



**Achiando v Domo & 2 others (Environment & Land Case  
E002 of 2025) [2025] KEELC 798 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 798 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT & LAND CASE E002 OF 2025  
FO NYAGAKA, J  
FEBRUARY 21, 2025**

**BETWEEN**

**JACOB ACHIANDO ..... PLAINTIFF**

**AND**

**LAWRENCE OBONYO DOMO ..... 1<sup>ST</sup> DEFENDANT**

**ALPHONSE OBOK NYAROMBE ..... 2<sup>ND</sup> DEFENDANT**

**THOMAS ODHIAMBO OMUODO ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Suit herein was institutes by the Plaintiff, Jacob Achiando who has sued three Defendants as named in the Plaint. His claim is that he and the church members of the God’s Last Appeal Church bought and developed the subject property herein, namely, East Karachuonyo/Kobuya/ 1288. The church has built a permanent structure on it. On the 11<sup>th</sup> January 2025 the Defendants unlawfully entered the church compound and disrupted the church services. At that point the 2<sup>nd</sup> Defendant, armed with a knife threatened bodily harm and violence on one of the Plaintiff’s associates. A Week later, on 18<sup>th</sup> January 2025 the actions of the Defendants escalated. The Plaintiff reported the matter to the Kendu Bay Police Station.
2. The Plaintiff prayed for a permanent injunction against the Defendants, their agents and any persons claiming through them from interfering with the church services and activities on the parcel of land and a declaration that the Plaintiff and the Members of God’s Last Appeal Church are the lawful owner of the suit parcel of land. The Plaintiff singles himself and the members to be declared owners. He asks that the Officer Commanding Station Kendu Bay to enforce the orders of the church.
3. Before a defence could be filed the Defendants entered appearance and filed a Preliminary Objection dated 07<sup>th</sup> February 2025. The Preliminary Objection constituted two points listed therein but when the Court carefully considered the separate points it formed the opinion that they amounted to only



one points, that the Plaintiff did not have capacity to sue for and on behalf of the church. That this was because the suit and the application offended the mandatory provisions of the Civil Procedure, being Order 1 Rule 1(4) and Order 9 Rule 2(c) of the Civil Procedure Rules because the Plaintiff sued on behalf of a corporation of a Society and he should have been authorized by the corporation to do so.

4. The Objection was disposed of by way of written submissions. The Defendants theirs first, dated 14<sup>th</sup> February 2025 while the Plaintiff filed his dated 18<sup>th</sup> February 2025.
5. This Court has considered the Preliminary Objection, the law and the submissions of the parties. The Court has also carefully analyzed the pleadings for reasons given below in the determination herein. This Court is of the view that only two issues lie before it for determination, namely, whether the Preliminary Objection is merited and who to bear the costs of the Objection. This Court has now to determine the issues, stating with the definition of a Preliminary Objection.
6. The Defendants' preliminary objection raises only one point of contention which is that the Plaintiff lacks capacity to sue for reason that he has brought this suit on behalf of a church which is a body corporate like a limited liability company. According to them the issue is that the Plaintiff has not filed any authorization from Gods Last Appeal Church to show that he was authorized to institute the suit in that behalf.
7. This Court determines the Objection using the conventional four-step analysis of determining legal issues, which is, the Issue, Rule, Application and Conclusion (summarized into the mnemonic, IRAC). I have stated above the issue between the parties. Before I delve into the next step of the analysis it is apt to give the understanding of what constitutes a Preliminary Objection.
8. A preliminary objection is a point of argument between parties that is grounded solely on the law. It may be raised by either a Plaintiff, Claimant or Petitioner on the one hand or Defendant or Respondent on the other. It arises by necessary implication from parties' pleadings, when compared with provisions of the law on the issue before the court. Pleadings though a skeleton of a party's case or defence form an important ingredient of his case. In their state they suffice for anyone to understand the genesis of a dispute. A Preliminary Objection therefore does not touch on any (other) facts at all than are pleaded, otherwise it would go to the merits of the dispute. If a court were to analyzing the merits of the dispute it would call for adduction of evidence, and a clarification of the same by way of testimony in-chief or deposition and the testing of its veracity, weight or proof by way of cross-examination.
9. A succinct definition and nature of a Preliminary Objection was given in the classical case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969] EA 696 at page 700. In it, Sir Charles Newbold defined a Preliminary objection as follows:-

“ 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. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... 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.”



