



**Keiyian Farmers Co-operative Society v Jomo Kenyatta University of Agriculture & Technology
(Environment & Land Case E011 of 2022) [2024] KEELC 632 (KLR) (13 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 632 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E011 OF 2022
EM WASHE, J
FEBRUARY 13, 2024**

BETWEEN
KEIYIAN FARMERS CO-OPERATIVE SOCIETY PLAINTIFF
AND
**JOMO KENYATTA UNIVERSITY OF AGRICULTURE &
TECHNOLOGY DEFENDANT**

RULING

1. The Respondent (hereinafter referred to as “the Applicant”) filed a Preliminary Objection dated 3rd of November 2023 (hereinafter referred to as “the present P.O”) seeking for the Plaint dated 22.08.2022 (hereinafter referred to as “the present Plaint”) to be struck out for the following reason; -
 - a. That the Plaintiff lacks the locus standi to institute the suit herein against the Defendant given that it is not a party to the Memorandum of Understanding entered between the Defendant and Keiyan Group Ranch on 25th of July 2013.
2. The present P.O was duly served on the Plaintiff (hereinafter referred to as “the Respondent”).
3. The Court thereafter directed that the present P.O to be canvassed by way of written submission.
4. The Applicant then filed their submissions on the 06.12.2023 while the Respondent filed theirs on the 11.12.2023.
5. The Court has duly perused the present P.O together with the submissions by the parties herein and identifies only one issue for determination.
6. The main issue for determination is whether or not the Respondent (Plaintiff) has the locus standi to institute any legal proceedings against the Applicant (Defendant) on the basis of the Memorandum of Understanding executed on the 25th of July 2013 (hereinafter referred to as “the MoU”).



7. The Applicant's position is that the parties in the MoU are Keiyian Group Ranch And Jomo Kenyatta University Of Agriculture & Technology.
8. However, the Respondent (Plaintiff) herein is Keiyian Farmers Co-operative Society Limited.
9. In other words, the entities known as Keiyian Group Ranch And Keiyian Farmers Co-operative Society Limited are two separate and distinct legal entities.
10. According to the Applicant (Defendant), there is no existing relationship emanating from the MoU under litigation connecting them to the Respondent (Plaintiff) in this suit.
11. In essence therefore, there is no legal basis and/or capacity for the Respondent (Plaintiff) herein litigate any legal issues against the Applicant (Defendant) on the terms and conditions contained in the MoU.
12. In response to the above submissions, the Respondent (Applicant) admitted that indeed the entity that executed the MoU was Keiyian Group Ranch .
13. However, Keiyian Group Ranch was registered under the Land (Group Representative) Act, Cap 287 which has since been repealed and replaced by the [*Community Land Act*](#) No. 27 of 2016.
14. In essence therefore, Keiyian Group Ranch ceased to exist upon the Land (Group Representative) Act, Cap 287 being repealed.
15. The Respondent (Plaintiff) entity was therefore registered in place of Keiyian Group Ranch and has the authority and mandate of the Keiyian Group Ranch to litigate any issues relating to the MoU.
16. Further to that, the Respondent (Plaintiff) was of the view that the present P.O does not meet the threshold established in the case of Mukhisa Biscuits Manufacturing Co.limited-versus- West End Distributors Ltd (1969) EA 696 and should therefore be dismissed.
17. As correctly stated by the Respondent (Plaintiff), the principles that guide Courts in determination of Preliminary Objections was settled in the celebrated case of Mukhisa Biscuits Manufacturing Co. Ltd-versus- Westend Distributors Ltd (1969) EA 696 which stated as follows; -

“----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 a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued 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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

18. The understanding of the above authority is that a Preliminary Objection can only be entertained where the facts are assumed not to be in dispute and the issue for determination is purely on a point of law.



