Lameck & another v Methodist Church in Kenya Registered Trustees & 3 others (Environment & Land Case E007 of 2024) [2024] KEELC 6463 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6463 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT & LAND CASE E007 OF 2024

LL NAIKUNI, J

SEPTEMBER 26, 2024

BETWEEN

AKSELI LAMECK .... 1ST PLAINTIFF

EMMA ESSER ASAPH AKA EMMAH AKSELI .... 2ND PLAINTIFF

AND

METHODIST CHURCH IN KENYA REGISTERED TRUSTEES .... 1ST DEFENDANT

ANTONY KAKENGA .... 2ND DEFENDANT

KENYA POWER & LIGHTING COMPANY LIMITED .... 3RD DEFENDANT

COUNTY LAND REGISTRAR, MOMBASA .... 4TH DEFENDANT

RULING

I. Introduction

1. This Honourable Court is tasked with the hearing and determination of the Notice of Preliminary objection dated 19th March, 2024 by the Kenya Power and Lighting Company Limited, the 3rd Defendant herein.

II. The Notice of Preliminary objection by the 3rd Defendant

2. The 3rd Defendant brought a 4 paragraphed objection where it objected as follows:-

    a. This Honourable Court lacks jurisdiction to hear and determine this dispute and therefore, the Notice of Motion and Plaint both dated 12th February, 2024 as against the 3rd Defendant and together with all consequential orders sought by the Plaintiffs ought to be dismissed with

costs because the same offend the provisions of section 7 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya.

b. This Honourable Court lacks jurisdiction to hear and determine this dispute and therefore, the Notice of Motion and Plaint both dated 12th February, 2024 as against the 3rd Defendant and together with all consequential orders sought by the Plaintiffs ought to be dismissed with costs because the same offend the provisions of Sections 3, 10, 11 (e), (f),(i),(k) & (1),23,24;36; 37; 40; 42; and 224 (2) (e) of the *Energy Act*, 2019 as read with Regulations 2, 4, 7, 9 and 21 of the Energy (Complaints and Disputes Resolution)Regulations, 2012 and the Energy Tribunal Rules, 2008.

c. This Honourable Court lacks jurisdiction to hear and determine this dispute and therefore, the Notice of Motion and Plaint both dated 12th February, 2024 as against the 3rd Defendant and together with all consequential orders sought by the Claimant ought to be dismissed with costs because the same offend the provisions of Article 159 (2) (c) and 169 (1) (d) and (2) of *the Constitution* of Kenya, 2010 as read with Sections 9 (2) and (3) of the Fair Administration Action Act, 2015.

d. This Honourable Court lacks original jurisdiction to hear and determine this matter, and as such it ought to be dismissed with costs, by dint of the Appellate jurisdiction vested in the High Court vide Section 37 (3) & (4) of the *Energy Act*, 2019 and Regulations 21 of the Energy (Complaints and Disputes Resolution) Regulations, 2012.

III. Submissions

3. On 20th March, 2024 while the Parties were present in Court, they were directed to have the Notice of Preliminary Objection dated 19th March, 2024 be disposed of by way of written submissions. Unfortunately, by the time of penning down the Ruling, the Honourable Court had not as yet accessed the Submissions. Pursuant to that, the Court delivered its Ruling on its own merit accordingly.

IV. Analysis and Determination

4. I have considered the Notice of Preliminary Objection by the 3rd Defendant and three (3) issues fall for determination in the Notice of Preliminary Objection: -

a. Whether the objection meets the required threshold of an objection based on Law and Precedents?

b. Whether this Honourable Court has the jurisdiction to hear and determine this suit?

c. Who bears the Costs of the Notice of Preliminary objection dated 19th March, 2024.

Issue No. a). Whether the objection meets the required threshold of an objection based on Law and Precedents?

5. In determining this instant Notice of Preliminary Objection, the Court will first consider what amounts to a Preliminary Objection and then Juxtapose the said description herein and come up with a finding on whether what has been raised herein fits the said description.