10. A further elucidation of the concept was given in *Bashir Haji Abdullahi v Adan Mohammed Noor & 3 others* [2004] e KLR, where the same Court held that,

“We are of the considered view that if a party wishes to raise a Preliminary Objection and files in Court a Notice to that effect and is subsequently served on other parties to the suit, the Preliminary points should be sufficiently particularized and detailed to enable the other side and indeed the court to know exactly the nature of the preliminary points of law to be raised. To state that “the application is bad in law” without saying more does not assist the other parties to neither the suit nor the Court to sufficiently prepare to meet the challenge. If it is only at the hearing that the Preliminary Objection is amplified and elaborated, it gets the other side unprepared and is reminiscent of trial by ambush.”

11. *Musinga J.* as he then was also weighed in on the definition by stating, in *SUSAN WAIRIMU NDIANGUI V PAULINE W. THUO & ANOTHER* [2005] eKLR, as follows:-

“a preliminary objection should not be drawn in a manner that is vague and non-disclosing of the point of law or issue that is intended to be raised. It should clearly inform both the court and the other party or parties in sufficient details what to expect.”

12. This Court has on several occasions restated the legal position on preliminary objections. Thus, in *Kuria & 27 others v Mott & 12 others (Environment & Land Case 23 of 2021)* [2024] KEELC 4220 (KLR) (14 May 2024) (Ruling) it stated as follows:

“It is clear that a Preliminary Objection arises on a point of law only. The Court needs only to examine the pleadings and compare the issues raised therein with the law in issue and make a finding as to whether the failure to comply with what the law requires or provides is so fundamental that it goes to the root of the claim, defence, petition or plaint. This is what this Court will do in regard to the objection raised.”

13. Given the above understanding of what constitutes a Preliminary Objection, in my humble view, the point raised by the Defendant herein has to be looked at from that prism. This court will now examine only the pleadings of the parties herein and the law at this stage to determine whether the point raised is merited. In a precise manner the Defendant contends that the Plaintiff is not duly authorized by the Church he is suing on behalf to do so as required by law.

14. This Court now proceeds to determine the objection using the simple conventional procedure of determining legal issues or disputes. This is by applying the Issue, Rule, Application and Conclusion (IRAC) method, that is to say, what is the Issue between the parties? What is the Rule (law) that applies to the issue? What is the Application of the Rule then? What is the Conclusion to be drawn on the issue as borne out of the application of the law on the facts?

15. The issue between the parties herein is that the suit and application are wholly defective since they offend the mandatory provisions of the law.

16. It has been submitted by the Defendants that the Plaintiff in this matter indicated in his plaint that he has been duly authorized by the church trustees to swear in that behalf. I have carefully looked at the Paint. The Plaintiff has not in any point stated that he was authorized by the church trustees. He only stated that he was authorized. As to who gave the authorization it is not clear. Secondly, the Defendants submitted that nowhere did the Plaintiff plead that he was instituting the suit on behalf of the church. They argued that the law on that is couched in a mandatory manner. Then what is the Defendants’



contention? Could their objection be sustained if that is the argument? Be that as it may, then what is the law on the issue raised above?

