



**Lekupe & 2 others v County Government of Marsabit & 5 others;  
Lentilal & 6 others (Proposed Interested Parties) (Environment & Land  
Case E003 of 2024) [2025] KEELC 3277 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3277 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT & LAND CASE E003 OF 2024**

**JO MBOYA, J  
APRIL 4, 2025**

**BETWEEN**

**SEBASTIAN LOUYEI LEKUPE ..... 1<sup>ST</sup> PLAINTIFF  
BENEDICT SANITA LEKENIT ..... 2<sup>ND</sup> PLAINTIFF  
LESIKIM LEKENIT' ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF MARSABIT' ..... RESPONDENT'**

**AND**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT  
CABINET SECRETARY, MINISTRY OF LANDS & PHYSICAL  
PLANNING ..... 2<sup>ND</sup> DEFENDANT  
COMMUNITY LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT  
LAND ADJUDICATION OFFICE MARSABIT' ..... 4<sup>TH</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 5<sup>TH</sup> DEFENDANT**

**AND**

**LAWRENCE LENTILAL ..... PROPOSED INTERESTED PARTY  
ASUNTA GALGITELE ..... PROPOSED INTERESTED PARTY  
LASHA LOLKIPAYANG'I ..... PROPOSED INTERESTED PARTY  
LEMASEN MPAPA LEYAMYAM ..... PROPOSED INTERESTED PARTY  
ARILE OGOM ADISOMELLE ..... PROPOSED INTERESTED PARTY  
MARIA GORRETI LIMBA ARSEREU ..... PROPOSED INTERESTED PARTY**



**RULING**

1. Vide Notice of Motion Application dated 13<sup>th</sup> February 2025, the 1<sup>st</sup> Defendant/Applicant has sought the following reliefs:
  - i. That this Honourable court be pleased to certify this application as urgent and do dispense with service of the same and proceed to hear the application Ex-parte in the first instance.
  - ii. That the Plaintiff's suit be struck out.
  - iii. That this Honourable court be pleased to review and set aside or vacate the consent order recorded on 13<sup>th</sup> December 2024.
  - iv. That the costs of this Application be in the cause.
2. The application is premised on the grounds which have been enumerated in the body thereof. In addition, the application is supported by the affidavit of one namely; Hussein Tarri Sasura sworn on even date and to which the deponent has annexed various documents including a copy of the Plaint filed by the Plaintiffs/respondents herein.
3. The Plaintiffs'/Respondents' were duly served with the application beforehand. Nevertheless, the Plaintiffs/Respondents neither filed a Replying affidavit nor grounds of opposition. At any rate, learned counsel for the Plaintiffs/Respondents intimated to the Court that same shall respond to the application on the basis of issues of law and not otherwise.
4. During the pendency of the application beforehand, various persons [herein after referred to as the proposed interested parties] filed an application dated 27<sup>th</sup> February 2025 and wherein same [proposed interested parties] sought to be joined into the proceedings.
5. The instant application came up for hearing on the 24<sup>th</sup> March 2025 whereupon the advocates for the parties covenanted to ventilate/canvass the application by way of written submissions. To this end, the court issued directions pertaining to the filing and exchange of the written submissions.
6. The 1<sup>st</sup> Defendant/Applicant [herein after referred to as the Applicant] filed written submissions dated 24<sup>th</sup> March 2025 and wherein the applicant has raised and canvassed two [2] salient issues. The issues canvassed by the applicant are, namely; that the Plaintiffs/ Respondents are divested of the requisite locus standi [Legal Capacity] to mount and maintain the instant suit; and the suit before hand does not disclose any reasonable cause of action or at all.
7. Regarding the question of locus standi, learned counsel for the applicant has submitted that the Plaintiffs/Respondents are not possessed of the requisite locus standi to commence and or maintain the instant suit for and on behalf of the purported South Horr Eldonyo Community, [hereinafter referred to as the Community]in so far as the said community has neither been registered nor issued with the registration certificate in accordance with the provisions of Section 7 of the [Community Land Act](#), 2016.
8. In particular, it has been submitted that prior to and before a community can purport to claim any rights and or interests over community land, such a community must seek for and obtain the requisite registration in accordance with the law. In this regard, learned counsel for the applicant has cited and referenced the provisions of Section[s] 6 and 7 of the [Community Land Act](#).



