



**Maina & 4 others v Kenya Taxi Cab Owners Investments & 12
others (Environment and Land Civil Miscellaneous Application
E056 of 2023) [2023] KEELC 20223 (KLR) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20223 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION E056 OF 2023
JO MBOYA, J
SEPTEMBER 20, 2023**

BETWEEN

**LABAN KABIBI MAINA 1ST APPLICANT
PETER KURIA WANJAMA 2ND APPLICANT
JOB NTHUSI NZIOKA 3RD APPLICANT
LAWRENCE MAINA KIMANI 4TH APPLICANT
JOHN KIMANI NG'ANG'A 5TH APPLICANT**

AND

**KENYA TAXI CAB OWNERS INVESTMENTS 1ST DEFENDANT
JOHN MATHENGE GAITA 2ND DEFENDANT
JAMES KIMOTHU KIIRU 3RD DEFENDANT
SIMON GIKONYO GITARI 4TH DEFENDANT
GIDEON KABUTHI MAINA 5TH DEFENDANT
GODFREY MAINA WAITHAKA 6TH DEFENDANT
IRUNGU MWANGI 7TH DEFENDANT
ROBINSON WABURI NDIRANGU 8TH DEFENDANT
STEPHEN NJOROGE MARIGA 9TH DEFENDANT
JAMES KARANU KIRURI 10TH DEFENDANT
JOHN KAMAU KAIRIE 11TH DEFENDANT
WILSON NJENGA MUNENE 12TH DEFENDANT**



RULING

1. The Applicants herein, who contend to have been the lawful and legitimate Directors of the 1st Respondent, before same were illegally removed and/ or ousted from office, have filed the instant Application and in respect of which same have sought for the following reliefs:
 - a. That an Order do issue to the Land Registrar at Nairobi that any further and or pending transactions upon the property LR N0. 37/262/7 be hereby stopped pending the hearing and determination of this Application.
 - b. That an Order do issue to the Land Registrar at Nairobi that any transactions upon the property LR No. 37/262/7 be hereby stopped pending the hearing and determination of Civil Suit No. 30 of 2022 before the Commercial & Admiralty Division of the High Court.
 - c. That service of this Application be dispensed with.
2. The Application by the Applicants herein is premised and anchored on various grounds, which have been enumerated in the body of the Application. Furthermore, the Application is supported by the affidavit of Laban Kabibi Maina, sworn on even date, namely, the 28th August 2023.
3. Additionally, the Applicants herein contend that the subject Application was duly served upon the Respondents and despite service, the Respondents herein have neither filed any Response and/or Reply to the subject Application. In this regard, the Application was/ is thus unopposed.
4. Moreover, when the Application came up for hearing on the 20th September 2023, Learned counsel for the Applicants sought to persuade the court to proceed and grant the Application as prayed. However, owing to the nature of the issues raised at the foot of the Application beforehand, the Honourable court directed counsel for the Applicants' to address the question of locus standi as pertains to the Applicants.

Parties' Submissions:

A. Applicants' Submissions:

5. Learned counsel for the Applicants adopted the grounds at the foot of the Application and thereafter raised, highlighted and canvassed three (3) salient issues for consideration by the Honourable court.
6. Firstly, Learned counsel for the Applicants' submitted that the Applicants' herein were the lawful and legitimate Directors of the 1st Respondent prior to and before same were illegally removed and/ or ousted from office. In this regard, Learned counsel added that arising from their removal from office, the Applicants herein have since filed civil proceedings before the High Court vide Milimani HCC No. 30 of 2022; which is currently pending before the Commercial and Admiralty Division of the High Court.
7. Furthermore, Learned counsel contended that even though the issue of who are the legitimate directors of the 1st Respondent is still pending the high Court, the Applicants herein have lawful rights and interests in the management of the affairs of the 1st Respondent, including the sole property, which is the Subject of the current proceedings.



8. Secondly, Learned counsel submitted that even though the 1st Respondent is a Body corporate and thus separate and distinct from the shareholders and directors; however, the 1st Respondent herein can only act and/or conduct her affairs through lawful Directors and not otherwise.
9. Additionally, Learned counsel has contended that insofar as the 1st Respondent can only act through her Directors, the Applicants herein as the lawful Directors, therefore have the requisite capacity to commence, mount and maintain the suit.
10. Finally, Learned counsel for the Applicants' has submitted that should a determination be made by the High Court confirming that the Applicants are the lawful Directors of the 1st Respondent, the Applicants herein would stand to suffer grave injustice, if any actions were taken and/or undertaken by the imposters, who are currently pretending to be the Directors of the 1st Respondent.
11. Instructively, Learned counsel added that part of the actions that are likely to be taken by the imposters, who are not the lawful Directors of the 1st Respondent, include alienation, sale and/or disposal of the suit property belonging to and registered in the name of the 1st Respondent.
12. Premised on the foregoing, Learned counsel has therefore implored the court to find and hold that the Applicants' herein have the requisite locus standi to commence and mount the suit; and furthermore, to grant the reliefs sought at the foot of the Application.

