

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**  
**ELC NO E092 OF 2025**

**BONNIE L. CHUNG ..... 1<sup>ST</sup>**  
**PLAINTIFF**

**ZEKE CHEBORIN KISA ..... 2<sup>ND</sup>**  
**PLAINTIFF**

**WONGI KANG ..... 3<sup>RD</sup> PLAINTIFF**  
*(Suing as Chairman, Secretary and Treasurer of Lamb keepers Ministries)*

**VERSUS**

**ROSEMARY MUTHEU NGUTA ..... DEFENDANT**

**RULING**

1. This Ruling is in respect of the Defendant’s Notice of Preliminary Objection dated 21<sup>st</sup> November 2025, based on the following grounds:
  - a) *That prayer (a) in the plaint is res judicata having been heard and determined in Nakuru High Court Constitutional Petition No. E22 of 2022.*
  - b) *Those prayers (b), (c) & (d) are prematurely brought since the Plaintiffs have not exhausted the remedies provided for under Section 79 of the Land Registration Act.*
  - c) *That in any case, the suit is bad in law, vexatious and an abuse of the court process and should be struck out with costs.*

## **DEFENDANT’S SUBMISSIONS**

2. Counsel for the Defendant filed submissions dated 28<sup>th</sup> January 2026 and listed three issues for determination as follows:
  - a) *Whether the Preliminary objection is properly before court.*
  - b) *Is prayer (a) res judicata?*
  - c) *Whether prayers b. c & d are prematurely brought before exhaustion of the remedies provided for under Section 79 of the Land Registration Act.*
  
3. On the first issue as to whether the preliminary objection is proper before the court, counsel relied on the case of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**, and submitted that *res judicata* and the doctrine of exhaustion are remedies which go to the jurisdiction of the court thus, pure points of law.
  
4. On the second issue as to whether prayer (a) is *res judicata*, counsel relied on Section 7 of the Civil Procedure Rules, and submitted that from the pleadings, the defendant was removed as a trustee of Lamb Keepers Ministries and replaced with the 2<sup>nd</sup> Plaintiff in 2022. The defendant filed Nakuru High Court Constitutional Petition No. E022 of 2022, challenging her removal, where the Defendant was a Petitioner while the Plaintiffs were interested parties, and the issue for determination was whether her removal as a trustee & official of the society was lawfully done and Justice Nyaga on 1<sup>st</sup> November,2023, dismissed her Petition with costs. That

decision upheld her removal as a trustee of that Society and since she is no longer a trustee, she has no power/capacity to sign any document.

5. Counsel stated that the Plaintiffs availed the Judgment in Nakuru H.C Constitutional Petition E022 of 2022 in their list of documents and relied on the case of **Tengele v Kamau & 4 others [2021] KEELC 6740 (KLR)**, where the court held that although *res judicata* can sometimes be raised through a preliminary objection, it is best handled by way of a Notice of Motion where, the judgments or rulings can be attached to verify the facts and the Respondent given an opportunity to respond to the facts.
6. Mr. Chaungo submitted that if indeed the High Court dismissed the defendant's challenge on her removal as a trustee, why would the Plaintiffs invite the ELC to determine whether she is still a trustee or not? For this court to determine prayer (a) it will have to re-open those issues, take evidence and analyse the process of her removal which was already heard and determined by the High Court.
7. Counsel further submitted that this suit may be fashioned as a land dispute but the fact remains that prayer (a) cannot be entertained taking into consideration that it may cause embarrassment if the court were to render a conflicting decision from the High Court decision and cited the case of **Diocese of Eldoret Trustees (Registered) v Attorney General (on behalf of the PS Treasury) & Another [2020] eKLR**.
8. On the third issue as to whether prayers b. c & d are prematurely brought before exhaustion of the remedies provided for under Section 79 of the

Land Registration Act, counsel relied on Section 29 of the Societies Act which allows Societies to change trustees every single year.

