



**Ngwatanio Phase Four Association v National Land Commission  
& 10 others (Environment and Land Constitutional Petition  
E017 of 2021) [2025] KEELC 4707 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4707 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E017 OF 2021  
NA MATHEKA, J  
JUNE 25, 2025**

**BETWEEN**

**NGWATANIO PHASE FOUR ASSOCIATION ..... PETITIONER**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**COMMISSIONER OF LANDS ..... 2<sup>ND</sup> RESPONDENT**

**MACHAKOS LANDS REGISTRY ..... 3<sup>RD</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF LANDS AND PHYSICAL  
PLANNING ..... 4<sup>TH</sup> RESPONDENT**

**CABINET SECRETARY MINISTRY OF INTERIOR AND COORDINATION OF  
NATIONAL GOVERNMENT ..... 5<sup>TH</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MACHAKOS ..... 6<sup>TH</sup> RESPONDENT**

**MAVOKO MUNICIPAL COUNCIL ..... 7<sup>TH</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 8<sup>TH</sup> RESPONDENT**

**OFFICER COMMANDING ATHI RIVER POLICE DIVISION .... 9<sup>TH</sup>  
RESPONDENT**

**OFFICER COMMANDING MLOLONGO POLICE STATION .... 10<sup>TH</sup>  
RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 11<sup>TH</sup> RESPONDENT**



## JUDGMENT

1. The Petitioner, Ngwatanio Phase Four Association states that it is an association and its members are about 1,200 men, women and children, are residents of Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as L.R. 19150. That members of the Petitioner, being the residents of Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as L.R. 19150 have been in occupation of the said parcel of land for more than 20 years without any interruptions. That members of the Petitioner are about 1,200 strong men, women and children, and are residents of Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as LR. 19150. That members of the Petitioner, being the residents of Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as L.R. 19150 have been in occupation of the said parcel of land for more than 20 years without any interruptions.
2. That the 6<sup>th</sup> Respondent has earmarked houses belonging to the members of the Petitioner for demolition without notice and the 6<sup>th</sup> Respondent has instructed the 8<sup>th</sup> and 9<sup>th</sup> Respondents to ensure that law and order is maintained during the planned illegal demolitions of the Petitioner's members' houses elected within on LR. No. 19150. That vide aa Gazette Notice 12623 of 7<sup>th</sup> December, 2018 and Gazette Notice 2924 of 29<sup>th</sup> March, 2019, the then Cabinet Secretary, Ministry of Lands and Physical Planning, Farida Karoney appointed a task force on current state of ownership of land in Mavoko, Machakos County. That on or about the 8<sup>th</sup> day of May, 2019, the aforementioned taskforce chairman, Mr. Paul K. Mwangi submitted said report to the then Cabinet Secretary, ministry of Lands and Physical Planning, Farida Karoney. That at Chapter 3 of the said task force report on current state of ownership of land in Mavoko, Machakos County, the members of the task force from page 14 to page 30 submitted in detail on the status of land ownership in Mavoko. That at 29 at paragraph 3.9 in the task force report addresses itself to Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as L.R. 19150. That the taskforce report indicates that Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as LR. 19150 was formally government land and Ministry of Lands and Physical Planning planned the suit property in year 1994 and allocations were done through the office of the Commissioner of Lands
3. That despite of the recommendations by the task force, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> respondents have failed to ensure that members of the petitioner have been granted title deeds as recommended but instead there has been a myriad demolitions of properties belonging to the residents of Mlolongo Phase Four (Mulinge Scheme) and as such they have been subjected to violations of their basic human rights through physical violence, harassments and unlawful arrests by officers from the 9<sup>th</sup> and 10<sup>th</sup> respondent's police stations. That despite members of the petitioner, being the residents of Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as LR. 19150 for more than 20 years without any interruptions, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have failed to issue titles to the said members of the petitioner but instead title documents have been fraudulently been issued to non-residents through orthodox means which act of the 1<sup>st</sup> and 2<sup>nd</sup> respondents has rendered several members of the petitioner homeless and arbitrary arrests and malicious prosecutions by the 9<sup>th</sup> and 10<sup>th</sup> respondents on the strength of the said various fake and fraudulently issued title deeds. That further the 6<sup>th</sup> and 7<sup>th</sup> respondents have earmarked houses belonging to the members of the petitioner for demolition without notice and the 6<sup>th</sup> respondent has



instructed the 9<sup>th</sup> and 10<sup>th</sup> respondents to ensure that law and order is maintained during the planned illegal demolitions of the petitioner's members' houses elected within on L.R. No. 19150.

