



Mwariki Farmers Company Limited v Catholic Diocese of Nakuru & 5 others (Environment & Land Case 13 of 2024) [2025] KEELC 624 (KLR) (18 February 2025) (Ruling)

Neutral citation: [2025] KEELC 624 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 13 OF 2024
A OMBWAYO, J
FEBRUARY 18, 2025**

BETWEEN

MWARIKI FARMERS COMPANY LIMITED PLAINTIFF

AND

CATHOLIC DIOCESE OF NAKURU 1ST DEFENDANT

PRINCIPAL SECRETARY MINISTRY OF EDUCATION 2ND DEFENDANT

**PRINCIPAL SECRETARY MINISTRY OF LANDS, PLANNING, HOUSING
AND SETTLEMENT 3RD DEFENDANT**

NATIONAL LAND COMMISSION 4TH DEFENDANT

THE LAND REGISTRAR NAKURU 5TH DEFENDANT

THE HONORABLE ATTORNEY GENERAL 6TH DEFENDANT

RULING

1. The 1st defendant has raised an objection premised on the grounds that the 1st Defendant is not known to law and is not a legal entity capable of suing or being sued. It has no legal standing and hence the suit against the 1st Defendant is a non-starter and an exercise in vain as no orders can issue or be executed against a non-legal entity.
2. The 1st Defendant submits the issue for determination is Whether the 1st Defendant has locus standi to sue or be sued. The 1st defendant relies on the case of *Mukisa Biscuits Manufacturing Ltd vs West End Distributors* (1969) EA 696 their lordships observed thus;

“---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 a contract giving rise to the suit to refer the dispute to arbitration.”

3. According to the defendants, the matter raised by the 1st Defendant herein raises a substantial and pure point of law, more so on locus standi and has the required ingredients to sustain a preliminary objection. The Plaintiff vide their plaint dated 27th February 2024 sued Catholic Diocese of Nakuru. There is no legal entity known as the Catholic Diocese of Nakuru. The only known legal entity is the Catholic Diocese of Nakuru Registered Trustees who are the only organ of the church who can sue or be sued.
5. Further to the Catholic Diocese of Nakuru operating as a society under the *Societies Act*, it was incorporated under the *Trustees (Perpetual Succession) Act*, Cap 164 on the 23rd December 1968 vide Certificate of Incorporation No.305/1 and the provisional Certificate of Incorporation No. PS 305 which was issued to the Registered Trustees after the original Certificate of Incorporation got lost. This is evident and clear from the certificate of incorporation attached to the 1st Defendants list of documents dated 12th March 2024.
6. It is the humble submission of the 1st Defendant that the suit against her is fatally defective, incurable and a nullity that cannot be cured by neither Article 159 (2) (d) of *the Constitution*, Order I rule 9 of the *Civil procedure rules* nor Order 8 of the *Civil Procedure Rules* by amending the pleadings and hence it is an exercise in futility as no orders can issue or be executed against a nonlegal entity,
7. The 1st defendant relies on the decision of the Environment and Land Court sitting in Murang'a in *Peter Ngugi Geoffrey & 3 others v Mithini SDA Church* [2019] eKLR when confronted with a similar preliminary objection where plaintiffs had sued a non-legal church entity and in upholding the preliminary objection held that in the matter the suit was filed against a religious organization. It is not a body corporate which would then mean it would be sued as a legal personality. That being so it lacks the capacity to be sued in its own name. That a Society can only sue or be sued through its officials. That is the law. Having failed to sue the officials or trustees of the Defendant, or the specific members of the Defendant the court found that the Preliminary Objection as raised was a pure point of law, and found the preliminary Objection merited, allowed it and the suit and the counterclaim were struck out.
8. The court in *Bridge Hotel Ltd V Wilfred Mutiso Lai Jesus Celebration Center* (2016) eKLR authoritatively held as follow;

