



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC SUIT NO. E008 OF 2020

MWAURA KAGUA.....1st PLAINTIFF

NGUMBA MWANIKI SAMMY NJENGA.....2nd PLAINTIFF

MANTA OLE LEPASO NAPIRRUG (suing as the Chairman of

Normongi Self Help Group.....3rd PLAINTIFF

-VERSUS-

COUNTY GOVERNMENT OF KAJIADO.....DEFENDANT

AND

LUPEMBE KANCHORI.....INTERESTED PARTY

RULING

This ruling is on the Preliminary Objection dated 11th December, 2020. The Preliminary Objection is as follows;

1. The Applicant's application is premature, misconceived and an abuse of the Court process.
2. The third Applicant does not have the requisite locus standi to institute this suit on behalf of Normongi Self Help Group and should therefore be struck out with costs.
3. The third Applicant had commenced the suit in his capacity as the Chairman of Normongi Self Help Group without written approval and or authority of the other members of the said Self Help Group as required by law.

In support of the Preliminary Objection, Counsel for the Interested Party filed written submissions dated 10th February, 2021 in which two (2) substantial legal points have been raised as follows;

Firstly, it is urged that contrary to the provision of **Order 1 Rule 13(1) and (2) Civil Procedure Rules** the third Plaintiff who is suing on behalf of a Self Help Group has not filed any written authority signed by members of the Group.

Secondly, it is urged that the verifying affidavit accompanying the plaint is only signed by the second Plaintiff who has no written authority of the other Plaintiffs contrary to **Order 4 Rule 1 (3) Civil Procedure Rules**.

In reply, the Plaintiffs' Counsel in submissions dated 11th October, 2021 relied on **Article 258 of the Constitution** which provides that every person has a right to institute Court Proceedings acting in the interest of one or more of its members.

Secondly, Counsel said that the second Plaintiff has full authority of his Co-Plaintiffs to file the suit.

Finally, Counsel urges that under **Article 159(2) (d)** the Court should focus on substantive justice rather than technicalities in this case.

I have carefully considered the Preliminary Objection in its entirety and I make the following findings;

Firstly, I find that the requirement to file the authority to appear on behalf of other Plaintiffs is mandatory under **Order 1 Rule 13, Civil Procedure Rules** which provides as follows;

13(1) “Where there are more Plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceedings, and in the like manner, where there are more Defendants than one, any one or more of them may be authorized by any of them to appear, plead or act for such other party in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in the case”.

Secondly the requirement for written authority to sign the verifying affidavit by one Plaintiff on behalf of his Co-Plaintiffs is mandatory.

Order 4 Rule 1 (3) provides as follows;

“Where there are several Plaintiffs, one of them, with written authority filed with the verifying affidavit, may swear the Verifying Affidavit on behalf of the others”.

Thirdly, it is a draconian move to strike out pleadings because a Court should always try to sustain a suit in view of **Article 50 (1)** of the Constitution which requires that every party who has a dispute before a Court or Tribunal be given a fair hearing.

A suit should not be struck out if it can be saved by an amendment.

For the above reasons, I will give the Plaintiffs 60 days within which to regularize their pleadings failing which the suit against the first and third Defendants will be struck out.

Costs to the Defendant.

Dated signed and delivered virtually at Kajiado this 8th day of December, 2021.

M.N. GICHERU

JUDGE