6. According to the Black 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.......”

7. The above legal preposition has been made graphically clear in the now famous case of "Mukisa Biscuits – Versus - Westend Distributor Limited [1969] EA 696", the court observed that: -

> " 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. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. ".

8. The same position was held in the case of "Nitin Properties Limited – Versus - Jagjit S. Kalsi & another Court of Appeal No. 132 of 1989[1995-1998] 2EA 257" where the Court held that:-

> " A preliminary Objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any facts has to be ascertained or if what is sought is the exercise of Judicial discretion."

9. Similarly in the case of "United Insurance Company Limited – Versus - Scholastica A Odera Kisumu HCC Appeal No. 6 of 2005(2005) LLR 7396", the Court held that:-

> " A preliminary Objection must be based on a point of law which is clear and beyond any doubt and Preliminary Objection which is based on facts which are disputed cannot be used to determine the whole matter as the facts must be precise and clear to enable the Court to say the facts are contested or disputed ."

10. I have further relied on the decision of "Attorney General & Another – Versus - Andrew Mwaura Githinji & another [2016] eKLR":- as it explicitly extrapolates in a more concise and surgical precision what tantamount to the scope, nature and meaning of a Preliminary Objection inter alia:-

    (i) A Preliminary Objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.

    (ii) A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and

    (iii) The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.

11. Therefore from the above holdings of the Courts, it is clear that a preliminary Objection must be raised on a pure point of law and no fact should be ascertained from elsewhere. See also the case of "In the matter of Siaya Resident Magistrate Court Kisumu HCCMisc. App No. 247 of 2003" where the Court held that;

> " A Preliminary Objection cannot be raised if any facts has to be ascertained."

12. Taking into account the above findings and holdings of various Courts on what amounts to a preliminary Objection, the Court now turns to the grounds raised by the 3rd Defendant herein. Basically, these are that the jurisdiction of this Honourable Court to hear the Notice of Motion application and the suit as per the Plaint both dated 12th February, 2024. Ideally, they have challenged the said Jurisdiction. In this case, I am satisfied that the objection raises pure points of law in that the preliminary objection essentially is on the doctrine of constitutional avoidance.

Issue No. b). Whether this Honourable Court has the jurisdiction to hear and determine this suit.

13. Under this sub title, the Honourable Court shall examine the three aspect presented by the 3rd Defendant. These are that:-

    a. This Honourable Court lacks jurisdiction to hear and determine this dispute and therefore, the Notice of Motion and Plaint both dated 12th February, 2024 as against the 3rd Defendant and together with all consequential orders sought by the Plaintiffs ought to be dismissed with costs because the same offend the provisions of section 7 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya.

    b. This Honourable Court lacks jurisdiction to hear and determine this dispute and therefore, the Notice of Motion and Plaint both dated 12th February, 2024 as against the 3rd Defendant and together with all consequential orders sought by the Plaintiffs ought to be dismissed with costs because the same offend the provisions of sections 3, 10, 11 (e), (f),(i),(k) & (1), 23, 24; 36; 37; 40; 42; and 224 (2) (e) of the *Energy Act*, 2019 as read with Regulations 2, 4, 7, 9 and 21 of the Energy (Complaints and Disputes Resolution)Regulations, 2012 and the Energy Tribunal Rules, 2008.

    c. This Honourable Court lacks jurisdiction to hear and determine this dispute and therefore, the Notice of Motion and Plaint both dated 12th February, 2024 as against the 3rd Defendant and together with all consequential orders sought by the Claimant ought to be dismissed with costs because the same offend the provisions of Article 159 (2)(c) and 169 (1) (d) and (2) of *the Constitution* of Kenya, 2010 as read with Sections 9 (2) and (3) of the Fair Administration Action Act, 2015.