“In the Eritrea Orthodox Church case supra, the judge held that since a religious organization is not a body corporate, it lacked legal personality to institute proceedings in its own name. In this instant, the 2nd defendant is not a body corporate. Similarly it lacks capacity to sue or be sued in its own name. The suit was filed against it is fatally defective. For now the suit against the 2nd defendant being fatally defective, no orders can issue against it as that would be issuing orders in vain. The only proper order I can issue against the 2nd Respondent at this stage and which I do hereby issue is that the plaintiff's suit together with the application against her is struck out for want of capacity. The question would then be whether to consider the merit of the application as against the 1st defendant as the Society Act has not bestowed on it legal personality. I am in agreement by the decisions of my learned brothers cited above. The suit can only be brought against the 2nd Respondent through its officials or Trustees as the case may be.

The applicant deposed that it is the 2nd Respondent who was located next to its premises. The noise was being made by members of the 2nd Respondent probably the 1st Respondent



being such a member. The orders therefore cannot lie solely as against the 1st Respondent. The application cannot thus stand against the 1st Respondent by himself as he would be doing his duties if any on behalf of the 2nd Respondent. Until the suit against the 2nd Respondent is properly commenced, the orders sought in the notice of motion dated 23rd March 2015 herein fails. In conclusion the notice of motion and suit against the 2nd Respondent be and is hereby struck out with no order on costs. The application as against the 1st defendant is dismissed with costs for want of merit. "

9. The 1st defendant submits that as was held in the above case, the 1st Defendant is not a legal entity that can sue or be sued. The [Trustees \(Perpetual Succession\) Act](#), provides at section 3 that;

3.

- (1) Trustees who have been appointed by anybody or association of persons established for any religious, educational, literary, scientific, social, athletic or charitable purpose, or who have constituted themselves for any such purpose, or the trustees of a pension fund may apply to the Minister in the manner provided in this Act for a certificate of incorporation of the trustees as a corporate body;
- (2) If the Minister, having regard to the extent, nature and objects and other circumstances of the trust concerned, considers incorporation expedient, he may grant a certificate accordingly subject to such conditions or directions generally as he thinks fit to insert in the certificate, an particularly relating to the qualifications and number of the trustees, their tenure and avoidance of office, the mode of appointing new trustees, the custody and use of the common seal, the amount of movable or immovable property which the trustees may hold, and the purposes for which that property may be applied; and
- (3) The trustees shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in their corporate name and, subject to the conditions and directions contained in the certificate, to hold and acquire, and by instruments under the common seal to convey, transfer, assign, charge and demise any movable or immovable property or any interest therein now hereafter belonging to, or held for the benefit of, the trust concerned in the Same manner an subject to such restrictions and provisions as trustees might so do without incorporation.

10. The 1st defendant relies on the case of [Bridge Hotel Ltd v Wilfred Mutiso Lai Jesus Celebration Center](#) [2016] eKL to argue that a church registered under [Societies Act](#) and incorporated under the [Trustees \(Perpetual Succession\) Act](#) should only sue or be sued through the registered trustees. In this instant case, Catholic Diocese of Nakuru is managed and controlled by the Catholic Diocese of Nakuru Registered Trustees and as such they are the only organ to sue or be sued on behalf of Diocese.

11. The title disputed by the Plaintiff is registered in the name of Catholic Diocese of Nakuru Registered Trustees, since this is the only organ of the church who can hold property, sue and be sued. The Plaintiff therefore ought to have known the right party to sue.

12. The 1st defendant relies on the dictum in High Court in Eldoret in [West FM Media v JMK](#) (Civil Appeal 1 of 2020) [2023] KEHC 692 (KLR) (10 February 2023) (Judgment) quoting the decisions in [Janto Construction Company Ltd v Enock Sikolia & 2 others](#) [2020] eKLR and [Maurice Ooko Otieno](#)



v Mater Misericordia Hospital [2004] eKLR, where it was held as follows in relation to party suing a non-existent legal entity;

“In *Janto Construction Company Ltd v Enock Sikolia & 2 others* [2020] eKLR the court held; A claimant has a duty of ascertaining the legal status of a party intended to be sued. The reason being that it is only those entities which are either natural or legal persons which can Successfully sue or be sued. Instituting legal proceedings against a non-legal entity renders the suit a non-starter-In this case had the Plaintiff ascertained the status of the 2nd Defendant it would have found out that indeed Citizen TV is not a legal entity. As a result of the foregone, the suit against the 2nd Defendant cannot stand. It is hereby struck out accordingly.”