9. Furthermore, learned counsel for the applicant has also cited and referenced the decision in the case of *Obo and others vs National land commission & 5 others* 2024 KECA 232 (KLR), where the Court of Appeal addressed the import and tenor of the provisions of Section 7 of the *Community Land Act*.
10. Additionally, learned counsel for the applicant has also cited and relied the decision in the case of *Cheub Adan Ali & 3 others vs the Community Land Registrar North Eastern Region – Manderia & others* (2022) KLC 1241 (KLR), wherein the court also addressed the necessity for the community to be registered before same could apply to partake of any rights and or interests over community land.
11. Moreover, learned counsel for the applicant has also submitted that the question of locus standi is a threshold question [issue] and that same goes to the root of the jurisdiction of the court. To this end, it has been posited that where a person, the plaintiffs not excepted are divested of locus standi then the suit [if any] filed by such a person must be struck out.
12. The learned counsel for the applicant has thereafter invited the court to take cognizance of the decision of the Supreme Court of Kenya in the case of *Matemu vs Trusted Society of Human rights alliance & 5 others* (2014) KESC 6 (KLR), where the Supreme court highlighted the fact that locus standi is an issue that goes to the jurisdiction of the court and that where the issue of locus [Legal capacity] arises, it behooves the court to resolve the issue on priority basis.
13. Secondly, learned counsel for the applicant has submitted that to the extent that the Plaintiffs herein have neither procured nor obtained registration as pertains to the community under reference, the Plaintiffs/Respondents cannot be heard to approach a court of law for purposes of canvassing a non-existent cause of action. Simply put, learned counsel for the applicant has contended that the suit by the Plaintiffs/Respondents is irredeemably bad and beyond redemption vide amendments.
14. Arising from the foregoing, learned counsel for the applicant has therefore implored the court to find and hold that the suit beforehand merits being struck out. In this regard, the court has been implored to allow the application and strike out the suit with costs to the applicant.
15. The Plaintiffs/Respondents filed written submissions dated 26<sup>th</sup> March 2025; and wherein the Respondents have raised three [3] salient issues, namely; that the Plaintiffs herein have the requisite capacity to sue and maintain the suit by virtue of being the intermediaries of the community; that Section 7 of the *Community Land Act* 2016 does not apply to the Plaintiffs; and finally that the Plaintiffs are challenging the impugned gazette notice[s] on the basis of the Provisions of Article 47 of *the Constitution* 2010.
16. As pertains to the first issue, learned counsel for the Respondents has submitted that the Plaintiffs/Respondents are indeed members of South Horr Eldonyo Marra Community and by virtue of being members of the said community, the Respondents are competent to commence and maintain the suit as the representatives of the community. Furthermore, the Respondents have posited that the County Government of Marsabit holds the land on trust for the residents/communities in the county and hence whenever the County Government breaches its fiduciary obligations [trustee] then the communities are at liberty to sue.
17. Other than the foregoing, the Respondent[s] have also submitted that the same have since applied to have the community registered in accordance with the law. To this end, learned counsel for the Respondent[s] has cited and referenced the various forms, namely; form CLA1 and CLA6 respectively, which were presented to the community land registrar for purposes of registration.
18. Moreover, learned counsel for the Respondent[s] has submitted that the Respondents herein are indeed the intermediaries of the community and by virtue of being the intermediaries of the



