



REPUBLIC OF KENYA



Wafula & 5 others (Suing For and on Behalf of Wateule Wa Wote Ministries) v Ndiwa & 4 others (Civil Suit E002 of 2023) [2025] KEHC 5400 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL SUIT E002 OF 2023
AC MRIMA, J
APRIL 30, 2025**

BETWEEN

**FRANCIS WAMALWA WAFULA 1ST PLAINTIFF
REUBEN KIBISI 2ND PLAINTIFF
ALTONEN WAFULA CHEMIAT 3RD PLAINTIFF
TOM WAKHUNGU CHEPKATI 4TH PLAINTIFF
MESHACK NYONGESA 5TH PLAINTIFF
MAULINE SISIA OMBIM 6TH PLAINTIFF
SUING FOR AND ON BEHALF OF WATEULE WA WOTE MINISTRIES**

AND

**JAMES NDIWA 1ST DEFENDANT
PETER SIMIYU 2ND DEFENDANT
MARY EKIRU 3RD DEFENDANT
ROBERT KIPSANG 4TH DEFENDANT
NATHAN SHIKANGA 5TH DEFENDANT**

RULING

1. This Ruling in is respect to the Notice of Preliminary Objection dated 8th May 2023 which was lodged by the Defendants. The objection was tailored in the following terms: -

1. That Plaintiffs’ suit as filed in incompetent, fatally defective and bad in law.



2. That the dispute in relation to this matter is on the parcel of land belonging to the Defendant and this Court lacks jurisdiction to entertain this matter pursuant to Article 162(2) of the Constitution of Kenya and section 4 and 13 of the Environment and Land Court Act.
 3. That this Court lacks Jurisdiction to entertain and or hear this matter in view of the doctrine of exhaustion of internal disputes mechanisms of the Church. The Plaintiffs have not exhausted the internal dispute resolution mechanisms set out under clause 4(d) and 6(a), (e) of the Constituting document of Wateule Wa Wote Ministries which provides for expulsion of members.
 4. That the dispute before this court is pending before the Registrar of societies pursuant to section 18 of the Societies Act Cap 108 of Laws of Kenya.
 5. That the Plaintiffs lack locus standi to institute this suit as the officials of the Church having no provision under the Constitution bestowing them with such authority being non-officials of the Church.
 6. That the entire suit as framed and filed is ambiguous, a stranger and unknown to the law.
 7. That consequently, the entire suit is a non-starter, amounts to an abuse of the court process and it ought to be struck out with costs.
2. The objection was heard by way of written submissions which both parties duly filed. In support of the objection, the Defendants filed written submission dated 28th July 2023 wherein they discussed inter alia the doctrine of jurisdiction in light of the Environment and Land Court Act, the doctrine of exhaustion and aspect of locus standi.
 3. On the jurisdiction of the Court, it was submitted that since the dispute involves the parcel of land where the Church stands then the correct forum to adjudicate the matter is before the Environment and Land Court. On the doctrine of exhaustion, it was submitted that the Church's constitution in clause 6(a) and (e) provided for internal dispute resolution mechanisms, a fact which they claimed the Plaintiffs took them through. It was further submitted that the regional board was not a party to the disciplinary proceedings that purported to expel the Defendants. It was its case this Court only ought to have been approached as a forum of last resort when the contents laid out in clauses 3(c), 4(d) and 6(a) & (e) of the Constitution were not adhered to.
 4. The Defendants drew support from the decision in Geoffrey Muthiga Kabiru & 2 Others -vs- Samuel Munga Henry & 1756 Others (2105) eKLR and the one in William Odhiambo Ramogi & 3 Others -vs- Attorney General & 4 Others Muslims for Human Rights & 2 Others (interested Parties) (2020) eKLR where the Court emphasized on exhaustion of administrative remedies before resorting to Courts of law.
 5. On the claim regarding lack of locus standi, the Defendants submitted that since there has never been election of officials in compliance with Clause 4(a) and (b) of the Constitution, the Plaintiffs hold office illegally after the expiry of their term and as such lacked the requisite standing to institute suit on behalf of the Church. The decision in Mumo Matemu -vs- Trusted Society of Human Rights Alliances & 5 Others (2014) eKLR where it was observed that evaluation of locus ought to be based on the constitutional consideration of capacity under Articles 3, 22 and 258 of the Constitution, the nature of the suit and the enforceability of the orders sought.
 6. In conclusion, the Defendants urged that it would be in the interest of justice that the objection be allowed and the suit be disposed at this stage.



