



REPUBLIC OF KENYA



**KENYA LAW**  
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**Giant View Investments Limited v Land Registrar, Kiambu & another (Land Case E207 of 2024) [2025] KEELC 5262 (KLR) (9 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5262 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
LAND CASE E207 OF 2024**

**JA MOGENI, J**

**JULY 9, 2025**

**BETWEEN**

**GIANT VIEW INVESTMENTS LIMITED ..... PLAINTIFF**

**AND**

**LAND REGISTRAR, KIAMBU ..... 1<sup>ST</sup> DEFENDANT**

**FUJIAN SHIXIN INVESTMENT AND DEVELOPERS (KENYA)**

**LTD ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is the Notice of Motion application dated 9/12/2024. It is brought under Order 51 of the Civil Procedure Rules, Section 3A of the [Civil Procedure Act](#) and Section 13 of the Environment and [Land Act](#) and other enabling laws.
2. It seeks orders:-
  - a. Spent.
  - b. That pending hearing and determination of this suit, this Honourable Court be pleased to issue a temporary injunction restraining the 2<sup>nd</sup> Defendant, its agents, servants, employees and/ or surrogates whomsoever, howsoever from selling, renting, leasing, alienating, transferring, or in any way dealing with the parcels of land known as Nguirubi/Ndiuni/515 'B' and Nguirubi/Ndiuni/516 'B'.
  - c. The costs of this application be borne by the Respondents.
3. The grounds of the application are supported by the annexed Affidavit of Samuel Ayuya Getembewho averred as follows:



1. The Plaintiff is the Bonafide proprietor of the two parcels of land known as Nguirubi/Ndiuni/515 'B' and Nguirubi/Ndiuni/516 'B' [ hereinafter referred to as "the suit properties"] having acquired them legally from the 2<sup>nd</sup> Defendant in 2022 and issued with the original title deeds by the 1<sup>st</sup> Defendant.
  2. The 1<sup>st</sup> Defendant unprocedurally, fraudulently and illegally revoked the Plaintiff's title deeds to the suit properties and reverted the ownership back to the 2<sup>nd</sup> Defendant without according the Plaintiff an opportunity to be heard.
  3. The Plaintiff is now apprehensive that the 2<sup>nd</sup> Defendant will proceed and transfer the suit properties to third parties at any time and render these proceedings nugatory.
  4. That due to the highly sensitive nature of the case, the interests of justice will be served through issuance of conservatory orders to protect the subject matter of this case pending the hearing and determination of the case.
4. In response to the Application the 2<sup>nd</sup> Defendant through its Advocate, filed a Notice of Preliminary Objection dated 14/01/2025 and raised the following objections:
1. By virtue of the decision of the High Court in *Affordable Homes Africa Ltd v Ian Henderson & 2 Others* [2004] eKLR, there was no authority from the Board of Directors to institute this suit.
  2. The deponent to the Supporting Affidavit dated 19<sup>th</sup> December 2024 and the Verifying Affidavit dated on even date does not have locus standi to swear the Affidavits as no authority was given by the Plaintiff Company authorizing the institution of these proceedings contrary to the Order 4 rule 1[4] of the Civil Procedure Rules, 2010.
  3. As held by the High Court in *Corner Holiday Inn Limited & 2 Others v Wangunyu & Another* [2007] eKLR, there is lack of evidence to show consent, approval or authorization by the Board of Directors or the Plaintiff Company contrary to Section 1501 [a] of the *Companies Act*, 2015.
  4. The said deponent acted contrary to Section 146 8[b] of the *Companies Act*, 2015.
5. Additionally, the 2<sup>nd</sup> Defendant swore a Replying Affidavit through its Director Chen Shuitong, on 18/03/2025 and averred that he opposed the application dated 19/12/2024 since it was frivolous, vexatious and an abuse of the Court process.
  6. He contends that Samuel Ayuya Getembe, opted to swear an Affidavit on behalf of the Plaintiff Company without any board resolution granting authority for the same. That it is not Samuel Ayuya Getembe who is the representative of the Plaintiff Company but instead it is Chen Shuitong who is the lawful and authorized representative of the 2<sup>nd</sup> Defendant Company, bestowed with full authority and mandated to act on behalf of the Company in all matters relating to and arising from this case. He annexed what he termed as a true copy of the authority from the other Director as CS-2.
  7. According to the averment of the 2<sup>nd</sup> Defendant herein, it is his position that the deponent of the Verifying Affidavit, one Samuel Ayuya Getembe, who claims to be a Director in both the 2<sup>nd</sup> Defendant and the Plaintiff Companies, he has been charged with forgery and fraud together with Zhou Xindong, a former Director of the 2<sup>nd</sup> Defendant Company. To support this claim he has annexed copies of the charge sheets marked as CS-3 and CS-4.