- community, same [Respondents] are mandated vide the provisions of Article 50 [7] of *the Constitution*, 2010; to act for and on behalf of South Horr Eldonyo Marra Community.
19. Respecting the second issue, learned counsel for the Respondents has submitted that other than the fact that the community has applied to be registered, which is still pending, the provisions of section 7 of the *Community Land Act*, 2016; does not apply to the Respondents in so far as same are challenging a case for breach of trust by the County Government of Marsabit [the 1<sup>st</sup> Defendant/ Applicant herein].
  20. Concerning the third issue, learned counsel for the Respondents has submitted that the Plaintiffs herein are challenging the propriety and legality of the gazette notices which were issued and published by the 3<sup>rd</sup> Respondent. In any event, it has been contended that the Respondents' suit is predicated and anchored on the provisions of Article 47 of *the Constitution* 2010; as read together with the provisions of Section 4 of the Fair Administrative Actions Act 2015.
  21. In a nutshell, learned counsel for the Respondents has submitted that the Respondents herein have the requisite locus standi [Legal Capacity] to warrant the filing of the instant suit. To this end, and in support of the contention that a beneficiary can sue where there is breach of trust, the Respondents have cited and referenced the holding in the case of Kazungu Fondo Shutu & another vs Japhet Noti Charo & another (2021) eKLR and Juletabi African Adventure Ltd & another vs Christopher Michael Lockey (2017) eKLR, respectively.
  22. The proposed interested parties also filed written submissions dated 24<sup>th</sup> March 2025; and wherein same raised and canvassed one singular issue, namely; that the Respondents were not seized of the requisite locus standi to commence and or mount the instant suit on behalf of South Horr Eldonyo Marra Community. In particular, it was contended that the community under reference has neither been registered nor issued with the requisite certificate of registration in accordance with the provisions of Sections 6 and 7 of the *Community Land Act*, 2016.
  23. Flowing from the foregoing, learned counsel for the proposed interested parties has contended that the Respondents are divested of locus standi. In any event, it has been posited that in the absence of locus standi, the suit by and on behalf of the Respondents is premature, misconceived and thus legally untenable.
  24. To vindicate the foregoing submissions, learned counsel for the proposed interested parties has cited and referenced the holding in the case[s] of Cheub Adan Ali and 3 others vs Community Land Registrar – North eastern Region – Mandera & 3 others (2022) KELC 1241 (KLR) and Obo & 3 others vs National Land Commission & 5 others (2024) KECA 232 (KLR).
  25. Having reviewed the application, the grounds contained thereunder and upon consideration of the written submissions filed on behalf of the respective parties, I come to the conclusion that the determination of the instant application turns on two [2] salient issues, namely; whether the Plaintiffs herein are seized of the requisite locus standi to commence and or maintain the suit or otherwise; and whether the Plaintiffs' suit discloses a reasonable cause of action or otherwise.
  26. Regarding the first issue, namely; whether the Plaintiffs herein are seized of the requisite locus standi to commence, maintain and or prosecute the suit, it is imperative to recall that the Plaintiffs herein have filed the suit for and on behalf of South Horr Eldonyo Marra Community. In particular, the Plaintiffs have contended that the Respondent[s] has since gazette the area for purposes of registration of the community land without the involvement of South Horr Eldonyo Marra Community.
  27. Moreover, the Plaintiffs have contended that Eldonyo Marra Community is comprised of Samburu ethnic group living in South Horr in Marsabit and furthermore, that the said community is comprised



of people who are consciously distinct and constitutes an organized group of users of community land in accordance with the provisions of section 2 of the *community land act* 2016.

28. Pertinently, the Plaintiffs' claim gravitates and revolves around the fact that the South Horr Eldonyo Marra Community has neither been involved nor informed of the activities that are being undertaken. In addition, it has been contended that the said community has been excluded by the Respondents and thus the Respondents are guilty of breach, violation and or infringement of the fundamental right[s] and Freedoms of the named community.
29. Having raised the foregoing issues, the Plaintiffs have thereafter enumerated various particulars of [sic] the breaches, violations and infringement of fundamental freedoms of the Plaintiffs and by extension the said community. [See paragraph 18 of the *Plaint*].
30. Suffice it to state that the Plaintiffs/Respondents have filed the instant suit in an endeavor to have South Horr Eldonyo Marra Community to be involved in the process and particularly, to have the portion of land [sic] under the occupation of the said community to be registered in their name.
31. The question that does arise is whether the Plaintiffs/Respondents herein, can purport to file and or commence a suit [sic] for and on behalf of a community that has neither been registered nor issued with a certificate of registration?
32. The answer to the foregoing question is discernible from the provisions of Section 7 of the *Community Land Act* 2016.
33. The said section is reproduced as hereunder;

7.

- (1) A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this section.
- (2) The community land registrar shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the community land management committee.
- (3) The notice shall also be given to the national county administrators and county government administrators in the area where the community land is located.
- (4) The community land registrar may use all available means of communication, including electronic media to reach the community members.
- (5) The community shall elect between seven and fifteen members from among themselves to be the members of the community land management committee as provided in section 15, who shall come up with a comprehensive register of communal interest holders.



(6) The community land management committee shall come up with the name of the community and shall submit the name, register of members, minutes of the meeting and the rules and regulations of the committee to the Registrar for registration.

