



**Taireni Association of Mijikenda v Chakama Ranching Limited & 7 others;
National Land Commission & 2 others (Interested Parties) (Environment &
Land Petition 15 of 2021) [2023] KEELC 18551 (KLR) (7 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18551 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION 15 OF 2021**

MAO ODENY, J

JULY 7, 2023

**IN THE MATTER OF: ARTICLES 1, 2, 3, 6,10, 22, 23, 25,27, 28, 29, 40, 47, 52, 56,
60, 61, 62, 63, 64, 76, 68, 69 & 258 OF THE CONSTITUTION OF KENYA 2010**

**IN THE MATTER OF: THE TRUST LAND ACT, LAND ADJUDICATION
ACT, COMMUNITY LAND ACT NO. 27 OF 2016, LAND REGISTRATION
ACT OF 2012 & THE NATIONAL LAND COMMISSION ACT**

AND

IN THE MATTER OF: CHAKAMA, PLOT NO. 13472/1 & 13472/3

AND

IN THE MATTER OF: CHAKAMA, PLOT NO. 13472/2

BETWEEN

TAIRENI ASSOCIATION OF MIJIKENDA PETITIONER

AND

CHAKAMA RANCHING LIMITED 1ST RESPONDENT

NEW AGRICULTURAL LIMITED 2ND RESPONDENT

**CABINET SECRETARY, MINISTRY OF LAND & PHYSICAL
PLANNING 3RD RESPONDENT**

DIRECTOR OF LAND ADJUDICATION & SETTLEMENT .. 4TH RESPONDENT

**CABINET SECRETARY, MINISTRY OF INTERIOR & COORDINATION OF
NATIONAL GOVERNMENT 5TH RESPONDENT**

COUNTY GOVERNMENT OF KILIFI 6TH RESPONDENT

THE CHIEF LAND REGISTRAR 7TH RESPONDENT



ATTORNEY GENERAL 8TH RESPONDENT

AND

NATIONAL LAND COMMISSION INTERESTED PARTY

CONTINENTAL CREDIT FINANCE LIMITED INTERESTED PARTY

CHAKAMA LAND ACQUISITION PROJECT INTERESTED PARTY

JUDGMENT

1. The Petitioner filed the instant petition dated 13th August 2021 seeking the following;
 - a) An order of declaration that the 3rd and 7th Respondents did not comply with *the Constitution* and the law when they alienated part of the community land and issued certificate of proprietorship on the said alienated land to the 1st respondent and registered it as L.R No. 13472/1
 - b) An order of declaration does issue that the 4th and 5th respondents have no power under *the constitution* and the law to commence and declare any section of trust land as an adjudication section unless they received the request from the 6th Respondent
 - c) An order of declaration does issue that the adjudication of the suit land which was commenced and materialized by the 4th and 5th respondents are null and void.
 - d) An order of injunction does issue to compel the 7th respondent to nullify the registration of part of the suit land registered as L.R No. 13472/1 in the name of the 1st respondent.
 - e) An order does issue to nullify the record of the adjudication carried on part of the suit land in the parcel registered as L.R no. 13472/1, either held by the 4th Respondent or already transmitted to the 7th respond L.R No, 13472/2ent for registration
 - f) An order does issue to nullify all or any title deed which has been issued by the 7th respondent in respect of the said adjudication
 - g) A permanent order of injunction does issue to prohibit the 7th respondent, its agents or servants from doing anything on the said part of the suit land registered as L.R No. 13472/1
 - h) A permanent order does issue to restrain any person from subdividing, registering, mortgaging, leasing, selling any part of the suit land formerly registered as L.R No, 13472/2
 - i) An order of injunction to issue to compel the 7th respondent to consolidate the whole of the suit land formerly registered as L.R No, 13472/1 and L.R No, 13472/2 and remit the same to the 6th respondent for adjudication and registering in the name of individual members of the community.



- j) Any other relief the court may deem fit to grant.
- k) Cost of the petition be borne by the respondents.

