



**Kangogo v Consumer Grassroots Association (Cause E1005 of 2023)
[2024] KEELRC 13335 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13335 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1005 OF 2023
CN BAARI, J
DECEMBER 5, 2024**

BETWEEN

EDNAH KANGOGO CLAIMANT

AND

CONSUMER GRASSROOTS ASSOCIATION RESPONDENT

RULING

1. For determination, is the Respondent's notice of Preliminary Objection dated 1st July, 2024, wherein, the Respondent seeks that the suit be struck out for being incompetent, bad in law and otherwise an abuse of the court process.
2. Parties filed submissions on the preliminary objection.

The Respondent's Submissions

3. The Respondent submits that the instant suit is instituted against an association registered under the *Societies Act*, which is not a corporate body that can be sued in its own name. It avers that it lacks capacity to be sued in its name in this proceedings.
4. In urging this position, the Respondent had reliance in Nairobi Civil case No. EO34 of 2021, *Islamia Madrasa vs Zafar Niaz & 8 others* where Justice H.I.Ongudi quoted the case of *Trustees Kenya Redeemed Church & Another Vs Samuel M. Ohiya & S Others* (2011) eKLR for the holding that:-

"It is trite law that a Society under the *Societies Act* is not a legal person with capacity to sue or be sued. A Society can only sue or be sued through its due officer holders".
5. The Respondent prays that the court finds and holds that the suit having been filed against an association registered under the *Societies Act*, the Preliminary Objection raised herein is merited, and the same be allowed and the suit against the Respondent be struck out with costs.



The Claimant's Submissions

6. The Claimant submits that in its response to the claim, the Respondent duly admitted that it was the Claimant's employer, and further admitted the Respondent's capacity as being an employer and submitted to the jurisdiction of the honourable court.
7. It is the Claimant's further submission that while the Respondent alleges that it is a duly registered Society under the *Societies Act*, it has failed to provide the court with a certificate of registration as evidence that indeed the Respondent is a society.
8. She submits further that it is trite law that a Preliminary Objection ought to be brought strictly on points of law which have been pleaded and not facts. She submits that the Respondent having failed to prove that it is a society, the Preliminary Objection ought not to be allowed as it requires evidence to prove the fact that the Respondent is indeed a registered Society, and as such, does not meet the threshold of a preliminary objection.
9. The Claimant sought to rely in the case of *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others* to insist that the issue as to whether the Respondent is a registered society needs to be ascertained by production of evidence, and as such, the court ought not to allow the instant preliminary objection.

Determination

10. I have considered the Preliminary Objection and the written submissions by both parties. The issue for determination is whether the Respondent has capacity to be sued.
11. Newbold, J.A. (as he then was) defined a preliminary objection in the famous case of *MUKISA BISCUIT CO LTD V WEST END DISTRIBUTORS LTD* [1969] E.A. 696 as follows:-

“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 has to be ascertained or if what is sought is the exercise of judicial discretion”.
12. The Claimant has not contested that an Association registered under the *Societies Act* has no capacity to sue or be sued in its own name. Her only contention is that the Respondent has not shown prove that it is indeed registered as such.
13. Justice Bosire (as he then was) in the case of *Free Pentecostal Fellowship in Kenya Vs Commercial Bank in Nairobi* H.C.C.C. No. 4116 of 1997, stated thus:-

“The position of Common Law is that a suit by an aggrieved incapacitated body of persons must be brought in the names of or against all the members of the body or bodies. Where there are numerous members, the suit may be instituted by or against one or more such persons in a representative capacity pursuant to the provisions of Order 1 Rule 8 of the Civil Procedure Rules”.



14. Further in Nairobi Civil case No. EO34 of 2021, Islamia Madrasa vs Zafar Niaz & 8 others also cited by the Respondent, the court quoted the case of Trustees Kenya Redeemed Church & Another Vs Samuel M. Ohiya & S Others (2011) eKLR and opined that:-

“It is trite law that a Society under the Societies Act is not a legal person with capacity to sue or be sued. A Society can only sue or be sued through its due office holders”.

15. The Respondent has been sued in the name “Consumer Grassroots Association”. The Claimant disputes that the Respondent is an Association registered under the Societies Act, and the Respondent has not produced any prove that indeed it is an entity registered under the Societies Act, Cap. 108 of the Laws of Kenya.

16. The Act defines a ‘society’ as:-

“society” includes any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya, and any branch of a society, but does not, except in paragraphs (i) and (ii) of section 11(2)(f) of this Act, include—

- (a) a company or foreign company registered under the Companies Act (Cap. 486);
- (b) any corporation incorporated by or under any other written law;
- (c) a registered trade union within the meaning of the Labour Relations Act (Cap. 233), including a branch of a trade union registered under that Act, a probationary trade union within the meaning of that Act and a trade union or a branch of a trade union whose application for registration has been made and not determined;
- (d) a company, firm, association or partnership consisting of not more than twenty persons, formed and maintained with a view to carrying on business for profit;
.....”

17. By the exemption given in part ‘d’ of the foregoing paragraph, it is clear that not all associations are registered under the Societies Act. In the absence of a registration certificate as prove of such registration, the pleadings before court do not sufficiently disclose the nature of the Respondent’s business as to determine its capacity to sue or be sued or the lack thereof.

18. In the premise, I find and hold that though the issue of registration and capacity to sue and be sued are largely points of law, the issue of the law under which the association is registered, and the nature of the Respondent’s business are disputed issues of facts that need to be ascertained in a full hearing.

19. I thus conclude that the Respondent’s Preliminary Objection does not meet the requisite threshold set in Mukisa Biscuit Co Ltd (Supra). It is dismissed with costs in the cause.

20. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 5TH DAY OF DECEMBER, 2024.

C. N. BAARI

JUDGE



Appearance:

Ms. Mutuku present for the Claimant

N/A present for the Respondent

Ms. Esther S - C/A