34. From the provisions of Section 7(1) of the *Community Land Act* [supra] it is evident that a community claiming an interest in or right over community land shall be registered in accordance with the provisions of Section 7 of the said act. For coherence, there is no gainsaying that the said section contains elaborate subsections and paragraphs which articulate the manner in which a community desirous of registration is to make the application and to whom.
35. Moreover, the provisions of Section 7 of the *Community Land Act* [supra] proceeds to and espouses the position that it is only the community that has since been registered that is at liberty to stake and or lay a claim of a community land and not otherwise. In this regard, it was therefore incumbent upon the Plaintiffs/Respondent[s] to demonstrate first and foremost that the community in question, namely; South Horr Eldonyo Marra Community, is duly registered.
36. Nevertheless, there is no gainsaying that the Plaintiffs/Respondents herein have conceded and acknowledged that the impugned community has neither been registered or issued with a registration certificate. In the absence of registration, there is no gainsaying that the Plaintiffs cannot purport to represent an unregistered community, which is not known in the eyes of the law, taking into account the peremptory[mandatory] provisions of section 7 of the *Community Land Act* 2016.
37. To my mind, the Plaintiffs herein have no locus standi and in the absence of locus standi, the Plaintiffs cannot purport to commence and or maintain a suit for and on behalf of a non-existent entity [namely, South Horr Eldonyo Marra Community].
38. Locus standi is a threshold issue which goes to the root of the jurisdiction of the court. Where a party and or person, the Plaintiffs not excepted, are divested of locus standi, such a person cannot be heard to raise any claim before a court of law. Instructively, locus standi denotes the right of a party and or person to appear before the court. Consequently, where one does not have the right to appear, then such a person has no business propagating [sic] a claim before the court.
39. Moreover, it is not lost on this court that locus standi is the key that opens the door of justice to enable the person[s] who has been impacted upon by the action or omission complained of to approach the court and partake of the court process and the fruits arising therefrom. Absent locus standi, it is immaterial the gravity or nature of the complaint that the party seeks to espouse and or propagate.
40. The Supreme Court [the apex Court] in the case of *Mumo Matemu vs Trusted Society of Human Rights Alliance* (2014) KESC 6 (KLR) stated thus;

The submission has been made that the objection on locus standi had not been raised since the filing of the matter on 2 September, 2013. The issue of locus standi raises a point of law that touches on the jurisdiction of the Court, and it should be resolved at the earliest opportunity.

In *Mary Wambui Munene v. Peter Gichuki Kingara and Six Others*, Sup. Ct. Petition No. 7 of 2013; [2014] eKLR, this Court held (at paragraphs 68 and 69) that the question of jurisdiction is a “pure question of law,” and should be resolved on a priority basis.



41. Locus standi and the legal implications attendant thereto was also highlighted in the case of Rajesh Pranjivan Chudasama vs Sailesh Pranjivan Chudasama (2014) eKLR where the Court of Appeal stated thus;

Besides, the respondent seemed to have confused the issue of locus standi and a cause of action. In Alfred Njau & Others v City Council of Nairobi (supra) this Court had occasion to discuss the two. They stated:

“Lack of locus standi and a cause of action are two different things. Cause of action is the fact or combination of facts which give rise to a right to sue whereas locus standi is the right to appear or be heard, in court or other proceedings; ...”

The court proceeded to state:

“To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the court but to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”

42. Suffice it to underscore that the Plaintiffs herein are devoid and divested of the requisite locus standi. In any event, the significance of registration of a community before same can partake of any right and or interest of a community land was elaborated upon by the Court of Appeal in the case of Obo & 3 others vs the Community Land Registrar, North Eastern Region – Mandera & 3 others (2024) KECA 232 (KLR) where the court stated and held as hereunder;

Under section 6(1) of the [Community Land Act](#), all unregistered community land is to be held by county governments on behalf of the communities for which it is held. However, section 7(1) of the same Act provides that: A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this section.

27. The appellants’ contention, if we understood them correctly, was that they intended that their community land be converted to private lands. In this regard, section 23 of the [Community Land Act](#) provides that: Registered community land may, subject to the approval of the registered community, be converted to private land through- transfer; orb. allocation by the registered community, subject to ratification of the assembly as provided in section 21(2).
28. Section 21(2) of the said Act provides that: A registered community shall, before the conversion of registered community land into any other category of land, seek and obtain approval from two-thirds of the assembly in a special meeting convened for that purpose.
29. From the foregoing, it is clear that what gives a community the standing to claim land in that capacity is registration under the Act. In this case, the learned Judge found that there was no evidence of registration by the appellants. In their submissions, the appellants have not addressed this particular finding. We agree with the learned Judge that in the absence of registration, the appellants had no locus to make a claim for the suit land.
30. In the absence of any evidence of registration, the question that arises is whether the appellants could make out a claim for ancestral land. In our view, it was not possible for the claim for ancestral land to be made out in those circumstances. From the evidence on record presented only by PW1,



