



Kamau (Suing on his own Behalf and as the Administrator for the Estate of Faith Nungari (Deceased)) v Registered Trustees of the Anglican Church of Kenya –ACK (St Mathias Church, Njiru) (Environment and Land Case E070 of 2024) [2026] KEELC 1891 (KLR) (4 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1891 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND CASE E070 OF 2024

JA MOGENI, J

MARCH 4, 2026

BETWEEN

JAMES NGUGI KAMAU (SUING ON HIS OWN BEHALF AND AS THE ADMINISTRATOR FO THE ESTATE OF FAITH NUNGARI (DECEASED) PLAINTIFF

AND

THE REGISTERED TRUSTEES OF THE ANGLICAN CHURCH OF KENYA – ACK (ST MATHIAS CHURCH, NJIRU) DEFENDANT

RULING

1. This Ruling is in respect of the Defendant/Applicant’s Notice of Preliminary Objection dated 8/07/2024 on the following grounds:
 1. That the Defendant lacks the legal capacity under Section 3 of the Societies Act to sue or to be sued, in the manner herein
 2. That the pecuniary jurisdiction of the Court herein is wanting
 3. That the proceedings herein against the Defendant are bad in law and form and ought to be struck out
 4. That the Plaintiff’s case is scandalous, immicable, incurably defective and contravenes the provision of the law
 5. That the Plaintiffs case is frivolous and vexatious and is an abuse of the Court process.
2. In response to the Preliminary Objection the Plaintiff/Respondent filed Grounds of Opposition dated 31/10/2024. He averred that the Preliminary Objection is an abuse of the Court process and



that this Court had inherent original jurisdiction to handle all matters irrespective of their pecuniary jurisdiction. It is the Respondent's contention that the Defendant/Applicant has not provided any evidence on the valuation of the suit property and that being a Church organization, the Plaintiff as drawn is in compliance with the Society Act.

3. The Preliminary Objection was canvassed by way of written submissions. The Defendant/Applicant filed his written submissions dated 13/12/2024 while the Plaintiff filed its submissions dated 24/01/2025.
4. In its submissions the Defendant identified two issues which they considered key in the dispute being whether the Defendant has locus standi to be sued under the Societies Act and whether the Honourable Court lacks pecuniary jurisdiction to determine the suit.
5. On the first issue the Defendant submitted that the Defendant herein lacks locus standi being a society registered under Section 3 of the Societies Act and can only be sued through its trustees.
6. The Defendant on the issue of jurisdiction submitted that this Court lacked the pecuniary jurisdiction since the value of the property is less than Kshs. 20,000,000/- and therefore the suit should have been instituted at the Magistrate's Court.
7. The Defendant relied on the following cases in their submissions:
 - a. Supreme Council of Kenya Muslims (SUPKEM) & Another vs Registrar of Societies Omar 2 Others (Interested Parties) (Judicial Review E104 of 2023) 2024 KEHC 1320 (KLR) Judicial Review (16 February 2024) Ruling
 - b. Norah Atieno Olweny vs Elijah Kiplagat, Elijah Kibet, Uasin Gishu Land Registrar, Uasin Gishu Land Surveyor & Attorney General [2020] KEELC 3319 (KLR)
 - c. Islamia Madrass Society vs Zafar Njaz & 8 Others [2021]eKLR
8. The Plaintiff/Respondent submitted that he commenced this suit by way of Plaint dated 20/02/2024 and that from inception of the suit he was aware that the Defendant is a Church registered under the Societies Act and that is why he had no capacity to sue or be sued. That the suit has been sued in the name of the Registered Trustees of the Anglican Church and not in the name of the Church directly.
9. In his submissions he relied on the following cases which he submitted for the parties to be sued as Registered Trustees:
 - a. Eritrea Orthodox Church -Vs- Wariwax Generation Ltd (2007) eKLR
 - b. African Orthodox Church -Vs- Rev. Charles Omuroka. Kakamega HCC 299 Of 2013
 - c. Nyamokenye Maranatha Faith Assemblies -Vs- Bosco Mogere & Others - Kisii HCC 483 Of 2015
 - d. The Registered trustees Of The Presbyterian Church Of East Africa -Vs- Church Of East Africa & Another - Civil Appeal No. 82 Of 2013
10. He submitted that the value of the suit property together with the developments therein is beyond Kshs. 20,000,000/- and therefore this Honourable Court is seized of jurisdiction. Further that the issues of valuation are matters of fact and not of law. That the pecuniary jurisdiction just like the High Court is unlimited unlike the Magistrate's Court.



11. It was his submission that the Preliminary Objection lacks specifics and clarity and is scandalous, frivolous and/or vexatious and that the Court should dismiss it and order for the suit to proceed to full hearing.