Petitioner's Case

2. The Petitioner's case is that they are a registered Association under the [Societies Act](#), Laws of Kenya and have filed this Petition on its behalf and of the communities who have claimed the rights of ownership of the suit land, the nature and extent of breaches of the law governing grants and disposition of trust lands, the actual infringements, violations, denials, threats to their community land and property rights as provided in [the constitution](#).
3. The Petitioner also state that petition relates to the whole of the Chakama ranch, with registered parcels namely:
 - a) Land Reference No. 13472/1 and Survey Plan No. 17503/1 and registered in the name of Chakama Ranching Company Limited, with successive sub divisions giving rise to 13472/3, 13472/4 and subsequent to the adjudication, now challenged.
 - b) Land Reference No. 13472/2 and Survey Plan No. 17503/1 and successive subdivisions giving rise to L. R. No. 13472/5, 13472/6 and any other
4. The Petitioner relied on the affidavits of Peter Poñda Kadzeha sworn on 13th August, 2021, and a Supplementary Affidavit sworn on 3rd November, 2021, affidavit in support of the Petition.
5. It was the Petitioner's case that the state has disinherited the original communities who are the first settlers in the expansive and continuous land which is known as Chakama Ranch by way of dispositions or grants to private persons at the expense of the communities who have had historical and central ownership of the suit land.
6. The Petitioner further stated that the 4th Respondent wittingly and without adhering to the [Land Adjudication Act](#), embarked on adjudication of some parts of the suit land to settle some people without considering the communities already in occupation since time immemorial and their interests as a whole.
7. Additionally, that the process or the procedures which the State or the County Council or its agencies adopted to acquire some part of Chakama Ranch on around 1984 and to lease it by way of grant to the 1st Respondent did not comply with the provisions of [the Constitution](#) 1984, Trust [Land Act](#) and Registered [Land Act](#) (now repealed). Further, that the land known as Chakama Ranch was never under the British protectorate and by operation of the repealed constitution the government had no residual power and authority to acquire the said land or make any legal claim upon it thus infringements of the rights protected under [the constitution](#).

1st Respondent's Case

8. The 1st Respondent filed a Replying Affidavit sworn by Alfred Mukare Mwathethe the Secretary of Chakama Ranching Co. Ltd stating that from a historical point of view the location of ranches within the coast province were hived out in areas which were basically semi-arid and were not considered fit for human habitation. He deponed that the 1st Respondent is a registered Limited Liability Company



which was registered in 1976 which applied to be granted the subject ranch and were issued with a document of title in 1985.

- a) Further that by the time the 1st Respondent was granted the land it was uninhabited until late 1990's when a portion of land was invaded and constructed some temporary structures and settled there. The government then bought a portion of the/1 and 13472/ ranch and settled them thus the land was subdivided creating L.R No. 13472 The Petitioner does not have any demonstrable legal or beneficial title to the said suit land known as L.R 13472/1 and L.R 13472/2 and accordingly the petitioner has no locus standi to institute any suit seeking any relief in connection with them.
- b) The Applicants have not met the threshold for granting of conservatory orders and/or the prayers sought against the Respondents.
- c) The constitutional rights alleged to have been breached are not absolute but limited and the petitioners have not demonstrated that they are deserving of the remedies they are seeking.
- d) That a lawful adjudication exercise done pursuant to the statutory provisions under the Adjudication Act cannot amount to violation of an individual entity and proof of ownership is cardinal when determining violation of the right to property.
- e) That the Petition is imprecise regarding the rights violated as it makes general references to omnibus provisions of the law thus violating the criteria set out in *Annarita Karimi Njeru v R* [1979].
- f) That the Petition is not ripe as the Petitioner has not demonstrated that it has exhausted all the known and available remedies under the Adjudication Act
- g) The petition is devoid of merit as the claims of historical injustice do not satisfy the criteria provided for under Section 15 of the [National Land Commission Act, 2015](#).

9. It was the 1st Respondent's case that it was part of the said settlement process and after the squatters were issued with title documents in respect of their portions they sold the same and moved into the remaining portion owned by the 1st Respondent.

3Rd 4Th 5Th 7Th And 8Th Respondents' Case

10. In response, the 3rd, 4th, 5th, 7th and 8th Respondents filed grounds of opposition anchored on the following grounds;

Petitioner's Submissions

11. Counsel for the Petitioner listed the following issues for determination;

- a) Whether the petitioner has locus standi to institute the instant petition and whether the petition meets the threshold as set out in the case of *Anarita Karimi Nieru v R*
- b) Whether the grant issued to the 1st respondent on 1st December, 1984 by the President of the Republic of Kenya was unlawful and unlawful?



- c) Whether the adjudication of the parcel on the suit land registered as L. R. No. 13472/1 in the name of the 1 respondent was unconstitutional and unlawful?
 - d) Whether the Petitioner can be granted the reliefs sought on the petition?
12. Counsel reiterated the averments in the affidavits and submitted that the suit land has been under continuous use and occupation by communities on or before 1948 and that the petitioner challenges the manner in which the said part of the community land was leased out to the 1st respondent and registered in its name.
 13. It was counsel's further submission that the actions of the 3rd, 6th, 7th and 8th Respondents has deprived the community the right to engage in economic and social activities as they do not own the land infringing their constitutional rights.
 14. Counsel additionally submitted that this is a public interest litigation and in instituting the instant Petition the Petitioner relies on the constitutional description of Article 260 of *the Constitution* of Kenya 2010 and has not at any time pleaded that it has beneficial interest. That the Petitioner has locus standi to institute these proceedings and cited the case of Mumo Matemu v Trusted Society of Human Rights and Annarita Karimi Njeru v R [1979] and Article 22 (3) of *the Constitution*.