    d. This Honourable Court lacks original jurisdiction to hear and determine this matter, and as such it ought to be dismissed with costs, by dint of the appellate jurisdiction vested in the High Court vide section 37 (3) & (4) of the *Energy Act*, 2019 and Regulations 21 of the Energy (Complaints and Disputes Resolution) Regulations, 2012

14. Before discussing the merits of the preliminary objection; the Court would like to give some insight on the objection on jurisdiction. An objection to the jurisdiction of the court has been cited as one of the preliminary objections that consists a point of law. Jurisdiction means a courts power to decide case or issue a decree. Indeed "the locus classicus case' on the question of jurisdiction is the celebrated case of "The Owners of Motor vessel Lillian 'S' -Versus - Caltex Kenya Limited. [1989] KLR 1" where the Court held:

    > " Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of Law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction............where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given"

15. In Kenya, the Environment and Land Court is a statutory creation by *the Constitution* of Kenya under the provision of Article 162 (b). Here, the Courts are vested it with original and unlimited jurisdiction.

From the preamble of the Environment & Land Court *Act, No. 19 of 2011* the jurisdiction of the court is defined as

> "......a Superior court to hear and determine disputes relating to the environment and the use and occupation of, and the titles to, land and to make provisions for its jurisdiction functions and powers and for connected purposes......"

16. Having determined that the Preliminary Objection by the 3rd Defendant is based on pure points of law, it will be important to determine whether this court lacks jurisdiction to hear and determine this suit.

17. Under the provision of Sections 4 and 13 (1) of the Environment Land Court Act this court has the legal mandate to hear any matter related to environment and land including the one filed by the Plaintiffs hereof. In the case of the "ELC (Malindi) in the Kharisa Kyango – Versus - Law Society of Kenya".

18. Additionally, still on the same point, in the case of "County Government of Migori – Versus - I N B Management IT Consultant Limited (2019) eKLR" whereby court being faced with an objection regarding jurisdiction, analyzed the law and observed as follows:-

> "10- The jurisdiction point raised by the Respondent herein clearly meets the foregone criteria being a pure point of law. That jurisdiction is everything is a well settled principle in law. My Lordship Ibrahim, JSC in Supreme court of Kenya Civil application No 11 of 2016-"Hon (Lady) Justice Kalpana H Rawal Versus Judicial Service Commission and others when in demystifying jurisdiction quoted from the decision in Supreme court of Nigeria supreme case No 11 of 2012- "Ocheja Immanuel Dangama – Versus - Hon. Atoi Aidoko Aliaswan and 4 others where Walter Samuel Nkanu Onnoghen, JSC and expressed himself as follows;-
>
> > "...........it is settled that jurisdiction is the life blood of any adjudication because a court or tribunal without jurisdiction is like an animal without blood, which means it is dead. A decision by a court or tribunal without requisite jurisdiction is a nullity deed on arrival and of no legal effect whatever that is why an issue of jurisdiction is granted and fundamental in adjudication and has to be dealt with first and foremost....."

19. This Honourable Court has previously held in the case "Mary Musuki Mudachi & another – Versus - Anthony Muteke Mudachi & 2 others; Elijah K. Kimanzi & 6 others (Interested Parties) [2021] eKLR" that:-

> "While I fully concur and associate myself with the ration made out under Phoenix of EA Assurance Limited case (Supra) my interpretation of the ratio on jurisdiction was where a case for instance of the Commercial or running down or Succession or employment and labour related and so forth was instituted before the Environment and Land Court or the vice versa then clearly that stated case becomes a nullity of jurisdiction and it's the one that cannot be salvaged by neither consent of parties, the Oxygen principles or the Overring Objectives or the prepositions found under Article 159 of *the Constitution* of Kenya. The instant case is extremely distinguishable from what was envisaged under that decision of the Court of Appeal. For these very reason, therefore, it is completely wrong for the Defendants to emphatically state that the Environment and Land Court at Mombasa has no jurisdiction

to hear and determine this case. The court is clothed with the legal jurisdiction to hear and determine the case."

