



Kariuki & 2 others (Suing in their capacity as Chairperson, Treasurer & Secretary of Paa Crescent Residents Association) v Oriki & 3 others (Miscellaneous Civil Application E1241 of 2023) [2025] KEHC 4313 (KLR) (Civ) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4313 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL APPLICATION E1241 OF 2023

JN MULWA, J

APRIL 3, 2025

BETWEEN

KINGSLEY KARIUKI 1ST APPLICANT

CATHERINE OTIENO 2ND APPLICANT

STEPHEN OTIENO 3RD APPLICANT

**SUING IN THEIR CAPACITY AS CHAIRPERSON, TREASURER &
SECRETARY OF PAA CRESCENT RESIDENTS ASSOCIATION**

AND

MOSOBA ORIKI 1ST RESPONDENT

GITHUMBI GITAU 2ND RESPONDENT

KENYA COMMERCIAL BANK LTD 3RD RESPONDENT

EQUITY BANK LIMITED 4TH RESPONDENT

RULING

1. This is a Ruling in respect of the motion dated 30/04/2024 filed by Mosoba Oriki and Githumbi Gitau (hereafter 1st & 2nd Applicants) as against Kingsley Kariuki, Catherine Otieno & Stephen Otieno (officials of) PAA Crescent Residents Association (hereafter the PAA Crescent) pursuant to Section 3 & 3A of the [Civil Procedure Act](#) (CPA), Section 2, 4, 12 and 15(1)(b) of the [Societies Act](#), Order 1 Rule 10(2) and Order 51 Rule 1 of the Civil Procedure Rules (CPR) seeking inter alia -;

- a. Spent.



- b. Spent.
 - c. That this Honourable Court has no jurisdiction to entertain this matter pursuant to Section 15(1)(b) of the *Societies Act*.
 - d. That the Respondent has no locus standi to sustain this suit pursuant to Section 2, 4 & 12 of the *Societies Act*.
 - e. That this Honourable Court be pleased to find that the application herein and or subject matter of the instant application is Res Judicata.
 - f. That this Honourable Court be pleased to join the Registrar of Societies as a Respondent to this suit/application.
 - g. That the costs of the motion be provided for.
2. The motion is predicated on the grounds set out on its face and supported by the annexed affidavit of the 1st Applicant. The gist of his deposition is that certificate of registration number 24796 in respect of the Respondent was cancelled by the Registrar of Societies vide a letter dated 09/11/2022 therefore once the latter took effect the Respondent became unlawful by dint of Section 4 of the *Societies Act* thus incapable of filing the instant proceedings. That a party aggrieved by the Registrar's decision is at liberty to appeal to the Cabinet Secretary within thirty (30) days of the date of cancellation whereas the Respondent has failed to demonstrate that it exhausted and or followed the laid procedure in Section 15(1)(b) of the *Societies Act* prior to lodging the instant application. He goes on to depose that the Respondent had filed a similar suit seeking similar orders vide Nairobi Milimani JR Misc. Application No. E170 of 2022 which has since been determined therefore in totality of the fore stated this Court is ousted of jurisdiction to entertain the instant motion. That notwithstanding the above, the Respondents has curiously failed to include the Registrar of Societies to the instant proceedings despite the fact that the grain of the Respondent's application dated 19/12/2023 being against the said Registrar. He concludes by stating that the instant proceedings are vexatious and ought to be struck out; however should the Court not be convinced of the same it ought to order the joinder of the Registrar of Societies as a party to these proceedings.
 3. The Respondents PAA Crescent opposes the motion by way of a replying affidavit deposed by Kingsley Kariuki. He assails the Applicants argument on exhaustion by deposing that the decision of the Registrar of Societies was appealed vide a letter dated 14/11/2022 in accordance with Section 15 of the *Societies Act* whereas the Respondent's deregistration has yet to be gazetted in accordance with Rule 14 of the Societies Rules therefore it has locus standi to prosecute these proceedings. He confirms that the Judicial Review matter was dismissed as a result of the pending appeal before the Attorney General which appeal is presently pressed to be heard. That the instant application is not Res Judicata as the Judicial Review matter was dismissed before the issues therein were determined and that the issues canvassed in the latter were different from what the Respondent has sought in its motion dated 19/12/2023 before this Court. He surmises that the instant motion is motivated by the Applicants personal vendetta and reaction to the Respondent's account being unfrozen therefore the motion is frivolous, vexatious and ought to be dismissed with costs at the first opportune moment.
 4. The 3rd and 4th Respondent did not participate in the instant proceedings.
 5. The motion was disposed of by way of written submissions of which the Court has considered alongside the respective affidavit material and thus postulates that the issues for determination concern:
-



- a. Whether the Respondent has locus standi to sustain the proceedings before this Court?
- b. Whether the Court has jurisdiction to entertain this matter pursuant to Section 15(1)(b) of the *Societies Act*?
- c. Whether the matter is Res Judicata?
- d. Whether the Registrar of Societies ought to be enjoined as a party to these proceedings?
- e. Who ought to bear the costs of the application?

