



**Redeemed Gospel Church INC v Jesus Celebration Centre Ministry INT & 3 others
(Environment & Land Case 2 of 2023) [2024] KEELC 4159 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4159 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITUI
ENVIRONMENT & LAND CASE 2 OF 2023**

**LG KIMANI, J
MAY 16, 2024**

BETWEEN

REDEEMED GOSPEL CHURCH INC PLAINTIFF

AND

JESUS CELEBRATION CENTRE MINISTRY INT 1ST DEFENDANT

JEREMIAH MATIA ALIAS REVEREND 2ND DEFENDANT

THE DISTRICT LAND REGISTRAR KITUI 3RD DEFENDANT

THE ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. This is a suit that was instituted by way of Plaintiff dated 2nd March 2021 filed at the Principle Magistrates Court at Mutomo M. ELC E008 of 2021. The suit was transferred to this Court by an order dated March 23, 2023. The Plaintiff's claim is that he is the beneficial proprietor of Land Parcel Mutomo/mwala/1103 situate in Mutomo town by virtue of being a bonafide purchaser for value and seeks the following orders:
 - a. A declaration that the suit property number Mutomo/mwala/1103 measuring 1.98Ha belongs to the plaintiff who is the bonafide purchaser for value.
 - b. An order compelling the 3rd Defendant to cancel and revoke the title deed number Mutomo/mwala/1103 and register the same in the name of the Plaintiff herein, Redeemed Gospel Church Inc.
 - c. A permanent injunction to restrain the defendants, whether by themselves, their agents and their servants from interfering with the ownership, use and possession by the Plaintiff or encroaching and trespassing on the suit property.



- d. An order compelling the defendants to immediately execute transfer instruments in respect of L.R Number Mutom/mwala/1103 in favour of the Plaintiff in default, the said order for transfer does bind the Deputy Registrar/executive officer who can execute the transfer documents in place of the said defendants.
2. The 1st and 2nd defendants filed a notice of preliminary objection dated January 15, 2024 on the following grounds:
 1. The suit is incompetent, bad in law and incurably defective.
 2. The plaintiff is an unincorporated body lacking the capacity to sue or be sued in its own name.

The 1st and 2nd Defendants' Submissions on the Preliminary Objection

3. Counsel for the 1st and 2nd defendants submitted that the Plaintiff herein is a society registered in accordance with the [Societies Act](#) of Kenya as pleaded at paragraph 1 of the plaint.
4. It is their submission that it is trite in law that societies being unincorporated bodies, lack the capacity to sue and be sued in their own name and can only do so through members or registered officials. They therefore submit that the plaintiff lacks the capacity or locus standi to file the instant suit.
5. Counsel cited and relied on the following authorities: [Republic v Registrar of Societies ex-parte Narok Muslim Welfare Association](#) (2017) eKLR, [Islamia Madrassa Society v Zafar Niaz & 8 others](#) (2021) eKLR. [Veronica Wanjira Maringa & 26 others v ACK, Buxton Diocese of Taita Taveta & another](#) (2022) eKLR.
6. Counsel submitted that the suit is therefore incompetent, bad in law and incurably defective and urged the court to so find and strike it out with costs to the 1st and 2nd defendants.

The 3rd and 4th Defendants' Submissions on the Preliminary Objection

7. State Counsel for the 3rd and 4th defendants filed written submissions in support of the preliminary objection, stating that the plaintiff has described itself as a society duly registered under the [Societies Act](#) cap 108 and there is no provision under the said act that permits societies to sue or be sued in their own name.
8. Counsel relied on the definition of locus standi as was put into words in the case of [Alfred Njau & 5 others v. City Council of Nairobi](#) (1983) eKLR. They also relied on the holding of Munyao Sila J on how unincorporated entities can bring their claims in the case of [Kipsiwo Community help-help group v. Attorney General and 6 others](#) (2013) eKLR.
9. Counsel cited the cases of John Otteyo Amwayi & 2 others v Rev. George Abura & 2 others, [African Orthodox Church of Kenya v. Rev. Charles Omuroka & another](#) (2014) eKLR and [Veronica Wanjira Manringa & 26 others v.A.C.K Buxton Diocese of Taita Taveta & another](#) (2022) eKLR in which the respective courts held that societies and churches do not have the legal capacity to sue and be sued in their own names.
10. They therefore submit that this suit is incompetent, fatally defective in substance and form and bad in law and pray that the court strikes out the suit with costs to the 3rd and 4th defendants.

