEPHAT KARUNGO
WAWERU, IBRAHIM ORUMA AND JOHN MUREITHI**

**IN THE MATTER OF: THE BILL OF RIGHTS AS ENSHRINED IN
ARTICLES 19, 20, AND 21 OF THE CONSTITUTION OF
KENYA, 2010.**

**IN THE MATTER OF: THE ENFORCEMENT OF
ENVIRONMENTAL RIGHTS UNDER ARTICLE 70 OF THE
CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF: THE ALLEGED INFRINGEMENT OF
RIGHTS UNDER ARTICLE 42 OF THE CONSTITUTION OF
KENYA, 2010**

BETWEEN

GIDEON

ESTATE

RESIDENTIAL

ASSOCIATION.....1ST PETITIONER

JOSEPHAT KARUNGO WAWERU.....

2ND PETITIONER

IBRAHIM ORUMA.....3RD

PETITIONER

JOHN MUREITHI.....4TH

PETITIONER

VERSUS

STANLEY MAINA.....1ST

RESPONDENT

ACK RIMPA CHURCH, DIOCESE OF

MOUNT KENYA SOUTH.....2ND

RESPONDENT

FRANCIS KURENDE.....3RD

RESPONDENT

RULING

1. The Court is called upon to determine a Preliminary Objection raised by the Respondents challenging the competence of the Petition. The Respondents contend that the Petition is fatally defective on the ground that the 2nd Respondent and by extension the 3rd Respondent lacks legal

capacity to be sued in its own name, and therefore the proceedings are incompetent.

2. The Petitioners oppose the objection and submit that the issue of the Respondent's capacity had previously been raised and determined by the Court, rendering the present objection res judicata.

3. The Respondents' objection is premised on the ground that the Respondent Church is not a legal person capable of suing or being sued. They argue that the Petition is incompetent for failure to sue a legally recognized entity.

4. Having considered the preliminary objection and the submissions, the Court identifies the following issues of determination;

- **Whether the objection meets the legal threshold of a preliminary objection.**
- **Whether the issue raised is barred by the doctrine of res judicata.**
- **Whether a church or religious institution may be sued in the manner presented.**

- **Whether the alleged defect warrants striking out the Petition.**

5. The law governing preliminary objections is settled. In the celebrated case of Mukisa **Biscuit Manufacturing Co. Ltd v West End Distributors Ltd**, the Court defined a preliminary objection as. *“A pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct.”*

The Court further cautioned that a preliminary objection should not involve factual inquiry.

6. The Supreme Court reiterated this principle in **Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others**, holding that a valid preliminary objection must be capable of disposing of the matter without requiring evidence. The question of legal capacity to sue or be sued is a point of law. The Court therefore accepts that the objection is properly raised as a preliminary objection in principle.

7. The Petitioners argue that the objection is barred by the doctrine of res judicata because the issue of capacity had

been previously raised and determined. The doctrine is codified under Section 7 of the Civil Procedure Act, which bars courts from re-litigating issues that have already been determined.

8. From the record before this Court, it is evident that the question of the Respondent's capacity had earlier been raised and determined. The Court had declined to terminate the proceedings on that ground and found that the existence of other identifiable parties justified sustaining the suit.
9. No evidence has been placed before this Court to show that the earlier ruling was reviewed, varied, or set aside. The Court therefore finds that the present objection amounts to an attempt to re-litigate an issue previously determined, and is therefore barred by the doctrine of res judicata.
10. Even assuming that the objection were not barred by res judicata, Kenyan courts have consistently adopted a pragmatic approach regarding disputes involving churches and other unincorporated associations. In **Free Pentecostal Fellowship in Kenya v Kenya Commercial Bank**, the Court of Appeal acknowledged that religious organizations

may be sued through identifiable officials or trustees even where the institution itself lacks corporate personality.

11. The same approach was adopted in *Trustees Kenya Redeemed Church & Another v Samuel M’Obiya*, where the court held that the description of a religious organization does not automatically invalidate proceedings where the parties behind the institution are identifiable.

12. This principle also flows from **Article 159(2)(d) of the Constitution**, which requires courts to administer justice without undue regard to procedural technicalities. The power to strike out proceedings must be exercised with caution. In **DT Dobie & Company (Kenya) Ltd v Muchina**, the Court of Appeal held that, *“A suit should only be struck out where it is so hopeless that it plainly and obviously discloses no reasonable cause of action.”*

13. Where a defect can be cured by amendment or clarification of parties, the court should lean toward sustaining the proceedings. The Court of Appeal reaffirmed this principle in **Mumo Matemu v Trusted Society of Human Rights Alliance**, emphasizing that constitutional

litigation should not be defeated by procedural technicalities where substantive questions of law arise. This approach is consistent with the constitutional values of access to justice under **Article 48** and fair hearing under **Article 50**.

14. Upon considering the objection and the applicable law, the Court arrives at the following findings; the issue of legal capacity had already been raised and determined rendering the present objection res judicata; even if the issue were open for determination the alleged defect concerns a procedural irregularity capable of cure through amendment or joinder of proper parties. Courts are enjoined to sustain proceedings where possible rather than terminate them on technical grounds. As such the court finds the Preliminary Objection unmeritorious.

15. In the end the Court makes the following orders:

a. The Preliminary Objection dated 1st September 2025 is dismissed.

b. The Petition shall proceed to hearing on its merits. The parties should prepare documentation for hearing of the case.

**c. Costs of the Preliminary Objection shall
abide the outcome of the Petition.**

**Dated, Signed and Delivered virtually at Kajiado this 5th
day of March 2026.**

JUDY OMANGE

JUDGE.

IN THE PRESENCE OF:

Mrs. Maina for Respondent.

Mr. Njunge for Petitioner.

Peter - Court Assistant.