



**Andu Akuru A Twiga CBO v Chief Land Registrar; National Land Commission (Interested Party)
(Environment & Land Case E013 of 2023) [2023] KEELC 20419 (KLR) (4 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20419 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E013 OF 2023**

JA MOGENI, J

OCTOBER 4, 2023

BETWEEN

ANDU AKURU A TWIGA CBO APPLICANT

AND

CHIEF LAND REGISTRAR RESPONDENT

AND

NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

1. This Ruling is in respect to the preliminary objection dated June 15, 2023 filed by the Respondent which seeks to strike out the entire suit on the following grounds: -
 1. That the suit is a non-starter as the applicant has no legal capacity to institute this suit.
 2. Directions were given on June 26, 2023 wherein the parties were to canvass with the preliminary objections by way of written submissions. By the time of writing this Ruling, none of the parties had duly submitted.

Analysis and Determination

3. I have carefully considered the preliminary objection as well as the pleadings filed in this matter. The issue that suffices for determination is whether the preliminary objection is merited.
4. It is trite law that a preliminary objection should always be on a pure point of law. In *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd (1969) EA 696*, Law JA stated that:

' So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings and which objection point



may dispose the suit', and further that 'A preliminary objection raises a pure point to 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.'

5. The meaning of a preliminary objection was further given in the case of [*Oraro v Mbajja \(2005\) eKLR*](#) where JB Ojwang J (as he then was) stated as follows:

' I think the principle is abundantly clear. A Preliminary Objection, correctly understood is now well identified as, and declared to be the point of law which must not be blurred with factual detail liable to be contested an in any event, to be proved through the process of evidence.

Any assertion which claims to be a preliminary objection, and 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. I am in agreement... that where a court needs to investigate facts, the matter cannot be raised as a preliminary point.'

6. Also, in the case of Supreme Court of Kenya in the case of [*Aviation & Allied Workers Union Kenya vs Kenya Airways Ltd & 3 Others \[2015\] eKLR*](#) the Court stated as follows: -

' Thus, a preliminary objection may only be raised on a 'pure question of law'. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts.'

7. Guided by the above cases, I find that a preliminary objection on locus standi or lack of it is a point of law. I agree with the Respondent that lack of locus standi on the part of the Applicant if proved would dispose the suit.

8. The definition of locus standi was given in the case of [*Law Society of Kenya Vs Commissioner of Lands & Others, Nakuru High Court Civil Case No 464 of 2000*](#). In the case, the Court held: -

' 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 Vs 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.'

9. The Respondent's objection is that the applicant has no legal capacity to institute this suit. This suit was filed by way of Originating Summons by Andu Akuru A Twiga CBO. The Applicant has described itself in the Originating Summons Application as 'a registered community-based organization based in Ruiru'. Indeed, the certificate of registration attached to the OS Application shows that the Applicant was duly registered as a Community Based Organization on November 26, 2021 under replacement certificate no RSC/635/CBP/2019.



10. The question of the legal personality of a Self -Help Groups was considered by the court in [Kipsiwo Community Self Help Group vs Attorney General And 6 Others \[2013\] eKLR](#) where the court stated thus:

' It is clear that Self- Help Groups are not incorporated bodies. In fact, I know of no law that recognizes them or incorporates them. They were probably the brain-child of administrators who at times had to come up with a tool to identify specific groups of people that needed assistance, or needed to undertake projects together. They seem to have helped harness resources at community level. The only problem is that the Government has not put in place any legal framework under which they can be registered and managed.'

11. Having determined that the Applicant is an entity such as a Community Based Organization or a Self-Help Group, which is an unincorporated body, the question the becomes whether it can sue in its own name. While considering this question, the court in [Senti Kumi Community Self Help vs Kenya Maritime Authority & another \[2019\] eKLR](#) held as follows:

' Senti Kirui Self Help Group has no capacity to institute this action in its namea person recognised in law had to sue on behalf of members of the Group and as such members had to be named and identified with precision. The person bringing action has to demonstrate that he had permission to bring the action on behalf of the members of the Group.'

12. The Court of Appeal in [Kenya Power & Lighting Co Ltd -vs- Benzene Holdings Ltd t/a Wyco Paints \(2016\) eKLR](#), in discussing the institution of suits by non-juristic persons stated thus;

' This principle was emphasized as long ago as 1923 by Bankes LJ in Banque Internationale De Commerce (supra), which was subsequently in 1959 cited with approval by Templeton, J of then Supreme Court of Kenya in Fort Hall Bakery Supply Co V Fredrick Muigai Wangoe (1959) EA 474, who said:

'The party seeking to maintain the action is in the eye of our law no party at all but a mere name only, with no legal existence.A non-existent person cannot sue, and once the court is made aware that the plaintiff is non-existent, and therefore incapable of maintaining the action, it cannot allow the action to proceed.'

13. Undoubtedly, the Applicant has no legal capacity to sue or be sued, being a non-juristic person. The officials of the Applicant should have at least been listed as Applicants suing on behalf of the Applicant but that was not the case. The alleged officials only went as far as to swear the Affidavit in support of the Originating Summons Application and depone to have the authority to bring this suit on behalf of the Applicant. The three individuals who have sworn the said affidavit aver that they are the Chairman, Secretary and member of the Applicant respectively and therefore they argue that they are lawfully authorized by the said Applicant to bring this suit against the Respondent in order to preserve its interest in parcel numbers LR Nos 252 and 253. There is no evidence before this Court demonstrating such authority as alleged.

14. It is my considered view that a Community Based Organization (CBO) can sue or be sued through its officials alone. But since the officials are not party to the suit, the Originating Summons Application cannot be maintained as the Applicant cannot be retained on record as it is. It is evident that this suit was commenced by the Applicant in its own capacity. The provisions and process of registration of such entities as Community Based Organizations (CBO), Self-Help Groups and others in relevant Government offices do not confer separate legal entity status to such groupings.



15. In regard to authority to institute the suit, other members of the CBO are to be seen to have given it in writing to the officials to institute the suit on behalf of the Applicant. The alleged officials of the Applicant stated in paragraph 1 on the face of the Application that this suit was brought by the Applicant in its own capacity as a registered CBO and further the alleged officials at paragraph 2 of the Affidavit in support contend that they are the Chairman, Secretary and member of the Applicant respectively and therefore they are lawfully authorized by the said Applicant to bring this suit against the Respondent in order to preserve its interest in parcel numbers LR Nos 252 and 253. Then again, no evidence has been adduced to demonstrate this alleged authority.
16. In the end, the Court finds and holds that the Applicant has no locus to commence the suit as it is not a legal entity and therefore the suit can only be commenced by or defended by or through the officials or a representative of the Applicant.

Disposal orders

17. The totality of the foregoing is that the cudgels aimed at the head of the Applicant's suit as against the Respondent is inescapable. I find merit in the Preliminary Objection dated June 15, 2023, and for which reasons the Applicant's suit is struck out in its entirety.

Orders accordingly.

DATED, SIGNED AND DELIVERED IN VIRTUAL COURT AT NAIROBI THIS 4TH DAY OF OCTOBER, 2023.

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MOGENI J.

JUDGE

In the Virtual presence of :-

Mr Wachira for the Applicant

Mr Osoro for the Interested Party

No appearance for the Respondent

Ms. Caroline Sagina Court Assistant

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MOGENI J.

JUDGE