7. The Plaintiffs challenged the objection through written submissions dated 18th November 2023. It was their case that the objection does not meet the test established by the case of Mukisa Biscuit Company -vs- West End Distributors Limited for failing to raise pure points of law.
8. It was their case that, as such, the objection was baseless and aimed at delaying the hearing and determination of the suit. They prayed that it be dismissed with costs.
9. On a consideration of the objection, the parties' submissions and the decisions referred to therein, two main issues arise for determination being whether the objection is proper in law and depending on the outcome, the merits of the objection. This Court will now consider the first issue.
10. For a preliminary objection to be valid, it is measured against the principle that it raises pure questions of law capable of disposing of a dispute at once. It is, therefore, the obligation of a court to ascertain that it is not caught up with factual issues that would necessitate the calling of evidence. The foregoing nature of Preliminary Objections was discussed in Mukisa Biscuit Manufacturers Ltd -vs- Westend Distributors Ltd (1969) E.A 696 pg. 700 when the Court observed as follows: -

...so far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection 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 has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.

11. In Civil Suit No. 85 of 1992, Oraro vs. Mbaja [2005] 1 KLR 141, Ojwang J, has he then was, cited with approval the position in Mukisa Biscuit -vs- West End Distributors (supra) and stated as follows on preliminary objections: -

.... I think the principle is abundantly clear. A "preliminary objection", correctly understood, is now well identified as, and declared to be a 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 a 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.

12. In Omondi -vs- National Bank of Kenya Ltd & Others {2001} KLR 579; [2001] 1 EA 177, it was observed that a Court, in determining a Preliminary Objection, can look the pleadings and other relevant documents and as follows: -

...In determining (Preliminary Objections) the Court is perfectly at liberty to look at the pleadings and other relevant matter in its records and it is not necessary to file affidavit evidence on those matters...What is forbidden is for counsel to take, and the Court to purport to determine, a point of preliminary objection on contested facts or in the exercise of judicial discretion and therefore the contention that the suit is an abuse of the process of



the Court for the reason that the defendant's costs in an earlier suit have not been paid is not a true point of preliminary objection because to stay or not to stay a suit for such reason is not done ex debito justitiae (as of right) but as a matter of judicial discretion.

13. The question whether jurisdiction is a point of law was settled by the Supreme Court in Petition No. 7 of 2013 Mary Wambui Munene -vs- Peter Gichuki Kingara and Six Others, [2014] eKLR, where the Learned Judges stated that 'jurisdiction is a pure question of law' and should be resolved on priority basis.
14. The Apex Court had earlier on in Constitutional Application No. 2 of 2011, In the Matter of Interim Independent Electoral Commission (2011) eKLR observed as follows in regard to jurisdiction and its source: -

... Assumption of jurisdiction by Courts in Kenya is a subject regulated by *the Constitution*, by statute law, and by principles laid down in judicial precedent.
15. The contest that the dispute herein belongs in the Environment and Land Court is jurisdictional issue. The argument emanates from the provisions of Article 162(2) of *the Constitution* of Kenya and Sections 4 and 13 of the *Environment and Land Court Act* which vests land related disputes in that Court. The issue raises a pure question of law.
16. The Defendants also raised the doctrine of exhaustion. Briefly, it is a doctrine whose roots are in Article 159(2)(c) of *the Constitution* that requires an aggrieved party to pursue internally available means of dispute resolution before turning to the Courts. Since the doctrine seeks to postpone or altogether oust the jurisdiction of a Court, it is a contest that can dispose of the suit preliminarily. [See: William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested parties) [2020] eKLR].
17. The Defendants also raised the aspect of locus-standi. The question whether locus standi is a pure point of law can be sourced from its definition. The Black's Law Dictionary 9th Edition at page 1026 defines the terms as '.... the right to bring an action or to be heard in a given forum.'
18. There is no doubt that the right to bring an action is an entitlement created by *the Constitution* and law [See Civil Application No. 29 of 2014, Mumo Matemu -vs- Trusted Society of Human Rights Alliance & 5 others [2014] eKLR and Mary Wambui Munene -vs- Peter Gichuki Kingara and Six Others.
19. From the foregoing, it is this Court's finding that the claim that the suit belongs to the Environment and Land Court; the assertion that the Plaintiffs have not exhausted internal disputes mechanisms and that the issue of lack locus standi are all jurisdictional contests. They are pure points of law and as such, the objection is valid for consideration by this Court.
20. With the above finding, the Court will now deal with the three jurisdictional issues raised in the objection.
21. The first issue was the claim that the suit belongs in the Environment and Land Court. Such stems from the contention that dispute before Court relates to the land where the Church stands. It is the Defendants' case that the main issue as could be discerned from agenda of the meetings as evidenced by the list of the Plaintiff's documents is the ownership of the land upon which the Church is erected.
22. This Court has had the occasion to peruse through the record. It has noted the contents of the various minutes and the agenda items. However, none of the documents refer to any dispute concerning land use or ownership. Further, the Plaint is couched in a very simple way. The primary cause of action relates to leadership and membership of the Church. It neither has anything to do with the land on