Respondent's Submissions

15. Counsel for the 1st Respondent submitted that the Petitioner is not corporate entity and therefore cannot institute these of proceedings in its own name and can only do so through its officials by way of a representative proceeding and cited the cases of Kipsiwo Community Self Help Group v Attorney General & Others [2013] eKLR and Kenya National Chamber of Commerce & Industry (Muranga Chapter) & 2 Other v Delmonte Kenya Ltd & 3 Others. Counsel therefore submitted that the petition is incompetent as there is no way a party with no capacity to commence any proceedings can institute and sustain competent proceedings.
16. Counsel for the 3rd, 5th, 6th and 7th Respondents submitted that the Petitioner has failed to satisfy the threshold of specify as espoused in Annarita Karimi Njeru v R [1979].
17. It was counsel's further submission that there is no evidence to indicate that any person or the members were discriminated by the Respondents on any of the grounds provided under Article 27 of *the Constitution* and relied on the case of Mohamed Abduba Dida v Debate Media Limited & Another [2018] eKLR.

Analysis And Determunation

18. I have considered the pleadings on record, the submissions by the parties as well as cases relied upon. The issue for determination is whether the petitioner has locus standi to institute the instant petition. The issue of jurisdiction and locus standi to institute a suit must be dealt with first to confirm whether a person has a right to be heard, right to appear in court.
19. In the case of Law Society of Kenya v Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000, 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”.

20. 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.

21. The 1st Respondent challenges the Petitioner’s ability to bring the instant suit as it is a society. In 1802 Lord Eldon opined as follows in ‘Lloyd V. Loaring (1802, CH.) 6 VES. 773, 777. Accord: Pipe V. Bateman (1855:

“It is the absolute duty of Courts of Justice not to permit persons, not incorporated, to affect to treat themselves as a corporation upon the Records I desire my ground to be understood distinctly. I do not think, the court ought to permit persons, who can only sue as partners, to sue in a corporate character; and that is the effect of this bill.”

22. A similar position was taken in other cases: Seely v Schenck & Denise quoted with Approval In Richardson v Smith & Co. [1885] 21 FLA. 336, 341

“Thus, a society is a number of persons taking to themselves a fictitious name, and by that name, protruding themselves into a court of justice.... But by this assumed name, they cannot appear in a court of justice. They can neither sue nor be sued by it. This is a privilege appertaining to corporate bodies only ... To sue and be sued, in their corporate name, is one of the great privileges granted to corporate bodies. It can only be authorized by statute. It is too plain for any argument that the unincorporated societies in their own name cannot be so sued. The right to sue and be sued is a corporate franchise.”

23. In the descriptive part of its petition, the petitioner describes itself as an association registered under the *Societies Act*, Laws of Kenya which is undisputed. The question is whether the Petitioner has the capacity to sue or be sued?

24. Constitution Article 22 provides as follows;

- (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by--
 - (a) a person acting on behalf of another person who cannot acting their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.
- (3) The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that--
 - (a) the rights of standing provided for in clause (2) are fully facilitated;



- (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;
 - (c) no fee may be charged for commencing the proceedings;
 - (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and
 - (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.
- (4) The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.
25. The Petitioner is not envisaged in the interpretation of a person as provided for under Article 260 of *the Constitution* and neither does it fall under Article 22 which deals with the infringement of the bill of rights.
26. In the case of *Keekonyokie Farmers Cooperative Society Ltd v Hon. Engineer Peter Mositet & 18 others*; Nairobi ELC Suit No.936 of 2014 where Nyamweya J upheld the preliminary objection and stated as follows: -
- “...the effect of the liquidation order issued on 6th August 2013 is in this respect to be found in Section 61, 62, 63 and 65 of the Act which provide as follows.....the two legal effects in the said provisions that are relevant to the capacity of the plaintiff to bring the suit and application herein are that firstly, the plaintiff has ceased to exist as a corporate body, and therefore lacks privileges and attributes that attached to it as a corporate body under Section 12 of the Cooperative *Societies Act* to hold movable and immovable property, enter into contracts and/or to sue and be sued in its name. Secondly, all the property of the plaintiff by virtue of Section 65 of the Act now vests in the liquidator appointed pursuant to the liquidation order in Gazette Notice No.11916 published on 6th August 2013, and the plaintiff has no interests in or capacity to deal with the same.”
27. In the case of *Mavoko Land Development Company Limited v Mlolongo Catholic Church & 2 others* [2022] eKLR where the court held that it is trite that a society registered under the *Societies Act*, including a religious organizations, can only sue or be sued through its officials.
28. Similarly, in the case of *Kisumu ELC Case No 225 of 2014, Evans Otiende Omollo v School Committee Union Primary School and Another* [2015] eKLR Kibunja J stated that; -
- “The parties described as Defendants herein do not exist as they are not legal entities under the *Basic Education Act* capable of being sued or to defend this suit. He further stated at paragraph 5 that 'having found that the four named defendants are nonexistent as entities capable of being sued, the court finds that to allow the suit as filed to continue to further hearing would be an abuse of the courts' process”
29. The upshot is that the Petitioner has no locus standi and the Petition is therefore dismissed with costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 7TH DAY OF JULY 2023.

M.A. ODENY



JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