B. Respondents' Submissions:

13. Though the Respondents' are said to have been served, none of the Respondents herein entered appearance nor filed any Response to the current Application. Similarly, none of the Respondents appeared and/or participated in the proceedings, pertaining to and in respect of the Application.
14. In a nutshell, the only submissions on record are the submissions by and on behalf of the Applicants, whose details have been enumerated in the preceding paragraphs.

Issues For Determination:

15. Having reviewed the contents of the Application beforehand, as well as the submissions by Learned counsel for the Applicants; the following issues do arise and are thus worthy of determination:-
 - i. Whether the Applicants herein have the requisite Locus standi to commence, mount and/or sustain the instant proceedings.
 - ii. Whether the Applicants' herein shall suffer any loss and/or injury as a result of any actions pertaining to and concerning the suit property or otherwise.

Analysis And Determination:

Issue Number 1:

i. Whether the Applicants herein have the requisite Locus standi to commence, mount and/or sustain the instant proceedings.

16. From the grounds alluded to and enumerated at the foot of the application beforehand, as well as the contents of the supporting affidavit, it is evidence and apparent that the Applicants herein contend to have been the lawful and legitimate Directors of the 1st Respondent, which is no doubt, a Limited liability company.



17. Furthermore, the Applicants herein have ventured forward and admitted that same were ousted and/or removed from being Directors of the 1st Respondent company. In this respect, the Applicants have averred that same have since proceeded to and filed Civil proceedings before the High Court, Commercial & Admiralty Division vide Milimani HCC No. 30 of 2022.
18. On the other hand, it is also considered that the said suit which challenges the manner in which the Applicants were removed and/ ousted from office as Directors of the 1st Respondent, is still pending hearing and determination. For good measure, there is no gainsaying that until and unless a favorable decision is made by the Honorable High Court, the Applicants herein ceased to be Directors of the 1st Respondent.
19. Fast forward, whether or not the Applicants contend that same were illegally removed and ousted from being Directors of the 1st Respondent or whether same remain as Directors of the 1st Respondent, which is an issue pending before the High Court, the critical point to note is that the current suit touches on and or concerns a property belonging to and registered in the name of the 1st Respondent, a Limited Liability Company.
20. Additionally, it is not lost to the court that a company, the 1st Respondent not excepted, is separate and distinct from her Directors and or Shareholders; and in the event that the properties belonging to a company are under threat of alienation or otherwise, it is the company by herself which is authorized and mandated to file any civil proceedings to vindicate her rights and/or interests.
21. The foregoing position is so established and trite. However, it suffices to cite and mention the dictum in the case of Protus Opwora Wabwoto v Ken Manda & 2 others [2020] eKLR, where the court underscored the dichotomy between the company and her directors and shareholders.
22. For coherence, the court stated and observed as hereunder:-

“In company law, once registration of a company has been successfully completed a legal person separate from its Members is created. With the formation of the company the new entity acquires a veil of incorporation that completely separates the members’ from being held responsible for the liabilities of the company which they have subscribed to. This veil of incorporation blocks the members from being held liable for acts of the company. This principle was set out in the old English case of Salmon and Salmon & Co. ltd [1897] AC 22. The effect of this is that there is a fictional veil between the company and its members, protecting them from being personally liable for the companies debts and obligations.”
23. Notably, the position of the law captured and espoused in the case of Salmon v Salmon [1897] AC 22; was reiterated, highlighted and amplified in the case of Omondi v National Bank of Kenya Limited [2001] eKLR, where the court stated and observed as hereunder:-

“As regards whether the plaintiffs have locus standi to institute this suit, I am in complete agreement with the submissions made by the defendants’ advocates that they do not. It is a basic principle of company law that the company has a distinct and separate personality from its shareholders and directors even when the directors happen to be the sole shareholders (see Salmon v a Salmon & Co Ltd [1897] AC 22). The property of the company is distinct from that of its shareholders and the shareholders have no proprietary rights to the company’s property apart from the shares they own. From that basic consequence of incorporation flows another principle: only the company has capacity to take action to enforce its legal rights.”