Whether the Respondent has locus standi to sustain the proceedings before this Court?

6. Here, while calling to aid the decision in *Turn Key International Trade Limited v Sunmatt Limited (Sundip Shah)* [2024] KEHC 2701 (KLR) the Applicants have argued and submitted that by dint of Section 2, 4 & 12 of the *Societies Act*, it is undisputed that once the Respondent’s registration certificate No. 24796 was cancelled, the Respondent association ceased to exist, its registration certificate ceased to have any force in law making the Respondent an unregistered association. That a non-existent person in law cannot bring or sustain a suit whereas the decision by the Registrar of Societies has since yet to be overturned or stayed. In retort the Respondent cited Section 7 of the *Fair Administrative Action Act*, Article 47 of *the Constitution* and the decision in *Atheists Ii Kenya & another v Registrar of Societies & 2 others* [2018] eKLR to submit that the Respondent is still considered an active society by dint of Section 15(3) of the *Societies Act*, Rule 14 of the Societies Rules and can only cease to exist after being granted its right of appeal and notice of cancellation is published in the Kenya gazette, both of which have yet to materialize.
7. With the above in reserve, Black’s Law Dictionary, Tenth Edition defines locus standi as:-

“...the right to bring an action or to be heard in a given forum.”
8. The Court of Appeal in *James Teko Lopoyetum v Rose Kasuku Watia & 4 others* [2021] eKLR reiterated its decision in *Alfred Njau & 5 others vs. City Council of Nairobi* [1983] eKLR where it held:-

“The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt’s Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.”
9. In *Sheila Nkatha Muthee v Alphonse Mwangemi Munga & Another* [2016] eKLR it was stated that:-

“Locus standi is a primary point of law almost similar to that of jurisdiction since the lack of capacity to sue renders the suit incompetent.”
10. It is undisputed that the Respondent’s registration was cancelled vide a notification by Registrar of Societies dated 09/11/2022. (Annexure MO-1). That said, Section 4(1) of the *Societies Act* concerning unlawful societies as read with Section 15(3) of the Act which provides that “notwithstanding the provisions of Sub-Section (1) of Section 4, where a society other than a society specified in paragraphs (i), (ii) or (iii) of the proviso to Section 4(1), lodges an appeal under subsection (1) of this section, such society shall not, pending the decision on the appeal, be an unlawful society” as read with Rule 14(d) of the Societies Rules, on publication in the Gazette notice of cancellation or suspension of a registered society, would translate that unless the latter is done or a pending appeal is finalized, such cancellation would not render the Respondent a non-entity.



11. The Applicants have not demonstrated either that the Respondent’s appeal as evidenced at Annexure KK-2 has since been determined or that the Registrar of Societies has published a Gazette Notice with respect to cancellation of the Respondent. Thus, as is, the Respondent is still an association recognized in law with the capability to institute and prosecute proceedings before this Court. Consequently, the Applicants plea on the Respondent’s locus standi is not well taken and is accordingly denied.

Whether the Court has jurisdiction to entertain this matter pursuant to Section 15(1)(b) of the Societies Act?

12. On the above, the Applicants have relied on the decision in Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR, The Owners of the Motor Vessel Lilian ‘S’ v. Caltex Kenya Limited (1989) KLR 1 and Section 15(1)(b) of the Societies Act to contend that it is only after the Respondent’s appeal before the Cabinet Secretary is determined that the latter can move to this Court therefore the jurisdiction of this Court has been prematurely invoked. The Respondent did not offer any retort to the above issue in its submissions.
13. What the Court gathers to be the Applicants plea on the issue is that the instant proceedings before this Court are an affront to the doctrine of exhaustion. The latter doctrine has since been well settled in our jurisdiction and this Court does not intend to re-invent the wheel on the same. Nevertheless, it necessitates mentioning that this Court draws guidance on doctrine from the Supreme Court decision in Albert Chaurembo Mumba & 7 others v Maurice Munyao & 148 others [2019] eKLR where the apex Court succinctly put it that:-

“..... Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to the relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute.”

14. With the latter in mind, to address the issue, this Court must revisit the record, particularly the Respondent’s motion dated 19/12/2023. As at filing of the Applicants motion that sought among other orders an arrest of ruling in respect of the Respondent’s motion dated 19/12/2023, what was pending determination before this Court was an order to the effect “that this Court do order that the Registrar of Societies to cancel the Registration of Tyson One Association”. Juxtaposing the latter to Section 15(1)(b) of the Societies Act which provides:-

“in the case of any other society, appeal to the Cabinet Secretary within thirty days of such refusal, cancellation or suspension and the Cabinet Secretary shall consider, determine and communicate his decision on the appeal within ninety days of the appeal”.

