



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 189 OF 2019

KAMITI FOREST SQUATTERS ASSOCIATION

(Suing through its Chairman Peter Njore Wakaba)....1ST PLAINTIFF/RESPONDENT

MUUNGANO WA KAMITI ASSOCIATION.....2ND PLAINTIFF/RESPONDENT

KAMITI ANMER DEVELOPMENT

WELFARE ASSOCIATION.....3RD PLAINTIFF/RESPONDENT

VERSUS

PHILIP M.G KAMAU.....1ST DEFENDANT/APPLICANT

ANMER SURVEY SERVICES.....2ND DEFENDANT/APPLICANT

CABINET SECRETARY INTERIOR ETC.....3RD DEFENDANT

COUNTY GOVERNMENT OF KIAMBU.....4TH DEFENDANT

ATTORNEY GENERAL.....5TH DEFENDANT

RULING

The matter for determination is the **Notice of Preliminary Objection** dated **15th January 2020**, by the **1st & 2nd** Defendants against the Plaintiffs' suit and the **Notice of Motion** dated **23rd December, 2019** on the grounds that;

1. The Plaintiffs herein being Societies registered under the Societies Act, Cap 108 lack capacity to institute a suit in their own name and as such the instant suit and the Application is fatally defective.

2. The 1st Plaintiff through its Chairman has purported to institute proceedings on behalf of the 2nd & 3rd Plaintiffs without their written authority to appear, plead or act on their behalf in writing in pursuant to Order 1 Rule 13(1) & (2) of the Civil Procedure Rules and the suit is therefore a nonstarter.

The **Preliminary Objection** was canvassed through written submissions and the Plaintiffs through the **Law Firm of Omagwa Angima & Company Advocates**, filed their written submissions on **30th January 2020**, and submitted that the Association could only sue through its official and therefore the Chairman of the Plaintiff having brought the suit on behalf of the Society, no authority was needed from the Society in order to be able to file the suit. It was further submitted that the Chairman of the **1st Plaintiff** could sue on behalf of the **2nd & 3rd Plaintiffs**, as he had permission from the other officials and there is nothing in law that forbids them from joining and protecting the common interest.

It was the Plaintiff's submission that there is no particular format prescribed which the authority must take or conform to and the Court was therefore invited to look into the purpose of **Article 159** of the **Constitution 2010**, in case the form is inadequate and as such find that lack of form would not be an impediment to accessing justice. The Court was therefore urged to dismiss the **Preliminary Objection**.

The **1st & 2nd** Defendants through the **Law Firm of Okatch & Partners Advocates**, filed their submissions on the **22nd of January 2020**, and submitted that the Plaintiffs have been described as registered organizations even though no proof of registration has been availed. It was

their submissions that a Society can only institute or defend proceedings in the name of its bonafide officials in a representative capacity and as such,

such suits must comply with the provisions of the **Civil Procedure Act**, as regards consent and authority to plead on behalf of its members. It was further submitted that as no **written authority** has been attached to the pleadings, the deponent of the **Verifying Affidavit** had no authority to institute proceedings. They relied on various decided case laws and further submitted that as the question of a party's capacity to sue is a pure point of law, which stems from the pleadings and as the Plaintiffs lack capacity to sue and they never obtained the authority to institute a representative suit, the Court should consequently strike out the suit and the Application with costs.

This Court has now carefully considered the instant **Notice of Preliminary Objection** and the annexures thereto, the pleadings generally, the written submissions and the attached decided case and the relevant laws and the court makes the following findings:-

The Court will first have to determine whether the objection raised by the 1st & 2nd Defendants qualify to be a **Preliminary Objection** as described in the case of **Mukisa Biscuit Manufacturing Co. Ltd ...Vs... West End Distributors Ltd (1969) EA 696**, where **Law J A** 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’.

Further **Sir Charles Newbold P** had this to say in the case;-

“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”.

The 1st & 2nd Defendants have submitted that the Plaintiffs have no **Locus Standi** or **capacity** to institute this suit. That due to the lack of the said capacity, the suit is incompetent and should be struck out.

In the case of **Law Society of Kenya ...Vs... Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000**, the Court held that;-

“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”.

It is therefore evident that **Locus Standi** is the right to appear and be heard in Court or other proceedings and literally, it means a place of standing. Therefore if a party is found to have no **locus standi**, then it means he/she cannot be heard even on whether or not he has a case worth listening to. Therefore, it is evident that if this Court was to find that the Plaintiff has no **Locus Standi**, then the Plaintiffs cannot be heard and that point alone may dispose of the suit. In the case of **Quick Enterprises Ltd.. Vs... Kenya Railways Corporation, Kisumu High Court Civil Case No.22**

of 1999, the Court held that:-

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the court having to resort to ascertaining the facts from elsewhere apart from looking at the pleadings alone”.

