



**Sheria Na Watu v Nairobi City County & 4 others (Environment & Land
Petition E023 of 2023) [2023] KEELC 17886 (KLR) (13 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17886 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E023 OF 2023**

EK WABWOTO, J

JUNE 13, 2023

**IN THE MATTER OF ARTICLES 1, 2, 10, 19, 20, 22, 23(3), 60,
62, 67, 177,196 & 258 OF THE CONSTITUTION OF KENYA**

-AND-

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLES 10(1)(A), (B), (C) AND 2(A),
60,67,196(1) (A) AND (B) OF THE CONSTITUTION OF KENYA, 2010**

-AND-

**IN THE MATTER OF SECTIONS 3(F), 8, 87(A), 88,91,102(A) AND
115 OF THE COUNTY GOVERNMENT ACT NO. 27 OF 2012**

-AND-

**IN THE MATTER OF THE PRINCIPLE OF PUBLIC
PARTICIPATION IN COUNTY PLANNING IN THE USE OF
TITLES OVER PUBLIC PROPERTIES FOR URBAN RENEWAL PROJECTS AS
A SIMPLE NON-COLLATERAL DEPOSIT WITH FINANCIAL INSTITUTIONS**

BETWEEN

SHERIA NA WATU PETITIONER

AND

NAIROBI CITY COUNTY 1ST RESPONDENT

COUNTY ASSEMBLY OF NAIROBI 2ND RESPONDENT

NATIONAL LAND COMMISSION 3RD RESPONDENT

FELIX OLUOCH OTIENO 4TH RESPONDENT

PATRICK MAINA MWANGI 5TH RESPONDENT



RULING

1. The Petitioner has requested this court to grant some interim reliefs in respect to prayer No 2 of the application dated June 6, 2023.
2. Ms. Odhiambo for the 1st Respondent together with Mr. Kokebe opposed the same. Ms. Odhiambo submitted and relied on the 1st Respondent's notice of Preliminary Objection which in essence stated that the Petitioner has no locus to institute the instant petition and hence should not be granted any orders.
3. Mr. Kokebe for the 2nd Respondent stated that the issues raised by the Petitioner have been previously addressed and all approvals granted. He also stated that there was public participation and that the grant of any orders will adversely affect the implementation of the project.
4. Mr. Mutunga for the Petitioner submitted that the constitution allows any party to file a petition and made reference to the applicable provisions of the constitution.
5. The court has considered the submissions made by Counsel for the parties and outlines the following issues for determination: -
 - i. Whether the Petitioner has locus to bring the instant petition.
 - ii. Whether this court should grant any interim conservatory orders.
6. On the first issue, the constitution of Kenya 2010 has expanded locus standi beyond the pre- 2010 constitution as was expressed in the case of *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others* when the court stated as follows;

Moreover, we take note that our commitment to the values of substantive justice, public participation, inclusiveness, transparency and accountability under Article 10 of the constitution by necessity and logic broadness access to the courts. In this border context, this court cannot fashion nor sanction an invitation to a judicial standard for locus standi that places hurdles on access to the courts except only when such litigation is hypothetical, abstract or is an abuse of the judicial process. In the case at hand, the petition was filed before the High Court by an NGO whose mandate includes the pursuit of constitutionalism and we therefore reject the argument of lack of standing by Counsel for the appellant. We hold that in the absence of a showing a bad faith as claimed by the appellant, without more, the 1st Respondent had the locus standi to file the petition. Apart from this; we agree with the superior court below that the standard guide for locus standi must remain the command in Article 258 of the constitution.”

7. The constitution has also expended the remedies that may be granted by courts as provided in Article 23 as follows: -

Article 23. Authority of courts to uphold and enforce the Bill of Rights

1. The High court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the bill of Rights.



2. Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine application for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of rights.
3. In any proceedings brought under Article 22, a court may grant appropriate relief, including-
 - a. a declaration of rights;
 - b. an injunction;
 - c. a conservatory order;
 - d. a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
 - e. an order for compensation; and
 - f. an order of judicial review.
9. In view of the foregoing, it is evident that, Article 22 of the *Constitution* stipulates that court proceedings may be instituted by a person acting on behalf of another person who cannot act in their own name, a person acting as a member of, or in the interest of, a group or class of person, a person acting in the public interest or an association acting in the interest of one or more of its members. Article 23 of the constitution further stipulates that for any further proceedings brought under Article 22, a court may grant appropriate relief.
10. In the instant case it was admitted by all the parties that indeed the Petitioner is a registered entity and as such this court finds that the Petitioner has the locus standi; to institute the suit and the 1st Respondents objection to the same on the lack of locus standi is overruled.
11. On whether or not the court should grant any interim conservatory orders, the court has heard the sentiments by Counsel for the 1st and 2nd Respondent and the main contention as presented by the Petitioner that there was no public participation in respect to the Resolution made by the 1st Respondent requiring that the Nairobi City County Government deposits the title deed for the Urban Renewal Projects sites including Pangani Estate Projects site be deposited with financial institutions to act as simple non collateral deposits in order to enable the joint venture development partners raise funds for implementation of the projects was not challenged by the Respondents. The 1st Respondent did not submit nor counter the aspect of whether or not there was public participation and the court having considered the same is of the view that there is need to grant some interim reliefs and in view of the foregoing, the court proceeds to grant Prayer No 2 of the application dated June 6, 2023 which shall apply until July 4, 2023.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF JUNE 2023.

E. K. WABWOTO

JUDGE