4. That further to the demolitions, the residents of Mlolongo Phase Four (Mulinge Scheme) have been subjected to violations of their basic human rights through physical violence, harassments and unlawful arrests by officers from the 9<sup>th</sup> and 10<sup>th</sup> Respondent's police stations which arrests are instigated by individuals who are not residents within the suit property and to this extent officers from the 9<sup>th</sup> and 10<sup>th</sup> respondent's stations have descended on members of the Petitioner within the suit property using private vehicles belonging to the said individuals who are not Residents leaving behind immense destruction of property. That the arbitrary arrests of the members of the petitioner leads to preferring of trumped up charges against members of the petitioner and the same amounts to abuse of power and there is existence of imminent risk of new arrests by the 9<sup>th</sup> and 10<sup>th</sup> respondents and subsequent charges being executed in due course.
5. The petitioner prays for:
  - a. An order restraining any purported demolition and or forceful eviction by the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Respondents against the Petitioner and its members.
  - b. A declaration that the residents of Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as LR. 19150 are entitled to be issued with title documents by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
  - c. A declaration that the residents of Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as L.R. 19150 are entitled to shelter with access to education facilities, clean water, health care and food at the State's expense;
  - d. A declaration that the residents of Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as L.R. 19150 are entitled to the full protection from discrimination and the same right had been violated hence they were entitled to full compensation for loss suffered during and after the illegal demolition or their structures.
  - e. A declaration residents of Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as LR. 19150 and other members of the public were entitled to the full enjoyment of the right to economic and social rights that were about to be violated and or already violated; and
  - f. An order quashing the Director of Public Prosecution's decision to institute criminal proceedings as against the residents of Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as LR. 19150.
  - g. A permanent order restraining the Director of Public Prosecutions by himself, his officers, servants, agents or anyone acting on his behalf from instituting, charging or prosecuting or continuing to prosecute members of the Petitioner herein in relation with the complaint or allegation(s) made arising from or in relation to this Petition.
  - h. Any other orders it may deem just, fit and expedient to award in the interests of justice.
  - i. Costs of this Petition be provided for.
6. The 9<sup>th</sup> 10<sup>th</sup> and 11<sup>th</sup> respondents submitted that the petitioner's claim against them are baseless and are not substantiated and do not meet the threshold of *Anarita Karimi Njeru vs Republic (1976-1980)*



KLR 1272. That no evidence of harassment, intimidation or prosecution has been adduced before the court. That the Petition is mischievous and an abuse of the court process.

7. I have considered the Petition and the submissions therein. The petitioner stated that it is an association and that articles 10(1) (2), 20(2), 24, 43, 40, 165, 27(2), (4) & (6) 28, 29, 39, 40, 43, 47 and 56 of the Constitution had been contravened. However, the preliminary issue for determination is whether the petitioner has locus standi to institute the instant petition. The issue of jurisdiction and locus standi to institute a suit must be dealt with first to confirm whether a person has a right to be heard, right to appear in court. In the case of Alfred Njau & Others vs City Council of Nairobi (1982) KAR 229, the court held as follows;

“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.”

8. Similarly, 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.”

9. In the case of Mumo Matemo vs Trusted Society of Human Rights Alliance & 5 Others, the court stated that while the court should not sanction hurdles to access to justice by restricting the definition of locus standi, it should nevertheless not entertain litigation that is hypothetical, abstract or is an abuse of the judicial process.

10. Therefore, locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.

11. The Petitioner states that it is an association registered as such by the Registrar of Societies whose members are about 1,200 men, women and children, are residents of Mlolongo Phase Four (Mulinge Scheme) village near the Kenya National Housing Corporation Mlolongo within a parcel of land known as L.R. 19150.

