



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANG'A

ELC NO. 16 OF 2019

PETER NGUGI GEOFFREY.....1ST PLAINTIFF

LUKAS MAINA NGANGA.....2ND PLAINTIFF

GEORGE NGUGI NGANGA.....3RD PLAINTIFF

PHILIP WANYOIKE NGANGA.....4TH PLAINTIFF

VS

MITHINI SDA CHURCH.....DEFENDANT

RULING

1. On the 26/9/19 the Defendant filed a Preliminary Objection on the grounds that it has no legal capacity to be sued and the suit is a non starter, bad in law and an abuse of the process of the Court.

2. In response the Plaintiffs responded in their submissions and opposed the Preliminary Objection. They argued that a church can be sued on its own name and in any event the same church had been sued in Thika Law Courts which is the subject matter of the litigation and yet the Defendant did not raise any objection. That the Defendant is properly before the Court and this is not a proper point of law which should be dismissed.

3. The Defendant on the other hand submitted that only a juristic person can sue and be sued. That a non existent entity cannot maintain a cause of action and that the Defendant is not a juristic person to maintain a suit. That the Defendant is not registered under any law in Kenya. It maintained that to prevent abuse of the Court and waste of judicial time this suit should be struck out. The Defendant insists that the Defendant has never existed and is not capable of being pursued legally.

4. Having considered the preliminary objection, the written submissions and the precedent supplied by the parties the issue for determination is whether the Preliminary Objection raises a pure point of law.

5. What then is a Preliminary Objection? As to whether the Preliminary Objection as raised is a pure point of law, the Court in the case of **Mukhisa Biscuit Manufacturing Co. Ltd. – v- West End Distributors Limited, 91969) EA 696**, defined a preliminary objection as follows;

“.....a “Preliminary Objection” correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion, which claims to be a Preliminary Objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary point...Anything that purports to be a Preliminary Objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence...”

6. The effect of the case law cited above means for one to succeed in putting up a Preliminary Objection, it must meet the following criteria; it must be pleaded by one party and admitted by the other; must be a matter of law which is capable of disposing off the suit; must not be blurred by factual details calling for evidence; must not call upon the Court to exercise discretion.

7. Section 3 of the Societies Act shows that the Defendant does not have the legal capacity of suing or being sued in its own name. In the

case of **John Otteyo Amwayi & 2 others vs. Rev. George Abura & 2 others – Civil Appeal No. 6339 of 1990**, the Court held as follows:

“The Societies Act does not contain provisions with regard to the presentation and prosecution of suits by or against the unincorporated Societies. It would appear to me that the legislature did not intend that suits be brought by or against those Societies in their own names.”

8. In the plaint the Defendant is described as a church registered under the Societies Act. The plaint has not exhibited any form of registration in respect to the Defendant’s entity. It is trite that a non juristic person is incapable of suing or being sued in its name. If indeed the Defendant is registered under the societies Act, then the right thing was to have it sued through its officials. None has been disclosed.

9. In the instant matter the suit was filed against a religious organization. It is not a body corporate which would then mean it would be sued as a legal personality. That being so it lacks the capacity to be sued in its own name.

10. A Society can only sue or be sued through its officials. That is the law. Having failed to sue the officials or trustees of the Defendant, or the specific members of the Defendant I find that the Preliminary Objection as raised is a pure point of law.

11. In the upshot the Preliminary Objection is merited it is allowed with the consequence that both the instant suit and the counterclaim are struck out.

12. The Plaintiff shall meet the cost of the Preliminary Objection and the suit.

13. **It is so ordered.**

DELIVERED, DATED AND SIGNED AT MURANG’A THIS 19TH DAY OF DECEMBER 2019

J.G. KEMEI

JUDGE

Delivered in open Court in the presence of:

Bwonwonga HB for Njoroge for the 1st – 4th Plaintiffs

Mureithi HB for Gori for the Defendant

Irene and Njeri, Court Assistants