8. It is the averment of the deponent that the charges preferred referred to in paragraph 8 above against the 2 persons referred to a bid to unlawfully remove the deponent as a Director of the 2<sup>nd</sup> Defendant Company through forged documents, to exercise absolute control over the Company and its assets.
9. He further avers that vide a letter dated 3<sup>rd</sup> June 2022 written to all Directors of the 2<sup>nd</sup> Defendant Company, the said Samuel Ayuya Getembe wrote confirming among others the fraudulent activities in the Company, but more specifically confirming the alleged fraudulent transfer of the suit properties per the annexed copy of the email marked as CS-5. That this being the position, then the said Samuel Ayuya Getembe cannot be the instigator of this suit yet vide the email referred to above he confirmed that the said transfer was fraudulent.
10. He further avers that Samuel Ayuya Getembe, incorporated a separate entity, the Plaintiff Company, with the sole purpose of illegally transferring the 2<sup>nd</sup> Defendant Company's parcels of land known as Ngwirubi/Ndiuni/515 'B' and Ngwirubi/Ndiuni/516 'B' [hereinafter referred to as "the suit properties"] to themselves. To support this averment the Defendant annexed a copy of the Plaintiff's CR12 marked as CS-6.
11. It is his contention that the purported transfer of the suit properties to the Plaintiff was done:-
  - a. Without any board resolution authorizing the sale.
  - b. Without any valid consideration paid to the 2<sup>nd</sup> Defendant.
  - c. Without any evidence of a proper transaction or valid contract for the transfer of land.
  - d. With the intent to defraud the 2<sup>nd</sup> Defendant and unlawfully enrich the Plaintiff.
12. The deponent avers that the Plaintiff cannot approach this Honorable Court while engaging in fraudulent and illegal dealings to unlawfully benefit from the 2<sup>nd</sup> Defendant's assets. That the Plaintiff's attempt to use the Court process to validate an illegal transaction is an abuse of the Court's authority and therefore the Court should dismiss the Plaintiff's application for being frivolous, vexatious and a waste of the Court's time.
13. In response to the Notice of Preliminary Objection [PO] the Plaintiff filed Grounds of Opposition stating as follows:
14. The contents of the said Notice of Preliminary Objection are NOT based on pure points of law as enumerated in Mukisa Bisucuit Manufacturing Company Limited vs West End Distributors Limited [1969] E.A 696. That the Preliminary Objection dated 14/01/2025 is based on fact of who else would be the one complaining of lack of authorization?
15. That this Honorable Court has Jurisdiction to hear and determine this suit by dint of Section 13 of the [Environment and Land Court Act](#) No. 19 of 2011 [Revised Edition] [2012] Laws of Kenya.
  16. That the subject matter [substratum] before this Honorable Court is parcel of land known as Ngwirubi/Ndiuni/515 'B' and Ngwirubi/Ndiuni/516 'B' situated within Kiambu County, hereinafter referred to as "the suit properties".
17. That the Notice of Preliminary Objection filed herewith is obscured by factual details concerning delivered judicial precedents concerning technicalities based on interpretation of Order 4 rule 1[4] of the Civil Procedure Rules in Kenya which precedents besides being old legal interpretation dating before 2010 which currently are no longer good law, and there are good and better judicial precedents interpreting the Order 4 Rule 1[4] of the Civil Procedure Rules since 2010.



