



People Like Us CBO v Kimaru & 4 others (Environment & Land Case 016 of 2021) [2022] KEELC 3229 (KLR) (6 June 2022) (Ruling)

Neutral citation: [2022] KEELC 3229 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE 016 OF 2021**

PM NJOROGE, J

JUNE 6, 2022

BETWEEN

PEOPLE LIKE US CBO PLAINTIFF

AND

ERIC MUREITHI KIMARU 1ST DEFENDANT

PHYSICAL PLANNER, ISIOLO COUNTY 2ND DEFENDANT

LAND REGISTRAR, ISIOLO COUNTY 3RD DEFENDANT

COUNTY GOVERNMENT OF ISIOLO 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. This notice of preliminary objection, by and large, raises similar issues to these raised in Isiolo ELC suit No E001 of 2021, to wit: Isiolo Vision of Hope Youth Development Programmes CBO (suing through Hussein Halkano (chairman) Yusuf (secretary) and Abdi Dadacha (treasurer as plaintiffs Versus Bishar Musa and 3 others as defendants
2. I reproduce here below the ruling delivered in that application

Republic of Kenya

In the Environment and Land Court at Isiolo

ELC suit No E001 of 2021

Isiolo Vision of Hope Youth Development programme CBO (suing through its officials Hussein Halkano (chairman), Abdi Yusuf (secretary, and Abdi Dadacha (treasurer)plaintiff



versus

Erick Mureithi Kimaru.....1st defendant/respondent

The Physical Planner.....2nd defendant/respondent

The Land Registrar, Isiolo County....3rd defendant/respondent

The County Government of Isiolo.....th defendant/respondent

The Hon Attorney General.....5th defendant/respondent

ruling

1. When the matter came up for directions on November 30, 2021, the parties asked that the preliminary objection filed by the 2nd and 4th defendants be canvassed first by way of written submissions.

2. The preliminary objection is in the following format:

notice on preliminary objection

Take notice that the 2nd and 4th defendants shall raise a preliminary objection to have the suit struck out based on the following grounds:

1. The suit offends the mandatory provisions of order 1 rule 13 and order 1 rule 8 (1) of the [Civil Procedure Rules](#).

dated at Meru this 23rd day of November, 2021

For: Mbogo & Muriuki

Advocates for the 2nd & 4th defendants

3. PO's have the tendency to delay determination of cases if they are not handled expeditiously. In this case, I direct that the proponents of the PO, the 2nd and 4th defendants, do file written submissions within 14 days of today and the other parties to do so within 14 days after receipt of the proponent's written submissions.

4. By consent of counsels present, directions on January 24, 2022.

Delivered in open court at Isiolo this 30th day of November, 2021

In the presence of:

Court Assistant: Balozi

Ashava for the plaintiffs

Ken Muriuki for 2nd and 4th defendants

Mbaikiata Present for 3rd and 5th defendants

Hon Justice P M Njoroge

Judge

3. The application was canvassed by way of written submissions.



4. I have carefully considered the veritably incongruent assertions proffered by the parties in support of their positions.
5. I do note that the applicant has not denied that the 3 people who have filed this suit are not members of the plaintiff. At any rate, even if this court disqualifies all the other members of the plaintiff, the 3 purported officials have the right to prosecute this suit on their own behalf. Striking out this case would deny them their right to seek justice. In my view the issues raised in this preliminary objection can be canvassed during the hearing of the main suit. *Ipsa facto*, this suit cannot be struck out in *toto* at this stage.
6. As can be seen from the Constitution of the parties, this preliminary objection evinces arguments, thus rendering it not being based on pure points of law.
7. I am guided by my ruling in Isiolo ELC E001 of 202 (Supra).
8. In the circumstances, I issue the following orders:
 - a. This notice of preliminary objection is hereby dismissed.
 - b. Costs shall be in the cause
 - c. Parties will take directions on July 4, 2022 and the plaintiff's advocate, Mr Ashava, to serve the mention date upon the defendants.

DELIVERED ON OPEN COURT AT ISIOLO THIS 6TH DAY OF JUNE, 2022 IN THE PRESENCE OF:

Court Assistant: Dene

HON. JUSTICE P. M. NJOROGE

JUDGE