Having now considered the objections raised by the Defendants, the Court finds that lack of **Locus Standi** can dispose of the matter preliminarily without having to resort to ascertaining of facts. The preliminary objection raised by the Defendants fits the description of preliminary objection as stated in the ***Mukisa Biscuit case (Supra)***.

The issue for determination is ***whether the preliminary objection as raised is merited or not.***

There are two grounds upon which the Preliminary objection is founded. **One is that the Plaintiffs being Societies registered under the Societies Act lack capacity to sue in their own name.** In this instant there are three Plaintiffs, the 1st Plaintiff which is **Kamiti Squatters Association** has sued through its chairman **Peter Njore Wakaba**, while the rest of the Plaintiffs being registered Societies have sued in their own names. It is trite that a society registered under the **Societies Act** cannot sue in its own capacity as it is not a juristic person and such the society needs to sue in a representative capacity. **Section 41** of the **Societies Act** provides;

“Whereby 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.”

With regard to the 1st Plaintiff, the society has sued through **Peter Wakaba** its chairman. From the documents in the pleadings provided before this Court, vide a letter dated **4th September 2019**, the said **Peter Njore Wakaba**, had been confirmed as having been appointed as the Chairman of the 1st Plaintiff and thus this Court is satisfied that the said **Peter Njore Wakaba** is an official of the 1st Plaintiff and therefore its representative and can therefore sue on behalf of the 1st Plaintiff. This Court therefore finds and holds that the suit by the 1st Plaintiff is perfectly in order as the 1st Plaintiff has sued through its Chairman who is an official and its representative.

With regards to the 2nd & 3rd Plaintiffs, they have been described in the Plaint as registered organizations representing their own members. It then follows that the provisions of **Order 1 Rule 8** of the **Civil Procedure Rules** that require a representative to sue on behalf of a group of persons with a common interest would then come to place as the two are not legal entities that can sue and be sued on their own. Failure to follow the laid down provisions of the law will therefore mean that the 2nd & 3rd Plaintiffs have no capacity to sue and their suit is therefore a non-starter.

The suit brought by the 2nd & 3rd Plaintiffs is incompetent as the two Plaintiffs have not established that they have **Locus Standi**, to bring this suit against the Defendants jointly or severally. Therefore, the Court will invoke its inherent jurisdiction and order that the 2nd & 3rd Plaintiffs' suit be struck out as the 2nd & 3rd Plaintiffs have no **Locus Standi** to bring this suit against the Defendants. However it is this Court's considered view that the 1st Plaintiff has established that it has **locus standi** as it filed this suit through its registered official.

On the second fold as to **whether the 1st Plaintiff had authority to bring this suit on behalf of the 2nd & 3rd Plaintiffs**, this Court notes that the 1st Plaintiff did not sue on behalf of the 2nd & 3rd Plaintiffs and the authority that was given was only with regard to undertake action necessary on behalf of them as Plaintiffs. As this Court has already held that the 2nd & 3rd Plaintiffs have no **locus standi**, then no suit exists as between the 2nd & 3rd Plaintiffs and the Defendants. However with regards to the 1st Plaintiff the suit is still in existence.

Having now carefully considered the **Preliminary Objection** raised herein by the 1st & 2nd Defendants, and the rival submissions, and the authorities quoted, the Court finds that the Preliminary Objection is merited and the end result is that the same succeeds as against the **2nd & 3rd Plaintiffs**. However, as the suit still exists with regards to the 1st Plaintiff, this Court cannot strike out the suit.

Consequently the Court finds and holds that the 2nd & 3rd Plaintiffs have no **locus standi** and/or no legal standing to bring this suit and accordingly their suit as against the Defendants is a non-starter. The Court therefore makes the following orders;

- 1. The 2nd and 3rd Plaintiffs have no locus standi and therefore they are struck out from the suit with no orders as to costs.**
- 2. However the suit stands in respect of the 1st Plaintiff.**

It is so ordered.

Dated, Signed and Delivered at Thika this 27th day of February 2020.

L. GACHERU

JUDGE

27/2/2020

In the presence of

No appearance for 1st Plaintiff/Respondent

No appearance for 2nd Plaintiff/Respondent

No appearance for 3rd Plaintiff/Respondent

No appearance for 1st Defendant/Applicant

No appearance for 2nd Defendant/Applicant

M/S Ndundu for 3rd Defendant

M/S Mbugua holding brief for M/S Muchiri for 4th Defendant

M/S Ndundu for 5th Defendant

Lucy - Court Assistant

Court – Ruling read in open court.

L. GACHERU

JUDGE

27/2/2020