20. On the first ground, I reiterate that the 3rd Defendant has challenged the jurisdiction of the court stating that the Notice of Motion application and the Plaint offend the provisions of section 7 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya. The issue for determination is whether this suit falls on all fours of section 7 of the *Civil Procedure Act* which stipulates as follows:-

> " No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."

21. Courts have rendered many rulings on the doctrine of res judicata which essentially frowns upon the use of the courts to abuse processes. The moment the court comes to the conclusion that the suit is res judicata, then the court should not shy away from pronouncing itself so.

22. The Plaintiff availed the proceedings in the civil case of "Mombasa ELC Case No. 589 of 2011 – Askeli Lameck & 121 others – Versus – Methodist Church in Kenya Trustees & 7 others which was determined by the Court on 16th December, 2019 by Justice A. Omollo. In the previous suit ELC 589 OF 2011, the Plaintiff has admitted at paragraph *11* that they were the Plaintiffs in the matter. Admittedly, the 1st and 4th Defendants herein were parties in that suit although the 4th Defendant was then known as Municipal Council of Mombasa. The Plaintiff has also admitted that the suit property in the former matter is the same as the one up for determination in the current matter.

23. From the proceedings and the Judgment, it is clear that this is a case that falls on all fours within "the doctrine of Res Judicata". What more would a party require to prove that a case is res judicata. In the case of "Henderson – Versus - Henderson (1843) 67 ER 313" res-judicata was described as follows:-

> " ....where a given matter becomes the subject of litigation in, and adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigations in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence or even accident omitted part of their case. The pleas of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence, might have brought forward at the time".

24. Courts must always be vigilant to guard against litigants who metamorphosize to bring suits as new litigants or add others to circumvent the doctrine of res judicata. Adding or subtracting litigants in a suit that is substantially or directly related to a previous suit with the same subject matter does not sanitize the suit to make it a fresh suit. It actually worsens the situation by making the suit terminate prematurely vide a preliminary objection. In a nutshell, therefore, I find this suit and the notice of motion application dated 12th February, 2024 to be res judicata and an abuse of the court process.

25. On the next issue of the suit and the notice of Motion dated 12th February, 2024 offend the provisions of sections 3, 10, 11 (e), (f),(i),(k) & (1), 23,24;36; 37; 40; 42; and 224(2)(e) of the *Energy Act*, 2019 as read with Regulations 2, 4, 7, 9 and 21 of the Energy (Complaints and Disputes Resolution)Regulations,

2012 and the Energy Tribunal Rules, 2008, it is important to note that the preamble of the *Energy Act* 2019 inter alia states that it is an Act of Parliament aimed at consolidating the laws relating to energy, to provide for National and County Government functions in relation to energy, to provide for the establishment, powers and functions of the energy sector entities. The entities envisioned under Part III of the Act include the EPRA (Section 9), EPT (Section 25), Rural Electrification and Renewable Energy Corporation (Section 43) and Nuclear Power and Energy Agency (Section 54).

26. Under Section 11 of the *Energy Act*, the powers of EPRA include to investigate and determine complaints or disputes between parties over any matter relating to licences and licence conditions under this Act. The nature of disputes under this section are further elaborated in the Energy (Complaints & Disputes Resolution) Regulations 2012. See Regulations 2, 4, 7, 9 and 21. They elaborate the nature of disputes, manner of hearing and appeal process to the Tribunal where a person is aggrieved.

27. The provision of Section 24 allows a person aggrieved by a decision of the EPRA to appeal to EPT within 30 days of the receipt of the decision. The Plaintiffs at paragraph 9 of the Plaint that the Plaintiffs' home had an electric connection supplied by the 3rd Defendant in the name of the 2nd Plaintiff which also supplied electricity to the shop. At paragraph *25*, the Plaintiff further averred that the 2nd Defendant irregularly contracted the 3rd Defendant to supply electric power in his name to the structures he had commenced construction of in the portion of land occupied by the Plaintiff without the Plaintiffs' consent.