24. Arising from the foregoing position, there is no gainsaying that whether the Applicants herein are directors of the 1st Respondent or whether same are challenging their removal/ ouster from office, either way, same cannot commence or mount the suit which seeks to protect the property that belongs to and is registered in the name of the 1st Respondent.
25. Consequently and in this respect, it is my humble view that the Applicants herein are divested of the requisite locus standi to commence or mount the instant suit and in this regard, the Applicants are not only busybodies, but are non-suited.
26. On the other hand, having found that the Applicants herein cannot file a suit seeking to protect the property of the company, it then becomes evident that the Applicants have no locus standi, which is a fundamental issue; and in any event, the absence of which would negate the suit ab initio.
27. Concerning the significance of locus standi, it is important to take cognizance of the holding in the case of Alfred Njau & 5 others v City Council of Nairobi[1983] eKLR, where the Court of Appeal canvassed and elaborated upon, on the question of locus standi and proceeded to find and hold that same is a threshold question and/or issue to be addressed at the onset.
28. For good measure, the court stated and held as hereunder:-

“The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt’s Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding. Therefore the effect of the judge’s finding here, which was made after hearing the evidence, and not treated as an isolated issue, the latter course being disapproved in the particular circumstances of that case by the House of Lords in IRC v National Federation of Self Employed and Small Businesses Ltd (supra).”
29. Simply put, it is my finding and holding that the Applicants’ herein have no locus standi to commence and maintain the suit/ proceedings herein. Consequently and in this regard, the entire proceedings filed and or commenced by the Applicants, are not only premature and mis-conceived; but same are similarly, bad in law.
30. In the premises, the entire proceedings merit being struck out, for having been commenced by persons, who are otherwise, busybodies as pertains to ownership of the suit property, namely, LR No. 37/262/7.

Issue Number 2

ii Whether the Applicants herein shall suffer any Loss and/or injury as a result of any actions pertaining to and concerning the Suit Property or otherwise.

31. Having found and held that the Applicants herein are divested of the requisite locus standi to file and/ or maintain the instant suit, it would have been appropriate to strike out the suit and terminate the ruling at this juncture. However, because the Applicants herein also sought an order of inhibition, it is appropriate to venture forward and just interrogate whether the Applicants’ herein have any interest over the suit property or otherwise, capable of being protected at their instance.
32. Without belabouring the point, it is important to observe and point out that the suit property belongs to the 1st Respondents and hence, if same is under any threat of alienation, whatsoever, then it is the 1st Respondent (a Limited liability Company), to pursue and/or take proceedings towards vindicating her rights.



33. To the contrary, the Applicants' herein have no such rights and therefore the question that arises and comes to the fore, is whether the subject suit discloses any reasonable cause of action; and by extension, whether a person, without lawful rights over a property can suffer any loss or at all.
34. To my mind, the suit beforehand does not disclose any reasonable cause of action. Furthermore, where a suit does not raise/ disclose a reasonable cause of action, it thus means that the proponent of the suit is divested of any Rights over and in respect of the subject matter in dispute. Consequently, such a person cannot be heard to claim that same shall be disposed to suffer any loss or at all.
35. Arising from the foregoing, it is my finding and holding that the issues canvassed and raised at the foot of the current Application, cannot attract and/ or anchor the grant and/ or issuance of any order, whether the same be one of the inhibition or temporary injunction.
36. In short, the Applicants herein have similarly not demonstrated the loss, if any, that same shall suffer. In addition, the Applicants have also not met the threshold for the grant of the order sought, including; proof of the existence of a prima facie case, as expounded in the case of Nguruman Limited v Jan Bonde Nielsen [2014] eKLR, where the Court of Appeal stated thus:-

“Recently, this court in Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KLR 125 fashioned a definition for “prima facie case” in civil cases in the following words:

“In civil cases, a prima facie case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.”

37. In view of the foregoing, even taking into account the obtaining facts, I would still have come to the conclusion that the Applicants' herein are not entitled to the reliefs sought. For good measure, the Applicants' have no known proprietary rights or interest over and in respect of the suit property, which are capable of being protected either vide the instant suit or otherwise.
38. In a nutshell, my answer to issue number 2 is also in the negative.

Conclusion

39. Arising from the foregoing, it is crystal clear that the Applicants herein have no locus standi to mount and/or commence the suit and therefore the entire proceedings before the court are a nullity ab initio. In this regard, same therefore stand vitiated and are worthy of being struck out.

Final Disposition:

40. Consequently and in the premises, the Application dated 28th August 2023; and the entire proceedings attendant thereto, be and are hereby struck out, albeit without costs, in so far as the Respondents neither entered appearance nor filed any Responses.
41. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER 2023.

OGUTTU MBOYA

JUDGE



In the presence of:

Benson – court Assistant.

Miss Wanjira for the Applicants.

N/A for the Respondents