19. Applying this understanding about a Preliminary Objection to the present one before the Court, it is important to point out the facts which are not in dispute as contained in the pleadings by the parties.
20. First and foremost, it is not in dispute that the Plaintiff herein is Keiyian Farmers Co-operative Society Limited.
21. Secondly, it is not disputed that there is a Memorandum of Understanding signed on the 25.07.2023 between Keiyian Group Ranch and Jomo Kenyatta University Of Agriculture & Technology.
22. Thirdly is that the Respondent (Plaintiff) herein is litigating against the Applicant (Defendant) on the basis of the Memorandum of Understanding signed on the 25.07.2013.
23. On the other hand, the point of law is that the Respondent (Plaintiff) herein does not have any locus standi to institute any proceedings against the Applicant (Defendant) on the strength of the MoU.
24. An issue of locus standing is one that raises a point of law as envisaged in the case of Mukhisa Biscuits Manufacturing Ltd-versus- Westend Distributors Ltd.
25. The point of law to be determined is whether the Respondent (Plaintiff) has the locus standi to file the present Plaint against the Applicant (Defendant).
26. Locus standi is defined in Black's Law Dictionary, 9th Edition (page 1026) as "the right to bring an action or to be heard in a given forum".
27. In the case of Alfred Njau & Others-versus- City Council Of Nairobi (192) KAR 229, the Court stated as follows; -

“ 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”.
28. In the present suit, who is the correct party to approach and be heard by this Court as regards the MoU.
29. Is it Keiyian Group Ranch or Keiyian Farmers Co-operative Society Limited?
30. A relook at the MoU confirms that the party who executed the MoU with the Applicant (Defendant) was Keiyian Group Ranch .
31. Keiyian Group Ranch is described as body entity incorporated under the Land (Group Representative) Act, Cap 287.
32. On the other hand, the present Plaint in Clause 1 described the Respondent (Plaintiff) Keiyian Farmers Co-operative Society Limited as a body incorporated under the *Co-operative Societies Act*, Cap 490.
33. Clearly therefore, the entity known as Keiyian Group Ranch and Keiyian Farmers Co-operative Society Limited are entities incorporated by different Statutes.
34. It is true that the Land (Group Representative) Act, Cap 287 was repealed and replaced by the *Community Land Act*, No 27 of 2016.
35. Consequently therefore, if Keiyian Farmers Co-operative Society Limited was a successor in title to Keyian Group Ranch, then Keiyian Farmers Co-operative Society Limited should have been incorporated through the provisions of the *Community Land Act*, No. 27 of 2016.
36. In essence therefore, this Court is of the considered finding that Keiyian Farmers Co-operative Society Limited is not a successor in title of Keiyian Group Ranch as submitted by the Respondent (Plaintiff).



37. Having arrived at this finding hereinabove, is there any privity of contract between the Respondent (Plaintiff) and the Applicant (Defendant) as regards the MoU under litigation?
38. In the case of Agricultural Finance Corporation V Lendetia Ltd (supra), the Court made the following determination; -
- “As a general rule a contract affects only the parties to it, it cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract.”
39. In another case of Savings & Loan (k) Limited-versus- Kanyenje Karangaita Gakombe & Another (2015) eKLR, the Court of Appeal expressed itself in the following manner; -
- “In its classical rendering, the doctrine of privity of contract postulates that a contract cannot confer rights or impose obligations on any person other than the parties to the contract. Accordingly, a contract cannot be enforced either by or against a third party. In Dunlop Pneumatic Tyre Co Ltd V Selfridge & Co Ltd [1915] AC 847, Lord Haldane, LC rendered the principles thus:
- “My Lords, in the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it.”
40. Based on the cited authorities hereinabove, it is clear that Keiyian Farmers Co-operative Society Limited was not a party to the MoU with the Applicant (Defendant) and therefore cannot institute any legal proceedings based on the terms and conditions therein.
41. The Respondent (Plaintiff) in this suit has no locus standi to file the present Plaintiff against the Applicant (Defendant) herein.

Conclusion

42. In conclusion therefore, this Court hereby makes the following Orders in determination of the Preliminary Objection dated 3rd of November 2023; -
- A. The preliminary objection dated 03.11.2023 is allowed.
- B. The plaint dated 22.08.2022 be and is hereby struck out forthwith.
- C. The plaintiff will bear the costs of the suit and the preliminary objection dated 03.11.2023.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 13TH FEBRUARY 2024.

EMMANUEL.M.WASHE

JUDGE

In the presence of:

Court Assistant: Mr. Ngeno

Advocate For The Applicant: Mr. Kinyanjui



Advocate For The Respondent: Mr. Ochwangi

