



**Israel Assemblies of God Registered Trustees & 2 others v Wamburi & 8 others
(Civil Case E014 of 2024) [2025] KEHC 11600 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 11600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE E014 OF 2024
DO CHEPKWONY, J
JUNE 24, 2025**

BETWEEN

**ISRAEL ASSEMBLIES OF GOD REGISTERED TRUSTEES 1ST APPLICANT
ARCHBISHOP EZEKIEL MIGWI MWANGI 2ND APPLICANT
BISHOP ZACHARY NG'ANG'A KABUGU 3RD APPLICANT**

AND

**BISHOP ELIJAH WAMBURI 1ST RESPONDENT
BISHOP STEPHEN GATHUO 2ND RESPONDENT
BISHOP JAMES MURIITHI 3RD RESPONDENT
BISHOP DANIEL MUTHEE KIBARA 4TH RESPONDENT
BISHOP SAMWEL MBURU 5TH RESPONDENT
BISHOP JOEL MURANJA 6TH RESPONDENT
REV JOSEPH NJOROGE 7TH RESPONDENT
REV PHILLIP THUMBI 8TH RESPONDENT
REV MOSES NJOROGE 9TH RESPONDENT**

RULING

1. This is a ruling in respect of the Notice of Motion application dated 25th April, 2024 in which the Applicants are seeking for orders that:-
 - a. Spent.



- b. That the 2nd to 9th Defendants/Respondents jointly and severally either by themselves, their servants, agents, employees or any other persons acting under their directions or supervision be barred by an order of temporary injunction from holding any meeting, presiding over the church activities, roles or in any other way from engaging, participating in the affairs of the church or holding diverse offices within the church structure as either bishops or reverends of the church of the Israel Assemblies of God within Uasin Gishu, Central, Laikipia, Rift Valley, Nairobi, Naivasha and Nakuru Dioceses pending the interpartes hearing and determination of this application and suit;
 - c. That the 1st Respondent herein Bishop Elijah Wamburi be temporarily restrained from misrepresenting himself as the archbishop of the church since there is a property sitting Archbishop Ezekiel Migwi Mwangi;
 - d. That the officers commanding Ruiru, Gachege, Olkalau, Kayole [In Naivasha], Nyahururu, Molo, Lanet, Mau Summit and/or any other police stations within the jurisdiction of the affected dioceses and/or parishes do ensure the compliance of the order; &
 - e. That the costs Of the Application be provided for.
2. The application is premised on the grounds set out on its face and the Supporting Affidavit of Zacharia Ng'ang'a Kabugu sworn on even date.
 3. In response, the Respondents filed a Notice of Preliminary Objection dated 25th May, 2024 citing the following grounds:-
 - a. That the Plaintiff's application and the whole suit are fatally defective, bad in and otherwise an abuse of the court process and should be dismissed with costs to the Defendants as no written authority has been produced in court granting the 3rd Plaintiff authority to swear the Supporting Affidavit and the Verifying Affidavit on behalf of other Plaintiffs.
 - b. That the whole suit and the application are non-justiciable seeing that the Plaintiffs have not exhausted the internal dispute resolution mechanisms of the Church and no written authority by the Secretary of the General Assembly Church Council has been produced in court as required by the Church's constitution.
 - c. That the Further Affidavit filed by the Plaintiffs dated 20th May, 2024 was filed without the court's leave and in contravention of the Directions of the Court dated 26th April, 2024 and ought to be struck out.
 - d. That the Authority in court and dated 19th April, 2024 is a forgery and an attempt to save the Plaintiff's case and should be struck out. We point out that the suit was filed on 25th April, 2024 yet in authority, they have indicated the case number HCCC E014 of 2014. The parties could not have granted authority on 19th April, 2024 and gotten the case number before filing of the case was done.
 - e. That the authority to institute a case produced in court and dated 19th April, 2024 is also an attempt to save the Plaintiff's case and has also been produced without leave of court. In the Authority, the parties make reference to a meeting held on 18th April, 2024 yet no minutes have been produced in court of the said meeting.
 4. The 2nd, 3rd, 6th, 7th, 8th and 9th Respondents have thus urged the court to strike out the Plaintiff and the Notice of Motion application with costs to them.



5. The court directed the Notice of Preliminary Objection to be disposed of in priority bases by way of written submissions. The 2nd, 3rd, 6th, 7th, 8th and 9th Respondents filed their submissions dated 23rd August, 2024, while the Applicants' submissions also dated 27th August, 2024 and the 1st Defendant's submissions is also dated 27th August, 2024 all which the court has read and will be considered in this Ruling.

Determination

6. The court directed the Notice of Preliminary Objection to be determined first because if the same is successful it may dispose off the entire suit. This is guided by the decision in the case of *Pius Kamau Kinuthia v David Mueithi Kanyi & Another* [Environment & Land Case No.E007 of 2023] [2024] KEELC 1625 [KLR] that:-

“A Preliminary Objection rests on the proposition that when raised, its fundamental accomplishment will have a bearing on disposing of a matter because it raises pure points of law. It also underscores the need for prudent management of time as a court resource by summarily flagging out a frail and hopeless suit that if admitted to full trial, will be a wash of judicial time and will not serve the interest of justice. One will not be required to look elsewhere to find an answer as to whether a Preliminary Objection is sustainable or not, but to look at the pleading and discover that the suit is a non-starter.”

7. What constitutes a Preliminary Objection was discussed in the case of *Mukisa Biscuits Manufacturing Ltd v West End Distributors* [1969] EA 696 where the court held that:-

“---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”.

In the same case Sir Charles Newbold, P. stated:-

“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 issue, and this improper practice should stop”.

