



**Republic v Registrar of Societies & another; Kenya International Freight & Warehousing Association (Nairobi Branch) (Exparte) (Judicial Review Application E032 of 2024) [2025] KEHC 4789 (KLR) (Judicial Review) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4789 (KLR)

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

**JUDICIAL REVIEW APPLICATION E032 OF 2024**

**RE ABURILI, J**

**APRIL 7, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE REGISTRAR OF SOCIETIES ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**KENYA INTERNATIONAL FREIGHT & WAREHOUSING ASSOCIATION  
(NAIROBI BRANCH) ..... EXPARTE**

**RULING**

1. In the Statutory Statement dated 27<sup>th</sup> March, 2024 filed in support of the Chamber Summons for leave to apply for Judicial Review orders, the applicant at paragraph 1 describes itself as a duly registered branch of Kenya International Freight & Warehousing Association (KIFWA) which is itself a Society duly registered under section 10 of the Societies Act (Cap 108 Laws of Kenya). The address for service was given as Nakuru, Vicmark Plaza.
2. On 28<sup>th</sup> March 2024, the applicant was granted leave to apply but the prayer for leave to operate as stay was declined and the court gave directions on effecting of service of the substantive motion and set a date for interpartes directions on 17<sup>th</sup> April, 2024.
3. The applicant filed the substantive notice of motion dated 4<sup>th</sup> April 2024 and upon service of the same upon the respondents, the 1<sup>st</sup> Respondent through the 2<sup>nd</sup> Respondent filed a Memorandum of appearance and a Notice of preliminary objection dated 13<sup>th</sup> May 2024 contending that the ex parte



applicant has no locus standi to institute this suit in its own name contrary to section 41(1) of the *Societies Act*; that the suit herein is fatally defective in law as the ex parte applicant lacks the capacity to institute proceedings in its own name; that a society registered under the *Societies Act* Chapter 108 Laws of Kenya is not a body corporate for it to sue or be sued as a legal personality; and that consequently, this suit should be struck out with costs.

4. Opposing the preliminary objection, the ex parte applicant and the respondents have filed written submissions to advance their respective positions.
5. According to the respondents, whose submissions are self-explanatory and mirror the preliminary objection, the preliminary objection meets the threshold in *Mukisa Biscuit Manufacturing Company Limited vs West end Distributors Limited* [1969] EA 696. The respondents reiterated that the applicant being a Society and not being a body corporate, it has no legal capacity to sue and be sued in its own name but in the name of its registered officials, as was held in the cited cases of *Republic v Registrar of Societies Exparte Narok Muslim Welfare Association*, [2017] e KLR; *Peter Taracha & another v Holiness Church & another* [2016] e KLR *Islamia Madrassa Society v Zafar Niaz & others* [2021] e KLR; *African Orthodox Church of Kenya v Rev Charles Omuroka & Another* [2014] e KLR *Trustees of Redeemed Church & another v Samuel M'Ombiya & 5 others* [2011] e KLR. All these cases, citing other decisions, say the same thing, that a society under the *Societies Act* can only sue and be sued in its own name and not otherwise.
6. The applicant on the other hand maintains that it has the capacity to sue and be sued in its own name and argues that the position is different when the matter before court is brought under the Bill of Rights as is the case herein, citing Articles 22, 260 and 47 of *the Constitution*. The applicant also argues that in the cases cited by the respondents, they involved ordinary suits unlike in the instant case which is brought pursuant to constitutional provisions. Further, that those decisions cited by the respondents are High Court decisions which are superseded by the Supreme Court decision in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2014] e KLR Case where the Supreme Court held that bodies which are unincorporated can sue and be sued in view of Article 22 and 260 of *the Constitution*. Further, that those High Court decisions are per incuriam.