28. The Court of Appeal in the case of:- "Kibos Distillers Limited & 4 Others – Versus - Benson Ambuti & 3 Others [2020] eKLR" laid down the following principle relevant to these objections:

> " Even if a Court has original jurisdiction, the concept of original jurisdiction does not operate to oust the jurisdiction of other competent organs that have legitimately been mandated to hear and determine a dispute."

29. The Supreme Court of Kenya in the case of:- "Benson Ambuti Adega – Versus - Kibos Distillers Ltd & 5 Others [2020] eKLR" emphasized that, where appropriate, the superior Courts should remit the dispute to the relevant bodies for adjudication.

30. In the case of "Nicholus – Versus - Attorney General & 14 Others [2023] KECA 34 (KLR)", the Appellate Court having affirmed the trial Court's ruling that Environment and Land Court lacked jurisdiction to entertain the Petitioner's case, the Appellant filed a further appeal to the Supreme Court. In allowing the petition the Supreme Court in "Nicholus – Versus - Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others (Interested Parties) [2023] KESC 113 (KLR)" inter alia held that the alternative dispute resolution mechanism under the *Energy Act* could not adequately remedy the Appellant's grievances which revolved on violation of his constitutional rights. In this case the Plaint before Court does not allege any constitutional violations and in light of the decision in "Kibos (supra)", I am of the view that the issues raised herein fall within the jurisdiction of EPRA.

31. Indeed, the Court of Appeal in the case of "Nicholus (supra)" recognized the three-tire dispute resolution mechanism contained in the *Energy Act* as follows. An aggrieved person first launches his complaint with the EPRA in the manner outlined in the Regulations under Regulations 4 and 7 which are to the effect that;

> " 4. These regulations shall apply to complaints and disputes in the following areas-
>
> a. Billing, damages, disconnection, health and safety, electrical installations, interruptions, licencee practices and procedures,

metering, new connections and extensions, reconnections, quality of service. Quality of supply, tariffs, way leaves, easements or rights-of-way in relation to the generation, transmissions, distribution, supply and use of electrical energy.

7 (1) In the event that any complaint is not resolved to the satisfaction of the complaint, after exhausting the complaints handling procedures established pursuant to regulation 5, the parties may declare a dispute, and both or any one of them may refer it to the commission for recourse.

2. A party to a dispute may refer to the commission in form S-2 as set out in the second schedule."

32. The Court of Appeal in the case of "Speaker of the National Assembly – Versus - Karume [1992] KECA 42 (KLR)" underscored the relevance of exhausting alternative dispute resolution mechanism created in law by stating;

> " 15. In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. We observe without expressing a concluded view that Order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions."

33. In their filed Plaint as stated before the Plaintiffs inter alia prays for an order of permanent injunction restraining the 2nd and 3rd Defendants from entering upon the portion of land occupied by the plaintiffs and from disconnecting, tampering with, interfering with or relocating the electric power supply lines to the Plaintiffs' house and shop and general damages against the 3rd Defendant. A compliance of this nature being a complaint against KPLC respecting transmissions then the first forum is EPRA. Section 36 (5) *Energy Act* empowers the Tribunal to grant vast equitable reliefs including but not limited to injunctions, penalties, damages and specific performance. Guided by the above binding decisions, I find that on prayer 2 the Preliminary objection is merited.

34. I will then proceed to examine the merits of prayer 4 where the 3rd Defendant avers that the Notice of Motion and Plaint both dated 12th February, 2024 as against the 3rd Defendant and together with all consequential orders sought by the Claimant ought to be dismissed with costs because the same offend the provisions of Articles 159 (2) (c) and 169 (1) (d) and (2) of *the Constitution* of Kenya, 2010 as read with Sections 9 (2) and (3) of the Fair Administration Action Act, 2015. It is clear from the above discussed that the dispute resolution mechanism through such bodies is explicitly recognized under Article 159 (1) and 169 (1) (d) of *the Constitution*. Likewise, I therefore find that this objection under prayer 3 is also merited.

