

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA NAIROBI**  
**CIVIL APPELLATE DIVISION**  
**HCCA E783 OF 2024**

**PETER NJOROGE AMBUKA.....**  
**APPELLANT**

**VERSUS**

**THE BOARD OF TRUSTEES OF THE**  
**PENTECOSTAL EVANGELISTIC**  
**FELLOWSHIP OF AFRICA (PEFA).....1<sup>ST</sup>**  
**RESPONDENT**

**BERNARD K MWANGI (Sued as the Chairman of PEFA**  
**NATIONAL ELECTION COMMITTEE (PNEC)....2<sup>ND</sup>**  
**RESPONDENT**

**JUDGMENT**

1. This is an appeal arising out of the decision of the lower court to strike out the entire suit as a result of a preliminary objection raised by the Defendant who is now the respondent in this Appeal. The brief history of this matter is that the Appellant filed a suit against the board of trustees, two officials of the church and the 4<sup>th</sup> respondent who is a candidate in an election. The main reason for the suit was the contention by the Appellant that the 4<sup>th</sup> Respondent was not qualified as per the church's constitution to participate in the election. The magistrate found that the first respondent was

not a juristic person and so the suit was struck out in its entirety. I have read the submissions and relevant authorities and wish to note the following with a view to determining this Appeal.

**Striking out the entire suit.**

2. The main finding by the magistrate was that the first defendant was not a juristic person. That decision only affected the First defendant and not the rest. Every defendant in every suit has been sued on its own capacity and Courts cannot determine the fate of one defendant and apply it to the rest. I note that the other defendants are capable of being sued and that the learned trial Court did not give a reason as to why the entire suit was struck yet there was no evidence that the first defendant represented the rest in this matter. To this extent I find fault in the magistrate's ruling in striking out the suit against the other defendants.
3. The main issue that forms the crux of this appeal is as to whether the first defendant is a juristic person or not. It has been established that board of trustees cannot be a juristic person unless it is incorporated under the Trustees Act. This is a pure point of law and the magistrate cannot be said to have been "speculative." Where a PO is raised like in this case, it is incumbent upon the Plaintiff to prove with documents that indeed the first defendant is a juristic person. The burden automatically shifts to the plaintiff to avail such prove and it is not necessary for the defendant to say "I am not who you say I am." This is the position because before

filing a suit, the plaintiff is supposed to properly describe who the defendant is otherwise it would be an abuse of the court process to drag unknown persons to Court. To this extent, the trial magistrate was correct in striking the suit against the first defendant.

- 4.** Doctrine of exhaustion. The trial magistrate was correct in holding that the Respondents had attempted to comply with the constitution which required that disputes should first be resolved before mediation. The Respondents did not take proper steps to have the matter resolved and so the Appellant had no option but to go to court. It should be noted that matters to do with elections run with time and must be determined timely to avoid illegality or unfairness. The Respondents did not provide prove that indeed it initiated the mediation process upon the Appellant's request and that the Appellant refused to participate.
- 5.** The constitution provides that only those who are candidates can bring a dispute to the PEDRC. This is the correct position but it is only after elections and not before as in this case. The finding of the same by the trial Court was therefore correct. The gist of this provision is to ensure that not everyone can trigger an election dispute if they did not participate in the election process. This will therefore avert situations where busybodies may bring unnecessary complaints yet the candidates are comfortable with the results. To the contrary, every member has a right to raise an

issue before elections so as to safe guard the constitution and their right to vote a qualified candidate. It would be unfair for members to be forced to participate in an election process when they feel that a candidate does not meet the requirements of the constitution.

6. The conclusion of the above is that the lower Court judgement is set aside by an order of this Court striking out the first defendant and retaining the rest. This file is sent back to the lower court for further actions. Each party shall bear own costs

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 13<sup>TH</sup> DAY OF APRIL 2026.**

**HON L P KASSAN  
JUDGE**

ORIGINAL