17. The Rule alleged to be offended is Order 4 Rule 1(4) of the Civil Procedure Rules and Order 9 Rule 2(c) of the same Rules. Order 4 Rule 1(4) provides that, “Where the plaintiff sues in a representative capacity the plaint shall state the capacity in which he sues and where the defendant is sued in a representative capacity the plaint shall state the capacity in which he is sued, and in both cases it shall be stated how that capacity arises.”
18. Order 9 Rule 2(c) provides that  
The recognized agents of parties by whom such appearances, applications and acts may be made or done are— in respect of a corporation, an officer of the corporation duly authorized under the corporate seal.
19. A clear interpretation of the former provision – Order 4 Rule 1(4) renders the meaning that in matters where the party who institutes or defendants a matter in a representative capacity he is obligated by law to state how the capacity arises. Thus, he/she is supposed to plead in the skeleton facts he brings before the court either in support or defence of the case by way of his claim or defence the relationship between him and that entity he refers to. I have looked at the Plaint herein. I have not seen where the Plaintiff described his capacity in relation to the church. He only pleads that he and the members of the Church acquired the property for the church, they have been worshipping there and the issue arose. He has not stated whether he is a trustee or elder or pastor or bishop of the Church. Further, the Plaintiff has not stated who the Defendants are in relation to the church. Does that render the suit incurably defective? Humbly, this Court thinks not. This is because by virtue of Article 159(2)(c) of *the Constitution* which provides that “Justice shall be administered without undue regard to procedural technicalities”, this Court is enjoined determine disputes on substantive points rather than technicalities (that do not go to the root of the suit). In my view, the failure to describe that representative capacity does not ‘destroy’ the substance of the suit. That is a procedural technicality which can be cured by way of an amendment of the plaintiff’s pleadings.
20. Turning to the second provision relied on by the Defendants, for one to understand the import of Order 9 Rule 2(c) of the Civil Procedure Rules he/she has to be read in the context it is enacted. The context Rule on statutory interpretation has never changed, and it is a requirement that whenever one seeks to understand the meaning of a provision he/she takes into account the context in which it is enacted or formulated. Of statutory interpretation, in *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.*, 1987 SCR (2) 1 the Supreme Court of India stated thus;

“Interpretation must depend on the text and the context. They are the basis of interpretation.

One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important... A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”



21. Also, expressing himself on the same principle, Ngcobo J of the Constitutional Court of South Africa stated in *Bato Staff Fishing (PTY) Ltd v Minister of Environmental Affairs and Tourism and others* [2004] ZACC 15; 2004(4) SA 490(CC); 2004(7) BCLR 687(CC) as follows;

“The technique of paying attention to context in statutory construction is now required by *the Constitution* section 39(2). As pointed above, that provision introduces a mandatory requirement to construe every piece of legislation in a manner that promotes the spirit purport and objects of the Bill of rights”

22. Thus, Order 9 Rule 9(2)(c) is in regard to recognized agents or entities that may appear for or defend a party in Court, as given in the main heading of Order 9 of the Civil Procedure Rules. Then what is the context of the provision? It is that where there is a suit or defence to be given and then a party decides to have a recognized agent to represent him/her/it, then that recognized agent who could either be an advocate or a corporation officer, meaning the corporation is not the officer: the two are different, then that corporation officer has to have a written authority of or from the corporation to institute or defend it, given under seal, to represent it.
23. The provision does not in any way relate to a situation where one approaches the Court as a party, that is to say, to claim or defend a claim against them. The two are quite diverse positions of law. That is why Order 9 Rule 9 includes advocates as persons who can appear on behalf of parties. Whenever an Advocate appears in a matter for a party it does not make the case his: he is only an agent of the party. Similarly, when a person is duly authorized to appear for a corporation they are agents and not the corporation. That is why they will require the authority of the corporation to represent them. They do this through the filing of a Resolution of the corporation.
24. And even if the requirement to file such authority was to be in issue in the instant suit, it would not cause the suit to be incurably defective at such a stage. This is because whereas it is important to file such authority, many decisions have been made which indicate that failure to do so at the time of filing suit or defence is not fatal to the party’s capacity and that it is permissible to file it before the suit is fixed for hearing. Refer to the cases of *Fidelity Commercial Bank Limited v Simon Maina Gachie* [2016] eKLR and *Republic v Registrar General & 13 others* [2015] eKLR; *Leo Investments Ltd v Trident Insurance Company Ltd* (2014) eKLR; also, in *Republic vs. Registrar General and 13 Others Misc. Application No. 67 of 2005* [2005] eKLR where Kimaru J (as he then was) stated: -

“...such a resolution by the Board of Directors of a company may be filed at any time before the suit is fixed for hearing as there is no requirement that the same be filed at the same time as the suit. Its absence is, therefore, not fatal to the suit.”