### **Analysis and Determination**

7. I have considered the arguments for and against the preliminary objection. What is a preliminary objection is now settled and the locus classicus case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] 1 EA 696, on what a preliminary objection is all about:

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. 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 points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

8. The preliminary objection is on locus standi of the applicant before court. In *Turn Key International Trade Limited v Sunmatt Limited (Sundip Shah)* (Civil Suit E406 of 2022) [2024] KEHC 2701



(KLR) (Commercial and Tax) (1 March 2024) (Ruling) Njoki Mwangi J had this to say on whether a preliminary objection on locus standi is a pure point of law and I agree with my learned sister Judge:

“A claim that a party lacks locus standi is a purely legal matter that must be brought up and resolved as soon as possible. In the circumstances, I find the Preliminary Objection as filed is proper as it raises pure points of law.”

9. The supreme Court in SC Petition No. 8 of 2020 between Law Society of Kenya v Communications Authority & 10 others had this to say on whether a question of locus standi is a pure point of law to be determined by the Court in limine:

“...the issue for determination is whether this Court has jurisdiction to hear and determine this appeal and whether the appellant is a proper party before this Court and has locus standi in this appeal. This court in the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2014] eKLR held that the issue of locus standi raises a point of law which touches on the jurisdiction of the Court, and it should be resolved at the earliest opportunity.”

10. Accordingly, the issue of locus standi is a question that on a pure point of law that can be resolved on a preliminary objection.

11. The other issue for determination therefore is whether the applicant has the locus standi to initiate these proceedings in its own name as a society duly registered under the *Societies Act*. But before I answer that question as argued, the applicant pleaded that it is a branch of the National Association, KIFWA which is a duly registered society under the *Societies Act* as per the annexed certificate of Registration FA1.

12. Section 2 of the *Societies Act* defines Society as:

“society” includes any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya, and any branch of a society, but does not, except in paragraphs (i) and (ii) of section 11(2)(f) of this Act, include...”

13. On institution of proceedings against societies, Section 41 of the *Societies Act* provides that:

41. Proceedings against societies

- (1) Where a society is charged with an offence under this Act or any rules made thereunder, the society may appear by a representative, who may enter a plea on behalf of the society and conduct the society’s defence on its behalf.
- (2) In this section, “representative” in relation to a society means a person who the court is satisfied has been duly appointed in writing by the society to represent it, but a person so appointed shall not by virtue of such appointment be qualified to act on behalf of the society before any court for any purposes other than those specified in this section.”

14. Albeit these are not criminal proceedings, under subsection 2 above, the Act provides for “for any purpose other than those specified in this section.”

15. I have perused the pleadings and affidavits in this matter and I have not found any appointment of anybody, not even the deponent of the verifying and supporting affidavit, Mr. Fredrick Oloo, in writing, authorizing him to represent the society, the Applicant herein.