8. And in the case of *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* [2015] eKLR, the Supreme Court made the following observation with regard to Preliminary Objections:-

“The true Preliminary Objection serves two purposes of merit; firstly, it serves as a shield for the originator of the Objection against profligate deployment of time and other resources. And secondly, it serves the public cause of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the Preliminary Objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits”.



9. In this particular case, the Respondent have raised a Preliminary Objection on several account of:-
- a. Failure by the Applicants to attach any written authority to institute a case as required by law.
 - b. Failure by the Applicants to exhaust all internal dispute resolution mechanisms.
10. With regard to the Applicant failure to attach any authority as required by law, the 2nd, 3rd, 6th, 7th, 8th and 9th Respondents have submitted that the suit offends Order 1 Rule 2 of the Civil Procedure Rules since the Authority to institute the suit has not been attached. They have relied on the case of Chalicha Farmers Cooperative Society Limited -vs- George Odhiambo & 9 Others [1987] eKLR and argue that the suit is fatally defective. They have further contested that the said Authority was later brought to court through a Further Affidavit which was filed without leave of court hence is also defective and should be struck out.
11. According to the Applicants , there is a Certificate of Registration No. XXXX which shows that the 1st Applicant is registered under the Societies Act and further hold that the 2nd and 3rd Applicants are its trustees hence they have the locus to institute the suit. According to the Applicants, in the Supporting Affidavit, the deponent Zachary Nganga Kabugu indicated that he had the authority to swear the Affidavit on behalf of the other trustees and attached the said authority in the Further Affidavit which they have stated is sufficient. They have relied on the Makupa Transit Shade Limited & Another v Kenya Ports Authority [2015] eKLR and Spire Bank Limited v Land Registrar & 2 Others [2019] eKLR cases.
12. The Applicant further contends that although the said authority was availed late and without leave of the court, they relied on Order 1 Rule 13 of the Civil Procedure Rules which provides that there is no specified stage at which the authority should be given.
13. It is trite law that for a Company to institute a suit, a resolution by the Board of Directors giving authority to the Directors or deponents to act for the Company ought to be filed but it is not a mandatory requirement that the same be filed at the onset of filing the suit. The same can be filed at a later date before the hearing of the suit. It then follows that failure to attach the resolution at the time of filing the suit is not fatal to the same. In the case of Leo Investments Ltd v Trident Insurance Company Ltd [2014] eKLR, the court 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.”
14. In this case, the court notes that the Applicants filed Further Affidavit attaching the resolution which authority to file the suit was passed and which the Respondents hold it was done without the leave of court hence they seek that the same be struck out. However, in view of the afore said discussion and cited case law, the court finds that lack of authority to file a suit is not fatal as the same can be filed at any stage thereof.
15. On the argument that the Further Affidavit on which the authority was attached be expunged since the Applicant did not seek leave of court to do so, the court finds this a draconian step which should only be undertaken as a last resort and has relied on the decision in the case of Flora Cherono v Mary Njibia & 9 Others [2021] eKLR which had the following to say on expunging court records:-
- “ 22. Whereas pleadings are the skeleton that give the shape and structure of the case, documents in support thereof clothe the skeleton: they give the muscle and outward shape of the entire structure of the case. Once they are filed they are



part of the body and should not be hastily severed from it just like any part of the body. Such body parts should not be quickly removed therefrom unless the experts, in many cases qualified medical or veterinary practitioners, advise so under clear justifiable circumstances such as when the part is cancerous and could infect rest of the body.

23. Furthering both the analogy and comparison above, on the one hand courts have termed striking out pleadings as a draconian step that should be exercised very sparingly.”
16. In this case the court finds that there is no prejudice demonstrated in the Further Affidavit being part of the record as it was already sufficient that the Applicants in the Supporting Affidavit acknowledged that they had authority to file the suit which was proved through the Further Affidavit, which the court finds sufficient and thus must fail.
17. On whether the Applicants have exhausted all internal dispute resolution mechanisms, it is the argument of the Respondents that the Applicants have not exhausted all avenues of dispute resolution in regard to the dispute resolution. In this regard, the Respondents have cited Rule 3 [g] of the Constitution of the Church which provides that:-
- a. All cases between Church and members shall first be tried by the three councils namely:-
- i. Parish church Council
 - ii. Diocese Church Council
 - iii. General Assembly - Church Council
- The secretary of the General Assembly Church Council shall grant a written authority after the approval of that council that such case may be forwarded to a court of law.
18. It is trite that where there is a clear procedure for redress or resolving a dispute agreed on by parties, followed. On this, the court is guided by the decision made in the case of *Speaker of the National Assembly v The Hon. James Njenga Karume*, Civil Case Application No. 92 of 1992, where the Court observed as follows:-
- “Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an act of Parliament that procedure should be strictly followed.”
19. In view of Rule 6 of the Church’s Constitution, this Court agrees with the Respondents’ argument that since internal mechanisms for resolution of the disputes are laid down in the Applicants’ Constitution, the same ought to be followed as proceeding with the suit at this stage would offend the doctrine of exhaustion. In the case of *William Odhiambo Ramogi & 3 Others v Attorney General & 4 Others; Muslims for Human Rights & 2 Others [Interested Parties]* [2020] eKLR the Court held as follows:-
- “The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts...”



20. In view of the foregoing arguments, on the doctrine of exhaustion, the Court finds that the Notice of Preliminary Objection has correctly been raised on a pure point of law. The upshot is that the suit before the court has been filed prematurely and the same is hereby struck out with costs to the Respondents and Interested Parties.

21. It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 24TH DAY OF JUNE 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Ndungu Gichuhi counsel for Applicants

Mr. Mutahi holding brief for Mr. Mburu Gitiga for 2nd, 3rd, 6th, 7th, 8th and 9th Defendants.

Court Assistant - Martin