35. On the fourth objection, the 3rd Defendant argues that the Honourable Court lacks original jurisdiction to hear and determine this matter, and as such it ought to be dismissed with costs, by dint of the appellate jurisdiction vested in the High Court vide Section 37 (3) & (4) of the *Energy Act*, 2019 and Regulations 21 of the Energy (Complaints and Disputes Resolution) Regulations, 2012.

36. Where a party is dissatisfied with the decision of EPRA, the second tier is a right to appeal to the EPT whose jurisdiction is provided in Section 36 of the *Energy Act* as follows;

    a. The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under this Act or any other Act.

b. The jurisdiction of the Tribunal shall not include the trial of any Criminal offence.

c. The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.

d. The Tribunal shall have appellate jurisdiction over the decisions of the Authority and any licensing authority and in exercise of its functions may refer any matter back to the Authority or any licensing authority for re-consideration.

e. The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.

f. The Tribunal shall hear and determine matters referred to it expeditiously.

37. Essentially, the right to appeal against a decision of the EPT lies to the ELC within 30 days of the decision on a point of law only. See section 37 *Energy Act* which provides:-

> " 36. (1) The Tribunal may, on its own motion or upon application by an aggrieved party, review its judgments and orders.
>
> (2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of a Court of law.
>
> (3) Any person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order, appeal to the High Court.
>
> (4) The law applicable to applications for review to the High Court in civil matters shall, with the necessary modifications or other adjustments as the Chief Justice may direct, apply to applications for review from the Tribunal to the High Court."

38. This Honourable Court can only sit as an appellate court in this particular matter. Equally, I therefore find merit in the fourth prayer of the preliminary objection. I hereby find that this Honourable Court is not equipped with the requisite jurisdiction to hear and determine the matter before it. Consequence of which the suit as it is stands dismissed.

Issue No. C. Who bears the Costs of the Notice of Preliminary objection dated 19th March, 2024

39. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of "Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and "Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of "Hussein Muhumed Sirat v Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.

40. In the present case, the Honourable Court finds that the Preliminary Objection by the 3rd Defendant is sustained while the suit is dismissed by and large. It follows then that the 3rd Defendant is entitled to cost of the objection and the suit to be borne by the Plaintiffs herein.

V. Conclusion and Disposition.

41. Ultimately in view of the foregoing detailed and expansive analysis to the rather omnibus application, the Court arrives at the following decision and make below orders:-

a. That the Notice of Preliminary Objection dated 19th March, 2024 be and is hereby found to have merit and the same is upheld.

b. That the suit instituted through the Plaint dated 12th February, 2024 and the Notice of Motion application dated the same day by the Plaintiffs herein stand struck out for lack for jurisdiction.

c. That this Honourable Court do and hereby hold that this suit is Res judicata in respect to Mombasa ELC Case No. 589 of 2011 – Askeli Lameck & 121 others – Versus – Methodist Church in Kenya Trustees & 7 others; as it is the court does not have jurisdiction to hear and determine it.

d. That the costs of the Notice of Preliminary objection dated 19th March, 2024 to the 3rd Defendant. The Defendants shall have the costs of the suit.

It is so ordered acordingly.

RULING DELIVERED THROUGH MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 26TH DAY OF SEPTEMBER 2024.

…………………………………

HON. MR. JUSTICE L. L. NAIKUNI

ENVIRONMENT AND LAND COURT AT MOMBASA

Ruling delivered in the presence of:

a. M/s. Firdaus Mbula, the Court Assistant.

b. Mr. Jumbale Advocate for the Plaintiffs.

c. Mr. Kimathi Advocate for the 1st Defendant.

d. Mr. Siminyu Advocate for the 2nd Defendant.

e. M/s. Owano Advocate for the 3rd Defendant/Objector.