



**Kayole Community Justice Center v Attorney General & 6 others (Petition 3 of 2022) [2023] KEELC 21880 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21880 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
PETITION 3 OF 2022  
LN MBUGUA, J  
NOVEMBER 21, 2023**

**BETWEEN**

**KAYOLE COMMUNITY JUSTICE CENTER ..... PETITIONER**

**AND**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**MP EMBAKASI CENTRAL ..... 4<sup>TH</sup> RESPONDENT**

**MCA KAYOLE NORTH ..... 5<sup>TH</sup> RESPONDENT**

**MINISTRY OF GENDER, CHILDREN AND SOCIAL DEVELOPMENT .... 6<sup>TH</sup> RESPONDENT**

**NAIROBI METROPOLITAN SERVICE ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

1. The Petitioner commenced this suit by a petition dated 22.12.2021 which was filed at the High Court, Nairobi, but on 19.1.2022, Justice A C Mrima considered the petition and ordered a transfer of the file to this court for the reason that the main issue in contention is the ownership, use and occupation of the property known as Kayole One Social Hall.
2. Subsequently, the Petitioner filed the notice of motion dated 20.4.2023 seeking orders to discharge the 7<sup>th</sup> Respondent from this matter and leave to amend the petition accordingly.
3. In response thereof, the 1<sup>st</sup> respondent filed a Notice of preliminary objection dated 7.8.2023 raising grounds that article 165(2) (b), (d) i) (d) (iii) as read with articles 22 & 23 of *the Constitution* ousts jurisdiction of the Environment and Land Court from addressing issues of violation and/or



infringement of fundamental rights and freedoms; Thus the pending application of the petitioner, as well as the entire suit should be dismissed. Adding that the Petitioner has no locus standi or capacity to institute this suit.

4. The existence of the above Preliminary Objection was brought to the attention of the court on 25.9.2023, the date the matter was listed for Pretrial directions. It emerged that the preliminary objection had not been served. The court gave directions on the prosecution of the preliminary objection which inter-alia included “service of the preliminary objection by 2.10.2023, failure to which the preliminary objection was to stand as dismissed”. The Affidavit of service was to be filed in the CTS.
5. I have combed through the digital platform (CTS) and I have not seen any Affidavit of service. Similarly, there is no Affidavit of service of the submissions of the 1<sup>st</sup> respondent.
6. The orders given on 25.9.2023 were self executing, See *Ace Engineering & Building Co. Ltd v National Bank of Kenya Ltd* [2019] eKLR. The back ground against which the orders of 25.9.2023 were given are rather unflattering, in that the matter had been mentioned in court for pretrial directions a record 6 times on 17.2.2022, 25.7.2022, 30.1.2023, 2.5.2023, 21.6.2023 and 25.9.2023.
7. Thus it was pertinent for the issue of compliance to be taken seriously. Needless to say that the issue of jurisdiction was dealt with by the High court, that is why the matter is before this court. Further, the court takes into consideration that the crux of the dispute relates to the use and occupation, and perhaps ownership of the “Hall” at Kayole. To this end, I find that this court has jurisdiction to handle the case.
8. On the application dated 20.4.2023, I take judicial notice that the 7<sup>th</sup> respondent is now a defunct entity, hence in tandem with the principles of expeditious disposal of cases, the application is found to be merited. See *Lawrence Kinyua Mwai v Nyariginu Farmers Co Ltd & another* [2019] eKLR.
9. In the end, the preliminary objection dated 7.8.2023 is hereby dismissed with no orders as to cost, while the application dated 20.4.2023 is allowed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Kirima for Petitioner

M/s Ngira for 1<sup>st</sup> Respondent

Mutava for 2<sup>nd</sup> Respondent