16. It follows therefore that the applicant has from the onset, not complied with Section 41 of the *Societies Act*.
17. Onto the question of locus standi of unincorporated bodies which include societies and Nongovernmental Organizations, Community Based Organizations and PBO's, the question that has been severally deliberated upon by Courts prior and after the promulgation of the 2010 Constitution is whether they can sue and be sued in their own names and that is the basis of the preliminary objection in this case. I will not belabor going into the pre-2010 Constitutional era as that is overtaken by events.
18. Following the promulgation of the 2010 Constitution, incorporating therein Articles 22 and 260, those Articles have settled the question of whether unincorporated bodies can institute proceedings claiming violation or threatened violation of rights. That should be the commencement point as I delve deep into the arguments put forth by each of the parties.
19. According to the applicant, the legal standing to sue in these proceedings which are anchored in the Bill of Rights is derived from Articles 22 and 260 of *the Constitution* and that the decisions relied on by the respondents are High Court decisions which were made in per curiam as they offend the Mumo Matemu (supra) case decided by the Supreme Court.
20. In the Mumo Matemu (supra) case, the Supreme Court was faced with a situation where a Non-Governmental Organization which was duly registered under the NGOs Coordination Act was challenged not to have locus standi.
21. The Supreme Court relying on Articles 22 and 260 of *the Constitution* held that the NGO had the locus standi and stated as follows:
  - “61. Locus standi is defined in Black’s Law Dictionary, 9<sup>th</sup> Edition (page 1026) as “the right to bring an action or to be heard in a given forum”. The applicant’s contention is that the 1<sup>st</sup> respondent was a non-existent entity, and it had misrepresented itself in the Petition of Appeal, and in the affidavit in support of the appeal. Already, we have observed that, by proper interpretation of Section 16(2) of the NGO Act, the “notice” contemplated is not Gazette Notice No. 11962. We are not, therefore, in a position to ascertain the date when the cancellation of registration took place; it cannot be ascertained whether notice was duly served upon the 1<sup>st</sup> respondent.
  62. More importantly, such notice if duly served upon the 1<sup>st</sup> respondent, would provide an opportunity for a response – to which 1<sup>st</sup> respondent has both a right and a legitimate expectation. The right to make a response, in relation to dispensation of service by a public agency such as the NGO Board, manifestly falls within the safeguards for “fair administrative action” in the terms of Article 47 of *the Constitution*. Rights of such a kind, moreover, are actionable within the framework of judicial powers in relation to the quasi-judicial operations of statutory agencies. Such matters would ordinarily be subject to the High Court’s judicial review jurisdiction. It emerges clearly, in the instant case, that the NGO Board had not given due notice of intended de-registration to 1<sup>st</sup> respondent, in the contemplation of the law.
  63. An important question remains: is it tenable that a “party” can lodge an appeal before this Court, while being legally non-existent?



64. On locus standi, counsel for the 1<sup>st</sup> respondent submitted that this Court ought to look at the definition of ‘person,’ under Article 260 of *the Constitution*, and, in this instance on whose behalf the 1<sup>st</sup> respondent was filing the appeal. He further submitted that the NGO Act, which authorized the cancellation of certificates of registration, was subordinate to *the Constitution*.
65. Article 260 of *the Constitution* defines “person” to include:“a company, association or other body of persons whether incorporated or unincorporated.”Counsel for the 1<sup>st</sup> respondent contends that this organization had filed the appeal “on behalf of the public”; and he urges that if the Court finds that 1<sup>st</sup> respondent had been de-registered, it should still bear in mind that the 1<sup>st</sup> respondent is still classified as a “person”, under Article 260 of *the Constitution*.
66. The 1<sup>st</sup> respondent’s point is that locus standi before the Courts has a new meaning, by the terms of *the Constitution* of Kenya, 2010. A narrower conception of that term had prevailed earlier; and only an aggrieved party whose interests were directly affected could institute proceedings. In *Maathai v. Kenya Times Media Trust Ltd* [1989] KLR 267, the High Court held that the plaintiff had not shown that she had a special interest in the matter in question, as opposed to a public-interest claim. In *Kenya Bankers Association v. Minister for Finance & Another* [2002] 1 KLR 61, the High Court made a courts shift from the narrow interpretation of locus standi, holding that even though the applicant was not the directly-aggrieved party, it could represent the banks in a constitutional matter. A relevant consideration in that case was that the applicant had brought the matter in good faith, to uphold the supremacy of *the Constitution*. The Court further held that this was a case of public interest litigation, and the applicants were public-spirited persons acting bona fide.
67. It is to be noted that the promulgation of the 2010 Constitution enlarged the scope of locus standi, in Kenya. Articles 22 and 258 have empowered every person, whether corporate or non-incorporated, to move the Courts, contesting any contravention of the Bill of Rights, or *the Constitution* in general. In *John Wekesa Khaoya v. Attorney General*, Petition No. 60 of 2012; [2013] eKLR the High Court thus expressed the principle (paragraph 4):“...the locus standi to file judicial proceedings, representative or otherwise, has been greatly enlarged by *the Constitution* in Articles 22 and 258 of *the Constitution* which ensures unhindered access to justice...”
68. Article 22 of *the Constitution* thus provides:“(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 act in 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” [emphasis supplied].