Analysis and Determination

12. After considering the Preliminary Objection and the submissions, the only issue that arises for determination is whether the Defendant's Preliminary Objection has merit and should be allowed. But before delving into the issue of Preliminary Objection the Defendant raised the issue of jurisdiction and this is an issue that must be determined first because without the jurisdiction the Court must down its tools.
13. It is trite that jurisdiction is everything and without it a Court cannot take any valid step. The Plaintiff/ Respondent pleads that this Court has the requisite jurisdiction to determine the instant suit while the Defendant/Applicant states that the value of the suit property is way below the pecuniary jurisdiction of the Environment and Land Court which is of a similar level with the High Court and whose pecuniary jurisdiction is capped at Kshs. 20 million. Section 26 (3) and (4) of the *Environment and Land Court Act*, 2011 provides:
 - “(3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.
 - (4) Subject to Article 169(2) of *the Constitution*, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle —
 - a. Disputes relating to offences defined in any Act of Parliament dealing with environment and land; and
 - b. Matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates' Courts Act.”
14. By various Gazette Notices, the former Chief Justice, made appointments pursuant to Section 26 (3) and (4) of the *Environment and Land Court Act*, 2011. Such Gazette Notices include Gazette Notice No 1472 dated March 1, 2016, Gazette Notice No 1475 dated March 14, 2016, Gazette Notice No 11930 dated December 5, 2017 and Gazette Notice No 2575 dated February 28, 2019. Indeed there, exist within the Magistrates' Courts, several Magistrates duly gazetted and granted jurisdiction and power to handle cases involving occupation and ownership of land.
15. The existence of the gazette Magistrates do not oust the jurisdiction of the Environment and Land Court as the Court has original jurisdiction. It is always advisable that cases should be filed in the Court with appropriate pecuniary jurisdiction. In situations where there is an overreach to the Environment and Land Court, the Court will always transfer a suit in this regard to the lower Court but not to strike out a suit as prayed on this basis.
16. In any event in relation to this matter as was objected to by the Plaintiff in the Grounds of Opposition, the value of the suit property has not been pleaded. No evidence has been tendered by both parties herein to indicate the value of the suit property, as such the Court cannot make assumption that the value of the suit property is below its pecuniary jurisdiction. Thus on this issue of jurisdiction this Court is well seized of the matter before it.



17. Now on the issue of the Preliminary Objection, the Court in the case of Mukisa Biscuit Manufacturing Co Ltd vs. West End Distributors Ltd 1969 1EA 696 held 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.”

18. The Defendant’s Preliminary Objection it is a registered unincorporated society which lacks a legal personality to sue and to be sued. The Plaintiff alleges that the Defendant’s Preliminary Objection does not raise a pure point of law as some of the issues such as the one on value of the suit property is a matter of fact and not a pure point of law. Further that the party sued are the registered trustees of the Defendant and not the Church.

19. As was held in the case of Mukisa Biscuit Manufacturing Co Ltd vs. West End Distributors Ltd (Supra), a Preliminary Objection raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It is my view that the Defendant’s Preliminary Objection raises a pure point of law as it is challenging the locus standi of the Plaintiff to institute legal proceedings.

20. Halsburys Laws of England 3rd Edition Vol 18 at paragraph 239 states as follows:

“ The trustees of a registered society or branch or officers authorised by its rules, may bring or defend actual or legal proceedings with respect to any property, right or claim of the society or the branch and may sue and be sued in their proper names without other description than the title of their office. The liability of trustees to be sued in proceedings with respect to a right or claim of the society or branch is restricted to cases in which the right or claim concerns the property of a society or branch ...”

21. As pointed out before, the Defendant is challenging the Plaintiff’s locus standi in instituting the present matter. As per the Plaintiff, the Defendant is “The Trustees of the Anglican Church of Kenya – A.C.K (St Mathias Church, Njiru)”. This is therefore unincorporated body.

22. The Court in the case of HCCC No 5116 of 1992 (OS) – Free Pentecostal Fellowship In Kenya vs. Kenya Commercial Bank held as follows:

“ The position at common law is that a suit by or against unincorporated bodies of persons must be brought in the names of, or against all the members of the body or bodies. Where there are numerous members the suit may be instituted by or against one or more such persons in a representative capacity pursuant to the provisions of order 1 rule 8 Civil Procedure Rules. In the instant matter the suit was instituted in the name of a religious organization. It is not a body corporate which would then mean it would sue as a legal personality. That being so it lacked the capacity to institute proceedings in its own name.”

23. As was held in the above case, an unincorporated body can only sue or be sued through its members and cannot sue in its own name. Section 3 of the *Trustees (Perpetual Succession) Act* provides that it is a registered body corporate which has power to sue and be sued. The Section provides as follows:

“(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 and, subject to the conditions and directions contained in



the certificate, to hold and acquire, and by instruments under the common seal to convey, transfer, assign, charge and demise any movable or immovable property or any interest therein now or hereafter belonging to, or held for the benefit of, the trust concerned in the same manner and subject to such restrictions and provisions as trustees might so do without incorporation.”

24. It is my view that Section 3(3) of the *Trustees (Perpetual Succession) Act* implies that it is the trustees who have been appointed by a body or association that become a body corporate that can sue and be sued and not an unincorporated society by itself. The Defendant being unincorporated lacked the capacity to be sued vide the present proceedings as it is not a legal person or a corporate body. In conclusion therefore, it is my view that the Plaintiff ought to have sued the trustees in their individual names and not corporately as the Trustees of the Anglican Church of Kenya.
25. Thus Defendant’s Preliminary Objection has merit.
26. But that notwithstanding, I consider the flaw in the Plaint to be capable of correction and I hereby order that the Plaintiff shall within 30 days hereof amend his Plaint to include the registered trustees’ individual names in the title and describe them as “as suing on behalf” of the body named. That Plaint shall be served on the other parties within 14 days of its filing and the suit shall be mentioned on 01/04/2025 to ascertain compliance and for further directions as to hearing.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 4TH DAY OF MARCH 2025
VIA MICROSOFT TEAMS.**

.....

MOGENI J

JUDGE

In the presence of :-

Mr. Kamau for the Plaintiff

Mr. Gichohi Waweru for the Defendant

Melita - Court Assistant