which the Church stands on nor on the use of that land as to bring it within the meaning under section 4 and 13(1) of the environment and *Land Act*. Therefore, the claim that the subject of the dispute before Court ought to be dealt with by the Environment and Land Court is a misdirection and is for rejection.

23. The focus now turns to the question whether the Plaintiffs lack locus standi. The Defendants contended that there has been no election on the leadership of the Church in compliance with Clause 4(a) and (b) of the Church's constitution, which requires a re-election of the leaders every two years and as such the Plaintiffs were automatically ousted from office upon the expiry of their terms. On their part, the Plaintiffs contended that they were rightfully in office. As the manner in which the issue of locus standi has been raised now calls for interrogation of the facts and adduction of evidence, it, therefore, transcends the boundaries of a preliminary objection into the realm of contested facts. It is, hence, dislodged from being a pure point of law and it fails from being considered as such.
24. On whether the Plaintiffs exhausted the internal dispute resolution mechanisms before approaching this Court, the starting point is the constitutional underpinning of the doctrine and how Courts have dealt with it. Article 159(2)(c) of *the Constitution* recognizes and entrenches the use of alternative mechanisms of dispute resolution.
25. The doctrine of exhaustion was comprehensively dealt with by a 5-Judge Bench in Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (2020) eKLR. The primary essence of the doctrine is to postpone judicial consideration of disputes until all other available avenues are exhausted.
26. Turning back to the issue as hand, it is apparent, from the objection that the Defendants anchored their arguments on Clause 4(d) and 6(a) and (e) of the Church's constitution. Due to their centrality, the Court will rehash the said provisions as under: -

4. Office Bearers

- c. any office bearer who ceases to be a member of the church shall automatically cease to be an office bearer.
- d. Office bearers may be removed from office in the same way as laid down for the expulsion of members in Rule 4(c) and persons elected at the general meeting resolving the expulsion shall fill vacancies created.

6. The Board

The following Boards shall be the decision-making organs of the Church.

- a. Executive Board
- b. Local Church Board
 - a) Executive Board
- (e) The Executive Board shall handle all disciplinary cases that affect the Pastor, in consultation with the Regional Boards

27. According to the Plaintiffs, the Defendants were expelled from the Church on the basis of *the Constitution*. Since the process was completed then there is nothing to be complied with. The process in the Church constitution was exhausted. Therefore, there is nothing more for the Plaintiffs to comply with under



the Church constitution. Further, since the Church constitution does not contemplate any appellate process, then the doctrine does not apply in this matter. It also fails.

28. Having considered the issues raised in the objection and given that none has succeeded, the objection cannot stand on the way of the Plaintiff. Further, as there seems to be nothing stopping the lower Court from dealing with this matter, the same will be transferred accordingly.

29. Consequently, the following final orders hereby issue: -

(a) The Notice of Preliminary Objection dated 8th May 2023 is hereby dismissed with costs.

(b) The suit is hereby transferred to the Kitale Chief Magistrates Court for further dealing.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE

Ruling No. 1 virtually delivered in the presence of:

Mr. Nyamu, Learned Counsel for the Plaintiffs.

Mr. Abiero, Learned Counsel for the Defendants.

Chemosop/Duke – Court Assistants.