9. Counsel further submitted that from the pleadings, it is clear that the 1<sup>st</sup> plaintiff's and defendant's name were reflected in the register as trustees of Lambkeepers Ministries, and they neither owned the properties jointly nor in common, as the parcels were property of Lamb keepers Ministries. Further that changing a trustee does not affect the proprietorship/ownership rights of Lambkeepers Ministries.
10. It was Mr. Chaungo's submission that Section 79 (1) of the Land Registration Act gives the Land Registrar powers to rectify the registrar as long as the proprietorship of such society remains unaffected. Otherwise, the new trustees would be filing a case every single year to have their names in the register, and the Plaintiffs should have applied to the Land Registrar to rectify the register on the grounds that the Society had changed its trustees, by providing the minutes appointing new trustees or any other requisite document and the names of the new trustees to be inserted in the register in place of the defendant.
11. It was counsel's submission that if the Registrar declines for whatever reason, then they can invoke this Court's supervisory Jurisdiction through a judicial review writ of mandamus compelling the Registrar to make the changes.
12. According to counsel, the plaintiff, has no allegations of fraud, mistake or omission against the defendant. Further, there is no prayer seeking to restrain or compel the defendant from doing anything. Counsel relied on

the case of **Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others (2015) eKLR**, where the Court of Appeal stated that it is imperative that where a dispute resolution mechanism exists outside courts, the same should be exhausted before the jurisdiction of the courts is invoked.

13. Counsel urged the court to allow the preliminary objection and strike out the suit with costs.

#### **PLAINTIFFS' SUBMISSIONS**

14. Counsel filed submissions dated 23<sup>rd</sup> February 2026, and identified the issue for determination as to whether the preliminary objection has merit.
15. Counsel relied on the cases of **Mukisa (supra), Samuel Kipkoros Cheruiptot and Philip Singei and 1 Others Vs Angata Bargo Farmers and The Land Registrar Transmara And 1 Others** and **Omondi vs National Bank of Kenya Limited and 2 others**, as quoted in the decision of **J N & 5 others v Board of Management, St. G School Nairobi & another [2017] eKLR**, and submitted that the preliminary objection lacks merit and should be dismissed with costs.
16. On the issue of *res judicata*, counsel relied on the cases of **John Florence Maritime Services Limited & another —v- Cabinet Secretary Transport & Infrastructure & 3 Others (2015) Njue Ngai v Ephantus Niiru Ngai & another [2016] eKLR**, and submitted that the parties, subject matter and the cause of action in Nakuru HC Constitutional Petition E22/22 and the present case are not identical.

17. Mr. Mbiyu submitted that the cause of action and subject matter in the constitutional petition was the alleged unlawful removal of the Petitioner as treasurer and secretary of Lambkeeper Ministries, where she sought orders of declaration, certiorari, mandamus and injunction and in the current case the cause of action is the rectification of registers of the various parcels of land.
18. Counsel further submitted that the judgment did not deal with the rectification of the register, as the High Court does not have jurisdiction over the issue. At Paragraphs 90 and 91 of the judgment in the constitutional petition, the High Court held that if the Petitioners were dissatisfied with their removal as treasurer and secretary of Lambkeepers Ministries, then they should first have raised the issue with the Registrar of Societies who effected such changes.
19. It was Mr. Mbiyu's submission that this Court derives its jurisdiction from Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act 2011 to hear and determine disputes relating to environment and land, and Section 79, of the Land Registration Act only empowers the Land Registrar to rectify the register in limited circumstances, such as where there are errors, omissions or formal defects or changes in the name of a proprietor.
20. Counsel relied on the case of **Kiro v Chief Land Registrar; Gakuo & another (Interested Parties) (Environment and Land Judicial Review Case E018 of 2025) [2025] KEELC 7705 (KLR)**, and submitted that for the Land Registrar to exercise this power, the consent of the affected

proprietors is required, and in this case, following the lawful replacement of the Defendant as a trustee of Lambkeepers Ministries, it became necessary to rectify the land registers to remove her name and replace it with that of the 2<sup>nd</sup> Plaintiff, but the Defendant has refused to sign the necessary documents to facilitate this rectification.

21. According to counsel, the Plaintiffs' claim goes beyond the limited administrative mandate of the Land Registrar, and raises substantive questions concerning trusteeship and proprietary rights, which fall squarely within the jurisdiction of this Honourable Court. Further, to invoke Section 79 of the Land Registration Act at this stage would require the Court to probe into the nature of the alleged error on the register, the identity of the proprietors, and the reliefs sought by the Plaintiffs, which are not pure points of law but of fact.
22. Counsel urged the court to dismiss the preliminary objection with costs.