18. Thus the Notice of Preliminary Objection filed herewith is Impotent as in the case of Livestock Research Organisation vs Okoko & Another [Civil Appeal No. 36 of 2021 [2022] KEHC 3302 [KLR] [29<sup>th</sup> June, 2022 [Ruling] here learned Justice Aburili at paragraph 50 of his Ruling [as he then was] while dealing with a case where a Director’s power to authorize the filing of an application on behalf of a Company had been challenged the good Judge stated that it was a matter of fact and the Objector must present any material or Affidavit from the other Directors denying the authority of one Director as a Director in the Company subject of proceedings.
19. That Justice Aburili in the Ruling above mentioned heavily relied on the good law and adhered to the principle of stare decisis as set in the case of Fub eco China Fushun vs Naiposha Company Limited & 11 Others [2014]eKLR where Justice Gikonyo [as he was] while dealing with a case where a Director’s powers to authorize the filing of an application on behalf of a Company had been challenged, stated that:

“ ... In the case before me, Caroline Wairimu Kimemia is a Director of the Defendant Company and she duly authorized the Advocates on record to commence this Application. That fact is not denied and I am surprised the person laying the objection is the Plaintiff and not the Defendant Company. The Plaintiff has also not presented any material or affidavit from the other Directors denying the authority of Caroline Wairimu Kimemia as a Director in the Defendant Company. As such, I do not think the Court is in any position to dispute the authority of Caroline Wairimu Kimemia or the instructions to the advocate on record to defend the interest of the Company...”

It follows therefore, that in the absence of any evidence that the deponent was never authorized by the appellant corporation to swear that Verifying Affidavit and/or to instruct counsel on record to file suit on its behalf , I find and hold that the trial Court erred in dismissing the appellant’s suit for failure to with the mandatory provisions of Oder 4 Rule 1[4] ....”

20. He also stated that the Notice of Preliminary Objection NEITHER serves as a shield for the 2<sup>nd</sup> Defendant as the Originator of the Objection NOR a profligate against deployment of time and other resources of the Claimant in any way whatsoever and this position is enumerated by the main question of WHO ELSE WOULD BE THE ONE COMPLAINING OF LACK OF AUTHORIZATION??? See the Court of Appeal decision in the case of Spire Bank Limited vs Land Registrar & 2 Others [2019]eKLR where the Court of Appeal appreciated the intention behind Order 4 rule 1 [4] of the Civil Procedure Rules was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. A written authority is not mandatory where the Director was safeguarding the interests of the Corporation.
21. That the Notice of Preliminary Objection filed by the Respondent herein IS NOT on a point of law that is straight forward and the same is obscured in factual details, that cannot be proved and therefore important to be entertained as enumerated in the binding precedent in Arthi Highway Developers Limited vs West End Butchery Limited & 6 Others [2015] eKLR where the Court of Appeal cited the persuasive case of United Assurance Co. Ltd v Attorney General: SCCA NO.1 of 1998 where the Supreme Court of Uganda held that;

“ ... Any Director, who is authorized to act on behalf of the Company, UNLESS the contrary is shown, has the powers of the board to act on behalf of that Company.”



22. He therefore stated that the Preliminary Objection must be strictly abandoned considering the recent interpretation in the above mentioned precedents.
23. The parties agreed to canvass the application by way of written submissions. I have considered the submissions filed by both parties.