Plaintiff's Submissions on the Preliminary Objection

11. Counsel for the Plaintiff opposed the notice of preliminary objection as lacking merit, since it raises no pure point of law and fails the threshold given in the *Mukisa Biscuit Manufacturing Company* case.



12. It is their submission that the matters raised by way of preliminary objection are matters which would not require evidence to prove or rebut.
13. Further, they submitted that the Plaintiff is an incorporated entity, and is stated as such on the face of the court document as 'Redeemed Gospel Church Inc.' It is their submission that the defendants' purported grievance would have been addressed if they had sought to discover documents on the basis of which the suit was filed, or an application permitting the plaintiff to present evidence in rebuttal or explanation.
14. In any event, they submit that even if there was an error in the manner in which the suit is filed, this is an error which can be corrected through an amendment. That striking out a suit is a draconian measure which must be sparingly used.
15. Counsel for the plaintiff concluded that the notice of preliminary objection is unmerited, an abuse of the court process and prayed that the same be dismissed with costs to the plaintiff.

Analysis and Determination

16. This court has considered the preliminary objection and the submissions made by Counsel for the parties. The issue for determination is whether the Plaintiff has the locus standi to sue. According to the Black's Law Dictionary a Preliminary Objection is defined as being:

“In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”

17. The above legal proposition has been made graphically clear in the now famous case of *Mukisa Biscuit Manufacturing Company Ltd v West End Distributors Ltd* (1969) E.A 696 that 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.”

In the same case, Sir Charles Newbold said:

“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 had to be ascertained or if what is sought is the exercise of judicial discretion.”

18. J.B. Ojwang, J (as he then was) in the case of *Oraro v. Mbajja* (2005) e KLR had the following to state regarding a 'Preliminary Objection'.

“I think the principle is abundantly clear. A “preliminary objection”, correctly understood is now well identified as, and declared to be the 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 preliminary objection, and 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. I am in agreement that, “where a court needs to investigate facts, a matter cannot be raised as a preliminary point.”



19. In the present case the Plaintiff has at paragraph 1 of the plaint pleaded that it is a Society registered under the *Societies Act* Laws of Kenya.
20. The Plaintiff submits that even if there was an error in the manner in which the suit is filed, this is an error which can be corrected through an amendment and that striking out a suit is a draconian measure which must be sparingly used. The court finds this argument untenable for the reason that the Plaintiff has so far not filed an application for amendment of the plaint even after having been served with the preliminary objection which was filed on January 15, 2024.
21. The Court further notes that the Plaintiff filed an application dated June 29, 2021 seeking leave to amend the plaint to join the plaintiff's registered trustees and the plaintiff's regional overseer of Kitui Sub county as plaintiff's in the suit. The said application was on October 17, 2023 dismissed for non-attendance.
22. In the case of *Peter Ngugi Geoffrey & 3 others v Mithini SDA Church* (2019) eKLR the court held that;

“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.”
23. This position was also taken in the case of *Festus Makau Kitati v New Konza Ranch Associations* [2019] eKLR where the court stated as follows;

“Reading of 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 v 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.”
24. The court finds that in the present case the suit was filed by a body that clearly describes itself as “a society dully registered as such in accordance with the Societies Act of Kenya” This is not a body corporate and so it lacks the capacity to be sued in its own name. Having failed to sue through it's officials or trustees the Court finds that the Plaintiff lacks the capacity to sue in it's own name and the Preliminary Objection as raised is merited.
25. The final order of the court is that;
 1. The preliminary objection dated January 15, 2024 is hereby allowed.
 2. The Plaintiff herein lacks the capacity to sue in it's own name.
 3. The suit herein is found to be incompetent, bad in law and incurably defective and thus it is hereby struck out.
 4. The costs of the suit are awarded to the defendants to be paid by the Plaintiff

DELIVERED, DATED AND SIGNED AT KITUI ON THIS 16TH DAY OF MAY, 2024.

HON. L. G. KIMANI



ENVIRONMENT AND LAND COURT JUDGE

Judgement read in open court and virtually in the presence of-

J. Musyoki Court Assistant

Muigai for 1st and 2nd Defendants

M/s Kerubo holding brief for the 3rd and 4th Defendants

N/A for Plaintiff