69. And Article 258 thus provides:(1)Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.(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 act in 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” (emphasis supplied).
70. The 1<sup>st</sup> respondent, in the instant matter, submitted that if the Court were to determine that it does not have locus standi, the Court should consider on whose behalf the matter was filed. It is clear to us that the application herein and the Petition of Appeal which the 1<sup>st</sup> respondent had filed earlier, involve constitutional questions which are public in nature. “Public interest” is defined in Black’s Law Dictionary, 9<sup>th</sup> Edition (page 1350) as: “the general welfare of the public that warrants recognition and protection” or “something in which the public as a whole has a stake, especially an interest that justifies governmental regulation”. In the appeal, the 1<sup>st</sup> respondent alleges that the appointment of the applicant was not in accordance with *the Constitution*. Even though the 1<sup>st</sup> respondent was not directly aggrieved, it filed an appeal in this Court on behalf of the public at large.
71. Articles 22 and 258 of *the Constitution* provide that every person has the right to institute proceedings claiming that *the Constitution* has been contravened; and “person” in this regard, includes one who acts in the public interest.
72. Section 2 of the NGO Act defines a non-governmental organization as:“a private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development, charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry, and the supply of amenities and services. It is to be noted that such a statutory definition, when read together with Article 260 of *the Constitution*, will justify the categorization of a ‘non-governmental organization’ as a “person”, as it is “...an association...whether incorporated or unincorporated.”
73. Counsel for the 1<sup>st</sup> respondent urged that the Non-Governmental Organizations Co-ordinations Act is subordinate to *the Constitution*. This Act provides for the process of registration and licensing of non-governmental organizations; Section 10 requiring that every NGO be registered. Section 12(2) of the Act provides that evidence of such registration takes the form of a certificate, which authorizes the NGO to operate in Kenya. Section 12(3) provides that:(a)registered Non-Governmental Organization shall by virtue of such registration be a body corporate capable in its name of –a.suing and being sued...”The foregoing provision is silent on whether a deregistered NGO cannot sue or be sued.
74. However, Section 22(1) of the NGO Act provides that it is an offence for any person to operate a Non-Governmental Organisation without registration,



and a certificate under this Act. It thus provides:(1)It shall be an offence for any person to operate a Non-Governmental Organization in Kenya for welfare, research, health relief, agriculture, education, industry, the supply of amenities or any other similar purposes without registration and certificate under this Act.”

75. These provisions are in respect of the legal capacity, and locus standi of non-governmental organisations. The NGO Act was enacted prior to the promulgation of *the Constitution* in 2010; thus it has to be read in the light of the new Constitution. Courts cannot disregard legislation enacted prior to the promulgation of *the Constitution*; for *the Constitution* in Section 7(1) of its Sixth Schedule thus stipulates:“All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.”
76. The foregoing provision has recently been interpreted by this Court, in *Communications Commission of Kenya & Five Others v. Royal Media Services Limited & Five Others*, Sup. Ct. Petition No. 14 of 2014; [2014] eKLR, as follows (paragraph 197):“(iii)All laws in force immediately before the promulgation of *the Constitution* remain in force, but subject to Section 7(1) of the Sixth Schedule.(iv)In construing any pre-Constitution legislation, a Court of law must do so taking into account necessary alterations, adaptations, qualifications and exceptions, to bring it into conformity with *the Constitution*” (emphasis supplied).
77. The NGO Act must be interpreted in conformity with *the Constitution*. Although Section 12(2) and (3) of the Act provides for the legal status of the 1<sup>st</sup> respondent, when read together with Articles 22, 258 and 260 of *the Constitution*, and in the public interest, it is to be inferred that the 1<sup>st</sup> respondent did not lose its locus standi, even if it were to be assumed to have lacked registered status. The three Articles give an enlarged view of locus standi, to the effect that every “person”, including persons acting in the public interest, can move a Court of law contesting infringements of any provisions in the Bill of Rights, or *the Constitution*.”