### **Analysis and Determination**

24. The main issue for determination is whether the Preliminary Objection and instant Application are merited and whether the application dated 9/12/2024 should be entertained. I will start by considering the Preliminary Objection.
25. The parameters of consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the Court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696. At page 700 Law JA stated:

“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 the contract giving rise to the suit to refer the dispute to arbitration.”
26. At page 701 Sir Charles Newbold, P added:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually 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 ....”
27. For a Preliminary Objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid Preliminary Objection should, if successful, dispose of the suit.
28. The 2<sup>nd</sup> Defendant impugns the capacity of the Plaintiff herein who is said not to have the authority to bring this particular application before the Court. The issue of the legal capacity of a party in any legal proceeding is critical point of law that goes to the root of any suit. A party must have capacity to sue and or be sued.
29. In the case of *Oraro v Mbaja* [2005] 1 KLR 141 the Court held as follows:

“...A “Preliminary Objection” correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion, which claims to be a Preliminary Objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary point .... Anything that purports to be a Preliminary Objection must not deal with disputed facts, and it must not itself derive



its foundation from factual information which stands to be tested by normal rules of evidence....” [Emphasis added].

30. And in the case of *Law Society of Kenya v Commissioner of Lands & Others*, Nakuru High Court Civil Case No.464 of 2000, the Court stated as follows:-

“Locus Standi signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of *Alfred Njau and Others v City Council of Nairobi* [1982] KAR 229, the Court also held that:-

“The term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings.”

31. Therefore, locus standi means the right to appear before and be heard in a Court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.
32. The 2<sup>nd</sup> Defendant avers that the Plaintiff lack locus standi to institute the suit. This is because according to the 2<sup>nd</sup> Defendant, the Plaintiff does not have the authority of the other Directors to institute the Suit. I have taken time to consider the documents filed by the Plaintiff and noted regrettably that indeed there is no authority from the Board authorizing the Plaintiff to institute the suit.
33. I note that from the CR12 filed by the Plaintiff there are three Directors but there is no authority to act on behalf of the Company by Samuel Ayuya Getembe. To support this averment the 2<sup>nd</sup> Defendant has annexed a copy of CR 12 dated 15/02/2022 and marked as B-7 also showing three Directors including the Plaintiff's name which appears in the list of Directors. He has also attached authority to act dated 26/02/2025 stating that the 2<sup>nd</sup> Defendant as Director and Shareholder has authority to act for the 2<sup>nd</sup> Defendant.
34. It is not in dispute from the pleadings, that the suit land belongs to a Limited Liability Company. The Plaintiff has also stated this fact at paragraph 2 of his Supporting Affidavit sworn on 19/12/2024. It is therefore an undisputed fact.
35. This being the case, it follows that the Limited Liability Company being a legal person can sue and be sued in its own name. The Court of Appeal in the case of *Amin Akberali Manji & 2 Others v Altaf Abdulrasul Dadani & Another* [2015] eKLR stated on the issue of locus in relation to a Limited Liability Company that:-

“....The centuries-old case of *Salomon v Salomon Company Limited* [1895-99] All ER 33 laid that principle to rest. There is also no argument that the proper Plaintiff in any proceedings or action in respect of a wrong done to the Company, is the Company itself. Again, that was established over 160 years ago in *Foss v Harbottle* [1843] 67 ER 189 [the Foss case], popularly referred to in Company law as “the rule in *Foss v. Harbottle*” [the rule]. The rule was restated by Jenkins L. J. in the case of *Edwards v Halliwell* [1950] All ER 1064 as follows:-

“The rule in *Foss-v-Harbottle*, as I understand it, comes to no more than this. First, the proper Plaintiff in an action in respect of a wrong alleged to be done to a Company or association of persons is prima facie the Company or the association of persons itself. Secondly, where the alleged wrong is a transaction which might be made binding on the



Company or association and on all its members by a simple majority of the members, no individual member of the Company is allowed to maintain an action in respect of that matter for the simple reason that if a mere majority of the members of the Company or association is in favour of what has been done, then cadit quaestio; or if the simple majority challenges the transaction, there is no valid reason why the Company should not sue.”

