



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 134 OF 2017

PENTECOSTAL ASSEMBLIES OF GOD KENYA

through its Registered Trustees).....1ST PLAINTIFF

BERNARD AYEKA.....2ND PLAINTIFF

ALLAN LIDAMBITSA.....3RD PLAINTIFF

JOHN JUMA.....4TH PLAINTIFF

VERSUS

JOSEPHAT OGOLE ELEGWA.....1ST DEFENDANT

MICHAEL WAMALWA NALWELISIE.....2ND DEFENDANT

RUTH SIKOLIA MAKONJO.....3RD DEFENDANT

MARGARET MASITSA MUHALIA.....4TH DEFENDANT

HUMPHREY MWOLE EGOSANGWA.....5TH DEFENDANT

R U L I N G

1. The defendants filed a Preliminary Objection dated 15/11/2017 which raises two grounds as follows:-

1. That one Patrick Lihanda Musungu does not have capacity to sue on behalf of the 1st plaintiff.

2. That Kitale Pentecostal Church, the registered owner of the suit land is not a party to this suit.

2. By reason of those grounds the defendants prays that the plaintiffs' suit be struck out.

3. While addressing this preliminary objection I have examined the plaint and found that the title does not mention the said Patrick Lihanda Musungu as a plaintiff.

4. The defendant has proceeded to make assumptions where none should be made. To that extent, the first limb of the objection does not have merit.

5. In respect of the second limb, I find that it is a case of joinder of parties. **Order 1 Rule 9** of the **Civil Procedure Rules** states as follows:-

“9. Misjoinder and non-joinder

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”

6. I therefore find that the second limb of the objection is also devoid of merit.

7. I hereby dismiss the preliminary objection dated 15/11/2017 with no orders as to costs.

Dated, signed and delivered at Kitale on this 22nd day of March, 2018.

MWANGI NJOROGI

JUDGE

22/3/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga for the Plaintiffs

Mr. Teti holding brief for Kaosa for defendants

COURT

Ruling read in open court.

MWANGI NJOROGI

JUDGE

22/3/2018