15. It is apparent that what is for determination does not appertain the cancellation of the Respondent’s registration but an order with respect to cancellation of Tyson One Associations registration. Had the Respondent sought to challenge the Registrar’s notice or order cancelling its registration the doctrine of exhaustion as urged by the Applicant would have applied to ouster this Court’s jurisdiction to entertain the Respondent’s motion dated 19/12/2023. As is, this is not the case. It can therefore be reasonably concluded that this Court is duly vested with jurisdiction to entertain these proceedings.

Whether the matter is Res Judicata?

16. The Applicants have summarily posited that this Court is ousted of jurisdiction to entertain the instant proceedings as the Respondent had filed a similar matter seeking similar orders vide Nairobi Milimani



JR Misc. Application No. E170 of 2022 which has since been determined by a Court of competent jurisdiction. The decisions in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] eKLR and *Kibos Distillers Limited & 4 others v Benson Ambuti Atega & 3 others* [2020] eKLR were cited in the latter regard. In riposte the Respondent cited the decisions in *Maina Kiai* (supra) and *Suleiman Said Shabhal vs Independent Electoral & Boundaries Commission & 3 Others* [2014] eKLR to assert that the instant matter is not Res Judicata as the Judicial Review case was dismissed before the issues therein were determined and that the issues canvassed in the latter were different from what the Respondent has sought in its motion dated 19/12/2023.

17. As rightly submitted by the respective parties, the doctrine of Res Judicata was succinctly addressed by the Court of Appeal in *Maina Kiai* Case that settled the ingredients of the doctrine appertaining:- the issues in the present suit being directly and substantially in issue have been canvassed in the former suit; that the former suit being between the same parties or parties under whom they or any of them claim; that the parties having litigated under the same title; that the issue in present suit having been heard and finally determined in the former suit; and that the Court that formerly heard and determined the issue being competent to try the subsequent suit or the suit in which the issue is raised, of which have to be conjunctively met, for the plea to succeed.
18. Thus, applying my mind to the above distillation, firstly, as can be garnered from the Applicants affidavit material, particularly (Annexure MO-3 & MO-4), the parties before Judicial Review matter and this Court are similar save for the Registrar of Societies who has not been included in the instant proceedings. Secondly, as deposed by the Respondent and gathered from the aforementioned annexure, the relief as sought before the Judicial Review matter and this Court vide the Respondent's motion are dissimilar. As before the former Court, the Respondent was seeking leave to apply for judicial review orders in respect of the Registrar's action of freezing the Respondent's account and cancellation of its registration. Here, what has been sought in the Respondent's motion dated 19/12/2023 includes among others orders an injunctive relief towards access of the Respondent's accounts held at the 3rd and 4th Respondent, and an order for cancellation of Tyson One Association's registration.
19. Manifestly, by dint of (Annexure MO-4) leave to apply for judicial review was denied for what appears to be failure on the part of the Respondent to exhaust remedies available and or prescribed for in the *Societies Act* with respect to the Registrar's decision. Therefore, it would be purposefully stated that the issue in question in the judicial review quest was not heard and finally determined in the former suit. However as earlier noted, the ingredients in the *Maina Kiai* Case are conjunctive. The latter limb having failed it would be moot to interrogate the other ingredients. To that extent therefore, the plea of Res Judicata equally must fail.

Whether the Registrar of Societies ought to be enjoined as a party to these proceedings?

20. On the issue, the Applicants summarily argued that given the reliefs sought in the Respondent's motion concerning frozen accounts by the Registrar of Societies and an order seeking that cancellation of Tyson One Association's registration, the Registrar of Societies is a pertinent party to these proceedings. The Respondent offered no response on the above issue.
21. The power of the Court to enjoin or strike out a party from proceedings is given by Order 1 Rule 10 (2) of the CPR which serves the purpose of enabling the Court to effectively and completely adjudicate



upon and settle all questions involved in the proceedings. In the case of *Departed Asians Property Custodian Board vs. Jaffer Brothers Ltd* [1999] 1 EA 55 it was stated that :-

“ A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown.

Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

22. Applying the above findings to the instant proceedings, *ex facie*, on accord of the prayer sought in the Respondent’s motion dated 19/12/2023, it seems that joinder of the Registrar of Societies would be germane to the instant proceedings, as the order of cancellation in respect of Tyson One Association registration is within the purview and or is a reservation of the Registrar of Societies. In *Civicon Limited v Kivuwatt Limited & 2 Others* [2015] eKLR, the Court stated in part that, joinder involves discretion and it serves the purpose of bringing on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Therefore, by issuing the order sought for by the Respondent, without the Registrar’s participation would only serve injustice whereas it is likely to condemn the latter unheard, in breach of the constitutional imperative of the right to fair hearing. As observed in *Jaffer Brothers Ltd* (*supra*), the Court is persuaded that the Applicants have reasonably demonstrated the necessity towards joining the Registrar of Societies.

Who ought to bear the costs of the application?

23. In conclusion, the Applicants motion only succeeds on the prayer seeking joinder of the Registrar of Societies to the instant proceedings, with the result that each party shall bear own costs on the motion.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI BEFORE THIS COURT ON 3RD APRIL, 2025.

.....

JANET MULWA.

JUDGE