36. Essentially, two principles were established in this case that is the "proper Plaintiff principle" and "the majority principle". In the first principle, any wrong done to the Company may be vindicated by the Company alone. On the second principle, if the alleged wrong can be confirmed or ratified by a simple majority then a shareholder is barred from bringing an action. That therefore means any action by minority shareholders is barred. The Court in Kenya has also cited the Foss case in several cases such as the cases of Rai and Others v Rai and Others [2002] 2 EA 537 and Grace Wanjiru Munyinyi & Another v Gedion Waweru Githunguri & 5 others [2011] eKLR .
37. In a situation where the Company intends to institute a suit, a resolution has to be made to that effect. One or more Directors may be authorized to plead on behalf of the Company. The authorization must be in writing.
38. In the instant suit the Plaintiff claims to have acquired the suit properties for the 2<sup>nd</sup> Defendant in the year 2022 and upon registration of the transfers and payment of the requisite charges the 1<sup>st</sup> Defendant issued the Plaintiff with the original title deed to the suit property in the Plaintiff's name as per annexure marked as SAG-3 which is the transfer forms.
39. However the Plaintiff avers that he intended to transfer the suit properties to another Company but it discovered that there was a Gazette Notice number 4949 dated 14/4/2023 by the 1<sup>st</sup> Defendant which reverted back the suit properties to the 2<sup>nd</sup> Defendant having issued a 30 day notice period within which the 1<sup>st</sup> Defendant received no objection about reverting properties back to the 2<sup>nd</sup> Defendant as per the annexure SAG-5.
40. The Plaintiff's claim is that there was no consultation with the Directors before the 1<sup>st</sup> Defendant revoked its titles. That handling of the revocation of titles process was illegal, unprocedural, unjust and unfair. He is apprehensive that the 2<sup>nd</sup> Defendant will sell the suit properties to third parties.
41. Despite the Plaintiff's claim he has not attached any document to show that he is authorized to represent the Company and is therefore allowed to institute this suit. His claim is stemming from the fact that he is a Director but has not provided any documents to lend credence to having been authorized through a resolution to institute the instant suit. Which makes me ask the question as to who is the Plaintiff acting for since as a legal person the Plaintiff can sue and be sued but through its authorized officers. This can only happen once a Board resolution is made.
42. Order 4 Rule 4 of the Civil Procedure Rules dictates so. It provides as follows:-

“Where the Plaintiff is a Corporation, the Verifying Affidavit shall be sworn by an officer of the Company duly authorized under the seal of the Company to do so.”
43. To the extent that the Plaintiff acknowledges the existence of the Company and that it was the one that owns the suit land in question, and further that, it entered into a sale agreement and purchased the suit properties for the 2<sup>nd</sup> Defendant and not for the Plaintiff, then the Plaintiff having stated at paragraph 3 of the Supporting Affidavit this fact, it follows therefore that the Plaintiff has no claim in the agreement of having purchased the suit property. For that reason, the Plaintiff lacks locus standi



to institute the suit. The objection raised by the 2<sup>nd</sup> Defendant has merit, it is allowed and the suit is hereby struck out. For avoidance of doubt, the Application dated 19/12/2024 is also struck out.

44. Costs follow the event. This suit is and has been struck out. The Plaintiff shall bear the costs arising therefrom.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 9<sup>TH</sup> DAY OF JULY 2025 VIA MICROSOFT TEAMS.**

.....

**MOGENI J**

**JUDGE**

In the presence of:

Mr. Alinyo for the Plaintiff

1<sup>st</sup> Respondent – Absent

Mr. Thina holding brief for Mr. Mukuna for the 2<sup>nd</sup> Respondent

Mr. Melita – Court Assistant

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**MOGENI J**

**JUDGE**