22. The Supreme Court further stated as follows:

[89] Public Interest Litigation plays a transformative role in society. It allows various issues affecting the various spheres of society to be presented for litigation. This was *the Constitution*'s aim in enlarging locus standi in human rights and constitutional litigation. Locus standi has a close nexus to the right of access to justice. In instances where claims in the interest of the public are threatened by administrative action to the detriment of constitutional interpretation and application, the Court has discretion on a case-by-case basis, to evaluate the terms and public nature of the matter vis a vis the status of the parties before it. This discretion is drawn from the command of Article 259 (1), to interpret *the Constitution* in a manner that promotes its values and purposes, advances the rule of law, human rights and fundamental freedoms, permits the development of the law and contributes to good governance.

90. The instant matter provides such an opportunity to determine a key point in the public interest; yet the legal standing of one party appears faulty and must first be considered, before



the Court, may proceed to hear the matter. Section 16 of the NGO Act empowers the Non-Governmental Organizations Coordination Board to cancel a registration certificate issued to any NGO if, the terms and conditions attached to the certificate have been breached, the organization has breached the Act, or the council has submitted a satisfactory recommendation for the cancellation of the certificate. The cancellation of this certificate of registration affects the NGO's legal capacity particularly because the Act does not provide an avenue for perpetuity. This is in stark contrast, for example, to the provisions of the [Companies Act](#), which provides for succession and perpetuity, protecting the legal interests of both a dissolved company and that of its creditors.

91. This is a clear lacuna in the law that fails to protect the legal interests of an NGO or its creditors upon deregistration, but one that also threatens the role of NGO's in public interest litigation and in effect, social change and human rights defense through litigation. What is to become of public interest where an NGO in the course of litigation in a matter affecting the larger citizenry, is deregistered? Who then protects the public concern raised and defends the ongoing matter? This clearly is an issue that needs resolve either through legislative initiative and reconsideration by Parliament, through an amendment of the appropriate law or a proper challenge of constitutionality in line with the provisions of Articles 22 and 258 of [the Constitution](#).
92. [The Constitution](#) enlarges the capacity to file a claim in defence of [the Constitution](#) thereby laying the basis for rights and constitutional enforcement. Article 3(1) provides that "every person has an obligation to respect, uphold and defend this Constitution." It further defines "person" to "include a company, association or other body of persons whether incorporated or unincorporated." [The Constitution](#) of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, adopts the constitutional definition of person. Article 258(1) in turn provides that "every person has the right to institute court proceedings, claiming that this Constitution has been contravened or is threatened with contravention." In constitutional adjudication therefore, the traditional strictures of locus have been broken to allow every person the capacity to file a constitutional claim. This resonates with the holding of the Court of Appeal in this very matter, at paragraph 27 that:

"Moreover, we take note that our commitment to the values of substantive justice, public participation, inclusiveness, transparency and accountability under Article 10 of [the Constitution](#) by necessity and logic broadens access to the courts. In this broader context, this Court cannot fashion nor sanction an invitation to a judicial standard for locus standi that places hurdles on access to the courts, except only when such litigation is hypothetical, abstract or is an abuse of the judicial process. In the case at hand, the petition was filed before the High Court by an NGO whose mandate includes the pursuit of constitutionalism and we therefore reject the arguments of lack of standing by counsel for the appellant. We hold that in the absence of a showing of bad faith as claimed by the appellant, without more, the 1st respondent had the locus standi to file the petition. Apart from this, we agree with the superior court below that the standard guide for locus standi must remain the command in Article 258 of [the Constitution](#)....."