12. In the case of Seely vs Schenck & Denise quoted with Approval In Richardson v Smith & Co. (1885) 21 F.L.R. 336, 341;

“Thus, a society is a number of persons taking to themselves a fictitious name, and by that name, protruding themselves into a court of justice.... But by this assumed name, they cannot appear in a court of justice. They can neither sue nor be sued by it. This is a privilege appertaining to corporate bodies only ... To sue and be sued, in their corporate name, is one of the great privileges granted to corporate bodies. It can only be authorized by statute. It is too plain for any argument that the unincorporated societies in their own name cannot be so sued. The right to sue and be sued is a corporate franchise.”

13. The petitioner describes itself as an association registered under the Societies Act, Laws of Kenya which is undisputed. The question is whether the petitioner has the capacity to sue or be sued?



Constitution Article 22 provides as follows;

- “(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.
- (3) The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that--
- (a) the rights of standing provided for in clause (2) are fully facilitated; (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation; (c) no fee may be charged for commencing the proceedings; (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.
- (4) The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.”

14. Further that Article 260 of the [Constitution](#) defines a person to include;

“includes a Company, Association or other body of persons whether incorporated or unincorporated;”

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.”

15. Be that as it may, the petitioner is not envisaged in the interpretation of a person as provided for under Article 260 of the [Constitution](#) and neither does it fall under Article 22 which deals with the infringement of the bill of rights.



16. In the case of Peter Taracha & Anor vs Holiness Church & Anor (2016) eKLR, the court stated as follows;

“I have carefully gone through the entire Societies Act Chapter 108 of the Laws of Kenya and I have not come across a single provision that provides for the institution of suits by or against entities registered under the Act. I thus wholly agree with the sentiments expressed by Justice Bosire (as he then was) in John Ottenyo Amwayi & others V Rev. George Abura & others HCCC No. 6339 of 1990 when he stated as follows:-

“The Societies Act does not contain provisions with regard to the presentation and prosecution of suits by or against unincorporated societies. It would appear to me that the legislature did not intend that suits be brought by or against those societies in their own names ....”

In Kiserian Isinya Pipeline Road Resident Association & others V Jamii Bora Charitable Trust and Another Civil Appeal No. 307 of 2006 Hon. Justice Alnashir Visram (as he then was) relying on several authorities including the case of Free Pentecostal Fellowship in Kenya V Kenya Commercial Bank HCC No. 5116 of 1992 (O.S) struck out an appeal with costs on grounds inter alia that it had been lodged by appellants whose majority consisted of unincorporated entities which did not have capacity to sue. In the Free Pentecostal Fellowship in Kenya case (supra) Justice Bosire (as he then was) expressed himself in the following terms :-

“The position at common law is that a suit by or against unincorporated bodies of persons must be brought in the names of, or against all the members of the body or bodies. Where there are numerous members the suit may be instituted by or against one or more such persons in a representative capacity pursuant to the provisions of Order 1 rule 8 Civil Procedure Rules.

In the instant matter, the suit was instituted in the name of a religious organization. It is not a body corporate which would then mean it would sue as a legal personality. That being so it lacked the capacity to institute proceedings in its own name”.

..... It is important to appreciate that lack of capacity to sue or be sued is a weighty matter that goes to the root of the validity of proceedings before a court. It is not a mere procedural issue. The consequences of instituting a suit without legal capacity to sue are grave: such a suit is incompetent and any proceedings flowing from it are a nullity in law.”

17. In the case of Mavoko Land Development Company Limited vs Mlolongo Catholic Church & 2 others (2022) eKLR the court held that it is trite that a society registered under the Societies Act, including a religious organizations, can only sue or be sued through its officials.

18. In the case of Kisumu ELC Case No 225 of 2014, Evans Otiende Omollo vs School Committee Union Primary School and Another (2015) eKLR Kibunja J stated that;

“The parties described as Defendants herein do not exist as they are not legal entities under the Basic Education Act capable of being sued or to defend this suit. He further stated at paragraph 5 that 'having found that the four named defendants are nonexistent as entities



capable of being sued, the court finds that to allow the suit as filed to continue to further hearing would be an abuse of the courts' process"

19. I find that the petitioner has no locus standi and the Petition is therefore dismissed with costs.  
It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**N.A. MATHEKA**

**JUDGE**