25. Refer also to the Court of Appeal decision in *Spire Bank Limited v Land Registrar & 2 others* [2019] eKLR where the Court clarified the mischief behind Order 1 Rule 1(4) of the Civil Procedure Rules by stating that: -

“...It is essential to appreciate that the intention behind order 4 rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company’s seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the



company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized.”

26. That aside, lest the Plaintiff goes to church clapping and praising God while the Defendants who may be members of the same church go to the said church angry, it appears to me that the Plaintiff has not purported to represent the church. The plaintiff has only stated that he and the church are related but he has not stated the relationship. Nowhere the Plaintiff has stated that the church is a corporation. He is only stating that he is suing on behalf of the church, and he is a plaintiff himself. Had he stated that he was representing the church as a recognized agent to appear in that behalf in this matter that would have placed him under Order 9 Rule 9(2) of the Civil Procedure Rules. The Plaintiff has not stated how the Defendants are related to the church. They could be members of the church too or are busybodies who want to interfere with the services of the church.
27. The Defendants sought to raise the matter, in their submissions that the church is a corporation. They did not plead this in any of their pleadings so far filed. In any event that would be a factual matter. In that regard it should not be lost sight of the fact that submissions are not pleadings – See Daniel Toroitich arap Moi versus Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another [2014] eKLR where the Court of Appeal stated that,

“Submissions are generally parties’ “marketing language”, each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.”
28. Thus, the preliminary objection fails and is dismissed. But alas! It is not over yet. Before this Court pens off, it is worth noting that given that the Plaintiff has not stated his relationship with the church and the defendants, this Court is of the view that either the parties have either lost their mission here on earth or forgotten about. Even from the name of the church, it is clear it is for purposes of giving the earth God’s last appeal. What is God’s last appeal? From the Holy Bible, it is not infighting in churches or dissension.
29. From Mathew 18: 15 – 35 the Holy Bible says that if any one of you has a dispute you try to resolve it among yourselves, and if you do not agree then call one or two witnesses to help solve it, if you do not agree then tell it to the whole church, and if you one of you does not still agree and is on a wrong tangent then treat him or her as a publican or pagan. This Court is of the view that not evidence has been tendered to show that this direction from Christ the Master Himself has been followed by the Plaintiff and the Defendants. Also, in 1 Corinthians 6: 1 also dares the church members not to sue each other. But the members herein have decided to be before the secular church it will hear the dispute. Even if that happens, if the parties were to insist on continuing to sue each other, the Court will hear them. But they are reminded still that all said and done while on earth here, in 2 Corinthians 5: 10, the same Holy Bible says that, “...we ALL shall appear” one day, which He (God) has appointed, before the Great Judgment Throne of God to give account of what we have done on earth here. So, as the members of God’s Last Appeal Church in this region continue to sue each other herein (unless they agree and seek forgiveness) they will one day give account of what they did (in their bodies) while on earth here.
30. Therefore, this Court wishes to give them chance to reflect on this matter and resolve it as children of God. In line with Article 159(2)(c) of *the Constitution* of Kenya, and in the spirit of fostering reconciliation, this matter should be referred to a Court-annexed mediator, to be appointed by the



Deputy Registrar of this Court. The parties are to appear before the Deputy Registrar of the Court on 24/02/2025.

31. Secondly, in terms of Order 1 Rule 1(4) and Order 8(3)(1) of the Civil Procedure Rules and, the Plaintiff is directed to amend the Plaint and serve within the next seven to reflect his relationship with the God's Last Appeal Church. Then the Defendants shall file and serve their Defence and all the documents referred to in Order 7 Rule 5 of the Civil Procedure Rules and serve within fourteen days of service of the Plaintiffs. The Plaintiffs will have the usual fourteen days to file their Reply to Defence and Counterclaim if any. Then all parties have up to April 3, 2025 to file and exchange their trial bundles in readiness for compliance directions under Order 11 of the Civil Procedure Rules.
32. This matter will be mentioned on April 3, 2025 to confirm compliance and receive a report on the outcome of the mediation.
33. Each party is to bear their own costs of the Preliminary Objection herein
34. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2025**

**HON. DR. IUR NYAGAKA,**

**JUDGE**

In the presence of

Mr. Achando Advocate for the Plaintiff

Mr. Gwada Advocate for the Defendants.

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