23. The Court of Appeal in *Finmax Community Based Group & 3 others v Kericho Technical Institute* [2021] eKLR considered the issue of locus standi, referring to the above *Mumo Matemu* case which I have reproduced in extenso and stated as follows:

“Having found that the respondent did not discharge its burden of proof, we need not consider the next and final ground; the capacity of the appellants to be sued. But for the development of the law, we shall consider it nonetheless.

The appellants were sued as Finmax Community Based Group, the Chairman, Treasurer and Secretary. It was readily admitted that the 1<sup>st</sup> appellant was registered, as the name shows, as a community-based Group under the Ministry of Gender, Children and Social Development. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> appellants were its officials.

The question posed to the Judge was whether, in those circumstances the respondent could institute an action against appellants. In his answer, the Judge found that the 1<sup>st</sup> appellant could only be sued through its officials. But since the 1<sup>st</sup> appellant’s Chairman, Secretary and Treasurer were joined in the suit, the Judge was of the view that that was sufficient; and that to insist on the particulars of the officials would be to place technicality above substance.

He also justified the joinder on the ground that, since in such community organizations high turnover of officials is expected, it is wise to sue the office and not the specific officials, who may have vacated those offices at the time an action is instituted.

The 1<sup>st</sup> appellant is an unincorporated association and therefore in law is not a legal personality with the capacity to sue or to be sued. For a long time, courts have held that such bodies could not sue or be sued.

However, with the advent of the 2010 Constitution, this position appears to have changed. Article 260 which is the Interpretation section of *the Constitution* defines “a person” to include;

“... a company, association or other body of persons whether incorporated or unincorporated”. (Own emphasis).

As regards institution of court actions, Article 50, dealing with issues of fair hearing gives;

“(1) Every person .... the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.

It would seem, from the foregoing, that an association like the 1<sup>st</sup> appellant is “a person” who may institute proceedings and also be sued.

However, the question today is not whether unincorporated entities may commence action or how actions against them may be commenced, but rather, the manner of commencing proceedings. It is equally also settled that they cannot maintain an action or actions brought against them in their names.

Proceedings on their behalf or against them can only be through the registered officials, whose particulars, names and capacity must clearly be indicated in the suit.

See *Grace Mwenda Munjuri vs. Trustee of the Agricultural Society of Kenya* [2014] eKLR.

In this appeal, the 1<sup>st</sup> appellant, being an unincorporated organization, had no capacity to be sued in its own name. The respondent could only institute the suit as against named officials.



Titles like Chairman, secretary or treasurer cannot be used as those are not legal persons against whom orders may be executed by the successful party in the proceedings.

For the reasons we have given, this appeal succeeds. We accordingly allow it by setting aside the judgment and order of the High Court made on 24<sup>th</sup> March, 2015 and amended on 22<sup>nd</sup> April, 2015 and substitute it with an order dismissing the respondent's suit".

24. In *Kisumu Bar Owners Association v Cabinet Secretary, Ministry of Interior & Coordination of National Government & 2 others (Constitutional Petition E002 of 2024)* [2024] KEHC 6003 (KLR) (27 May 2024) (Ruling) and in ELC Petition No. 15 of 2021 [2023] eKLR 9<sup>th</sup> February 2023 Ruling in *Naka Residents Associates vs Ease Ltd & 33 Others*. Ombwayo J in a Petition No. 15 of 2021 held as follows and I have no reason to depart therefrom.

“A perusal of the Petition and annexures confirms that the Petition is a Society registered under the Society Act. Being a Society under the *Societies Act*, the issue being raised in the Preliminary Objection is whether the Petitioner can sue in its own name, as it has done. This to me is a noble legal question which goes to the root of the matter herein. It is a point of law which could dispose of the case depending on how it goes.”