### **ANALYSIS AND DETERMINATION**

23. The issues for determination are whether the preliminary objection on the ground that the suit is *res judicata*, and whether the Plaintiffs have exhausted the remedies provided for under section 79 of the Land Registration Act, 2012.
24. The nature and scope of a “preliminary issue” is defined in the case of **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969] EA 696 at 700** as follows:

***“So far as I am aware, a preliminary objection consists of 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 dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit or to refer the dispute to litigation.”*

25. Similarly, in the Supreme Court case of **Hassan Ali Joho & another -Vs- Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 [2014] eKLR**, the court **held** thus:

*“a Preliminary Objection consists of 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 dispose of the suit”*

26. The Defendant has raised two issues, namely: that this suit is *res judicata* as there was a similar suit in the Nakuru High Court Constitutional Petition No. E22 of 2022, where the Defendant was challenging her removal as a Trustee, which was dismissed on 1<sup>st</sup> November 2023, the second issue is that the Plaintiff has not exhausted the remedies under Section 79 of the Land Registration Act, 2012.
27. It is not in dispute that the Defendant was removed as a Trustee of LambKeepers Ministries and that the Defendant filed a Petition to challenge her removal, which was dismissed by the High Court on 1<sup>st</sup> November 2023. The Petition was purely on the issue of her removal and not the rectification of the titles to remove her name and be replaced by one Zeke Cheborin Kissa who took over as a Trustee in her place.

28. The Plaintiffs sought the following orders in the Plaint:

- a) *A declaration that the defendant is no longer a trustee of Lambkeepers Ministries.*
- b) *The Land Registrar Nakuru rectifies the registers for Title Number Bahati / Kabatini Block 1/14620, Bahati / Kabatini Block 1/14621 Bahati / Kabatini Block 1/14622, Bahati /Kabatini Block 1/14623, Bahati / Kabatini Block 1/14624, Bahati / Kabatini Block 1/14625, Bahati / Kabatini Block 1/14626, Bahati / Kabatini Block 1/14627, Bahati /Kabatini Block 1/14628, Bahati / Kabatini Block 1/14629, and Bahati / Kabatini Block 1/14630 to remove the defendant Rosemary Mutheu Nguta as co- proprietor as trustee of LambKeepers Ministries and replace her with Zeke Cheborin Kissa.*
- c) *The necessary documents for the rectification of the registers be signed by the Deputy Registrar of this honourable court in the place of the defendant.*
- d) *The titles deeds issued on 29th May, 2014 in respect of the above parcels of land be cancelled and fresh titles deeds be issued in the names of Bonnie Chung and Zeke Cheborin Kissa as trustees of LambKeepers Ministries.*
- e) *Costs to the Plaintiffs.*

29. The above prayers in the Plaint cannot be deemed as having been heard and determined by a competent court involving the same parties, the same subject matter in Petition No. E022 of 2022. It follows that this matter is not *res judicata* as submitted in the Defendant's preliminary objection.

30. Furthermore, in the case of **Suleiman Said Shabhal vs Independent Electoral & Boundaries Commission & 3 Others [2014] eKLR**, the court in addressing what amounts to *res judicata* held as follows:

***“To constitute res judicata, there must be adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy.”***

31. On the second issue, whether the Plaintiff has exhausted the remedies provided for under Section 79 of the Land Registration Act, it should be noted that there are two processes, in this case, one at the Registrar of Societies where the name change is effected, and at the Land Registry where the title is rectified. The rectification which is envisaged, affects the rights of a registered owner and cannot be treated as either a minor or a typographical error which can be cured by Section 79 of the Land Registration Act which empowers the Land Registrar to act upon.

32. Section 79(1) of the Land Registration Act provides as follows:

***(1) The Registrar may rectify the register or any instrument presented for registration in the following cases—***

***(a) In formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;***

***(b) In any case and at any time with the consent of all affected parties; or***

*(c) If upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;*

*(d) For purposes of updating the register;*

*(e) For purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.”*

33. Therefore, Section 79 of the Land Registration Act 2012, which allows the Land Registrar to rectify errors, does not apply when the rectification involves complex legal disputes, substantive ownership rights, or allegations of fraud that require a hearing and determination of the ownership dispute. The rectification is restricted to clerical, administrative, or undisputed errors, and not the cancellation of validly registered titles.
34. Section 80 of the Land Registration Act empowers the court to order the Land Registrar to cancel a title or rectify an entry in the register, upon satisfaction that the same was entered vide misrepresentation, fraudulently or by error.
35. I have considered the preliminary objection, the submissions by counsel together with the relevant authorities, and find that the same lacks merit, and is therefore dismissed with costs to the Plaintiff.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 19<sup>TH</sup>  
DAY OF MARCH 2026.**

**M. A. ODENY  
JUDGE**