In *Maurice Ooko Otieno v Mater Misericordia Hospital* [2004] eKLR the court held that; The law requires that a suit be brought against a legal entity. The respondent failed to establish that the West FM Media he sued as the defendant was a legal entity capable of being sued. In the event that the appellant herein failed to enter appearance or appeal the judgment and decree, the same would have been rendered unenforceable. The judgment should have ended at the juncture that the trial magistrate acknowledged that the appellant was non-suited as the appellant lacked locus standi to defend itself against the allegations. The admission of DWI that he was an employee of West Media Limited does not suffice to consider the appellant as properly suited as the same was not vide any pleadings. Further, the respondent had several opportunities to cure the defect in his pleadings as he amended the same and failed to do so. Allowing the said decision to stand amid the glaring contradiction would be a bad precedent. The same would amount to issuing a court order in vain as it would be unenforceable. The trial court having reached a conclusion of fact that the defendant was wrongly sued, should have dismissed the suit as it was incurably incompetent. In the premises, I find that the trial court erred in issuing judgment against a party it had already determined was wrongly sued”

13. According to the 1st defendant, the 1st Defendant as sued is a nonexistent entity and therefore the suit is incurably defective. The case before the court is not about non-joinder or amendment of pleadings which is a procedural question but rather legal capacity of the 1st defendant which goes to the substance of the suit. Where there is no competent defendant, the suit is a nullity and it amounts to abuse of the process of the court.
14. The plaintiffs submits that the preliminary objection is based on the capacity of the 1st defendant to be sued and to sue on its' name. The 1st defendant also relies on the case of *Mukisa Biscuits Manufacturing Ltd Vs West End Distributors* (1969) EA 696 as considered by Justice Oundo in *Rebecca Chumo Vs Christina Cheptoo Chumo* [2021] eKLR, it has to be to be a point of law that will conclude the case.
15. The 1st defendant argues that there is no doubt as to who the defendant is and that is why the trustee entered appearance and filed a defence and a counter claim claiming the ownership of the suit property. As the suit stands the claims raised by the plaintiff assuming the case against the 1st defendant is struck out, will still be canvassed in the counter claim and as such this preliminary objection automatically fails the test of the Mukisa Biscuits case.
16. I have considered the preliminary objection and do find that the same is raised by the trustees of the 1st defendant who have actually entered appearance for the 1st defendant and therefore dismissing the suit against them will be putting undue regard to procedural technicality. It means therefore that though the plaintiff has sued the catholic diocese of Nakuru, he should have sued the registered trustee's catholic diocese of Nakuru who have filed a memorandum of appearance, defence and counter claim.



The Trustees Catholic diocese of Nakuru has filed a lengthy defence and counter claim and have prayed for an order that the suit property belongs to the 1st defendant. This court finds that the failure to sue the trustees of the Catholic Church is an omission that can be corrected by an amendment to the pleading to include the registered trustees of the Catholic Church as the 1st defendant. The 1st defendant suffers no prejudice because she has already filed a defence and counterclaim. I agree with Mr Gakinya that striking out the 1st defendant from the plaint and the suit on the basis of failure to name the trustees as the 1st defendant will be placing undue regard to procedural technicalities contrary to the provisions of Article 150 of *the Constitution* of Kenya 2010 that prohibits the same. The upshot of the above is that the preliminary objection is disallowed and that the plaintiff is allowed to amend the plaint and serve the same within the next 10 days failure of which the suit against the 1st defendant shall be struck out. The defendants to amend their defense within 5 days of service if they so wish. The matter be mentioned on 20th March 2025. Hearing reserved on 30th July 2025 at 8.30 am.

RULING DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 18TH DAY OF FEBRUARY 2025

A.O.OMBWAYO

JUDGE