25. The above holdings must be distinguished from cases of the Public Benefit Organizations (PBOs) formerly known as NGOs, under the Public Benefit Organizations *Act No. 18 of 2013* where the Public Benefits Organizations have been found to have legal standing to institute suits/petitions and to be sued in their own name, in view of Section 10(3) of PBO Act, which provides that:

10. Certificate of registration

- (1) Upon registering a public benefit organization, the Authority shall issue a certificate of registration in the prescribed form.
- (2) A certificate of registration shall be a conclusive evidence of the authority to operate throughout Kenya as specified in *the constitution* of the public benefit organization or in the certificate of registration.
- (3) A registered public benefit organization shall by virtue of such registration be a body corporate with perpetual succession capable, in its name, of—
  - (a) suing and being sued;
  - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
  - (c) entering into contracts; and
  - (d) doing or performing all such other things or acts necessary for proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

26. There is no such corresponding provision under the *Societies Act*. Furthermore, the petition herein is not brought in the public interest but for the commercial benefit of the members of the association. There is also no material to demonstrate threatened violation or violation of *the Constitution* of Kenya, 2010. At paragraph 12 of the verifying affidavit, the deponent Fredrick Aloo deposes as follows:

“that the decision by the 1<sup>st</sup> respondent made on 8.2.2024 but communicated to the exparte applicant on 15.2.2024 vide letter Ref SOC/36939 dated 8.2.2024 was arrived at



in contravention of various Articles of *the Constitution* of Kenya 2010 as well as the *Fair Administrative Action Act*, 2015 which need not be enumerated herein save that the same have been cited in the title of the Application.”

In paragraph 13, the deponent continues to attack the decision on account of unlawfulness, unreasonableness and procedurally unfair. Again, there is no unconstitutionality pleaded, which then offends the principles espoused in *Anarita Karimi Njeru (No. 2) [1979] KLR 154* and *Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKLR*, which require that there be reasonable precision in drafting and framing of issues in Constitutional petitions—that is defining the dispute the court is called upon to decide, give particulars of the complaint and manner of alleged infringement. The Court observed that the petitioner, apart from citing constitutional provisions, had not provided particulars. This point was also emphasised in the Supreme Court SC Civil Application No. 29 of 2014 [2014] eKLR *Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others [2014] eKLR*.

27. In the *Mumo Matemu* case, the Supreme Court’s decision at paragraph 67 must be read together with other paragraphs that followed. The appellant in the *Mumo Matemu* case was not a society but a Non-Governmental Organization which was suing in the public interest and the Court went further and reproduced the provisions of the then Non-Governmental Organizations Coordination Act. Furthermore, the Court of Appeal in the *Finmax Community Based Group & 3 others v Kericho Technical Institute* case was clear that:

“However, the question today is not whether unincorporated entities may commence action or how actions against them may be commenced, but rather, the manner of commencing proceedings. It is equally also settled that they cannot maintain an action or actions brought against them in their names.

Proceedings on their behalf or against them can only be through the registered officials, whose particulars, names and capacity must clearly be indicated in the suit.

See *Grace Mwenda Munjuri vs. Trustee of the Agricultural Society of Kenya [2014] eKLR*.

In this appeal, the 1<sup>st</sup> appellant, being an unincorporated organization, had no capacity to be sued in its own name. The respondent could only institute the suit as against named officials.

28. Whereas this court would not adopt the decisions made prior to the 2010 Constitution and the *Mumo Matemu* decision, it is clear in my mind that Associations and any other unincorporated body can institute proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated or infringed or is threatened. However, where such suit is for their own or commercial benefit as opposed to the benefit of or in the public interest, then the society can only sue and be sued in the name of its registered officials.
29. In the instant case, the applicant’s claim of violation of rights is in respect of Article 47 of *the Constitution* to the effect that the 1<sup>st</sup> respondent’s decision made on 8.2.2024 but communicated to the applicant on 15.2.2024 is unlawful, unreasonable and procedurally unfair.
30. In *Northern Nomadic Disabled Person’s Organization (NONDO) v The Governor, County Government of Garissa & another (Constitutional Petition 4 of 2013) [2013] KEHC 467 (KLR) (16 December 2013) (Judgment)*, the learned Judge considered the issue and applied the *Mumo Matemu* case and the Court of Appeal decision cited above and stated as follows, and I concur that:

“Locus standi



29. Article 22 of *the Constitution* provides that:(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 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 act in 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/
30. Further, in the Mumo Matemu case supra, the Court of Appeal endorsed the view held by the High Court in Trusted Society case supra that the standard guide for locus standi must remain the command in article 258 of *the Constitution*. It provides that:(1)Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.(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 act in 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.
31. I need not belabor the point. Even if the petitioner was not a registered association, by dint of articles 22 and 258 of *the Constitution* they would still have the legal legs to stand on. The Court of Appeal however hastened to caution in the Mumo Matemu case that the person who moves the court for judicial redress in the cases of this kind must not act for personal gain or private profit, political motivation or other unspecified consideration.”[emphasis added]
31. There is no evidence that these judicial review proceedings herein are instituted in the public interest but for the benefit of the applicant society and its members. It follows that the applicant could bring the judicial review proceedings but in the name of its officials. This is so in view of the fact that it would be impossible to recover costs from an unincorporated body like the applicant, unlike in the Mumo Matemu case where the appellant was a Nongovernmental Body and under the relevant statute, once registered, it was considered as an incorporated body which could sue and be sued in its own name. furthermore, as correctly observed by the Supreme Court, the petition was instituted in the public interest as per the mandate of the NGO.
32. therefore, the issue is not whether the applicants can bring action in their own name especially under the Bill of rights, but that they can do so in the name of their registered officials and or in the public interest not for their own benefit or for commercial or political gain.
33. The Court of Appeal in Kenya Power & Lighting Co Ltd –vs- Benzene Holdings Ltd t/a Wyco Paints [2016] eKLR, which decision was made much later than the Mumo Matemu case which latter case originated from the Court of Appeal, all the way to the Supreme Court, in discussing the institution of suits by non-juristic persons, and well aware of the Mumo Matemu Case 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.'

34. The Supreme Court in the recent case of *Law Society of Kenya v Communications Authority (supra) Petition No. 8 of 2020* -acknowledged the Court of Appeal's Caution in the Mumo Matemu case and stated as follows:

“The Court of Appeal in Mumo Matemu cited above-described - that ‘a person’ in this regard, includes one who acts in the public interest.”

35. Mutuku S, J in Northern Nomadic Disabled Person's Organization (NONDO) v The Governor, County Government of Garissa & another (Constitutional Petition 4 of 2013) [2013] KEHC 467 (KLR) (16 December 2013) (Judgment) also acknowledged that in as much as an association had the locus standi to sue and be sued, there was caution by the Court of Appeal in the Mumo Matemu case and stated as follows:

“I need not belabor the point. Even if the petitioner was not a registered association, by dint of articles 22 and 258 of the Constitution they would still have the legal legs to stand on. The Court of Appeal however hastened to caution in the Mumo Matemu case that the person who moves the court for judicial redress in the cases of this kind must not act for personal gain or private profit, political motivation or other unspecified consideration. “

36. The Court found that in the above cited case, the petitioner was not being driven by personal gain or some political millage and therefore the petitioner had locus standi to move the court in the constitutional Petition.

37. See also Kuguru Food Complex Ltd v National Land Commission & another [2016] eKLR Constitutional petition NO. 359 OF 2016 where E. Muriithi J allowed the joinder of an estate association as a party to the petition only through their registered officials and stated:

“As an unincorporated body, which therefore has no capacity to sue or be sued in its name, the Rangers Court Welfare Association will be joined through its officials named in the Notice of Motion of 3<sup>rd</sup> October 2016”

38. For all the above reasons, I find the preliminary objection to be validly raised. I uphold it and proceed to strike out the application herein with an order that each party shall bear their own costs of the application for judicial review since it would be impossible to recover costs from an entity with no legal standing.

39. This file is closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF APRIL, 2025**

**R.E. ABURILI**

**JUDGE**