we find that there was no sufficient evidence to arrive at such a finding. In our considered view, a claim for land based on ancestry requires more than just mere allegations. While it may not be possible to adduce documentary evidence to support such a claim, one is expected to adduce evidence that goes further than mere occupation of the land in question since, in our view, mere occupation of land without more does not necessarily convert the land in question to ancestral land. Evidence ought to be adduced by the person who expects the court to find in his favour, for example, showing actions taken by a particular community which, if considered cumulatively, satisfies the tribunal that, as a fact, the occupation was based on a claim based on ancestry.

Unfortunately, no such evidence was adduced in this case. The report referred to by the appellants was purportedly made by their members and, in particular, by a person who was not called to testify. Hence, the trial court was denied the opportunity to interrogate the same in order to establish if it could pass the evidential threshold so as to justify a finding on a claim based on ancestry.

43. Next is the issue of whether the Plaintiff's claim discloses a reasonable cause of action. Barring repetition, it is worthy to recall that it is only a community that has been registered in accordance with the provisions of section 7 of the Community Land Act 2016, that is possessed of the capacity to sue and not otherwise.

44. Be that as it may, I have since found and held that the community being represented by the Plaintiffs is not registered. In the absence of registration, can the said unregistered community [which is unknown to law] purport to raise and canvass a cause of action before a court of law?

45. Before answering the question highlighted in the preceding paragraph, it is important to discern the meaning of a cause of action. In this regard, it suffices to take cognizance of the holding in the case of *Kigwor Ltd vs Samedy Traders* (2021) eKLR where the Court of Appeal stated thus;

36. In the Court of Appeal case of *Attorney General & another v Andrew Maina Githinji & Another* [2016] eKLR Justice Waki held that:-

“A cause of action is an act on the part of the defendant, which gives the plaintiff his cause of complaint.”

That definition was given by Pearson J. in the case of *Drummond Jackson vs. Britain Medical Association* (1970) 2 WLR 688 at pg 616. In an earlier case, *Read vs. Brown* (1889), 22 QBD 128, Lord Esher, M.R. had defined it as:-

“Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.”

Lord Diplock, for his part in *Letang vs. Cooper* [1964] 2 All ER 929 at 934 rendered the following definition:-

“A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”

When did the cause of action in this case arise? Put another way, when did the respondents become entitled to complain or obtain a remedy ...”

46. Back to the question of whether the Plaintiff's suit discloses a reasonable cause of action. Notably, it is only a registered community which constitutes a legal entity under the provisions of the Community Land Act. In this regard, it is only such an entity that can stake a claim to and in respect of community



land. In short, the Plaintiffs herein, who purport to represent an unregistered community group, have no known cause of action or at all.

47. In the absence of a reasonable cause of action, the Plaintiffs herein cannot approach the seat of Justice and seek to be heard. The Court can only avail opportunity to be heard to those who espouse and propagate a Cause of action known to Law. Period. [See D.T Dobbie Ltd versus Muchina [1982] eklr]
48. Flowing from the foregoing, it becomes evident that the entirety of the claims being raised by the Plaintiffs/Respondents are not only premature and misconceived, but same are also being canvassed by busybodies.

**Final Disposition:**

49. Having considered and analyzed the twin issues raised in the body of the ruling and having taken into account the caution espoused vide the decision in the case of D.T Dobbie Ltd vs Muchina (1982) eKLR, I come to the conclusion that the suit before me is premature, misconceive; and Legally untenable.
50. Consequently, and in the premises, the final orders of the court are as hereunder;
  - i. The Application dated 13<sup>th</sup> February 2025, be and is hereby allowed.
  - ii. The Plaintiffs suit vide Plaint dated 14<sup>TH</sup> November 2024 be and is hereby struck out.
  - iii. Costs of the suit and the Application be and are hereby awarded to the 1<sup>st</sup> Defendant/Applicant.
51. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ISIOLO THIS 4<sup>TH</sup> DAY OF APRIL 2025.**

**OGUTTU MBOYA**

**JUDGE.**

In the presence of

Mutuma/Mukami – Court Assistants

Mrs. Ahomo for the 1<sup>st</sup> Defendant/Applicant

Mr. John Abwuor for the Plaintiffs/Respondents

Ms. Nduta holding brief for Mr. J.M. Mwangi for the proposed Interested Parties.

