



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**ENVIRONMENTAL CASE NO. 66 OF 2012**

**WAZIRI ABUBAKARI ALI..... 1ST PLAINTIFF**

**ALI MAKOKHA ABDI ..... 2ND PLAINTIFF**

**VERSUS**

**MUCHANI MUTUKA ..... DEFENDANTS**

**RULING**

The applicant filed a notice of motion dated 12th November 2012. While the application was pending, the respondent raised a preliminary point of law that the plaintiffs lack capacity to bring this suit.

The parties then filed their written submissions. Mr. Onkangi for the respondent submitted both on the preliminary point and on the merits of the application. Mr. Kraido only submitted on the merit of the preliminary point of law raised. When the parties appeared before me on 23rd April 2013, they agreed to dispose of the preliminary point first. I will therefore give my ruling on the preliminary point of law strictly so that the applicant is not prejudiced.

The preliminary point by the respondent raises the issue that the applicants not managers of Webuye Muslim Academy. They submit there is no written authority to sue and/or institute the instant proceedings on behalf of the School and the suit ought to be struck out. Further they submit the suit ought to have been brought by the Trustees of the School and not the applicants who are both strangers to the school and the purported land.

A second point was raised that this court lacks jurisdiction to entertain this matter as the claim before court is for interference in the management of a school and not a land matter.

The applicant in their response stated that the preliminary objection does not raise a pure point of law as annunciated in the *Mukisa Biscuit Co. Ltd. vs. West End Distributors Ltd. [1969] EA 696*. The present preliminary objection contains points that are suitable for a formal application. According to the applicant, the documents annexed to the replying affidavit shows they have a nexus to the property hence they have *locus standi* to sue. It will only require the plaint to be ammended. They urged the court not to strike out the suit. The plaint at paragraph 3 thereof ;

***“That at all material times relevant to this suit, the plaintiffs have been and still are officials of the management team of Webuye Muslims Academy, a private educational Institution situated on plot No. Webuye Municipality/3271.”.***

The claim for as presented in paragraph 8

***“permanent injunction to restrain the defendant by himself..... from entering disrupting the learning process and in any other manner interfering with management of Webuye Muslim Academy situated on plot No. Webuye Municipality/3271 pending hearing and determination of suit.”***

I presume the last words ***“pending hearing and determination of this suit”*** ought to have been omitted. Be that as it may, the intention of quoting the prayer/claim is to find out if the same gives plaintiffs any locus if the prayer is associated with description given in paragraph 3 *supra*.

In my understanding of the description given in paragraph 3 *supra* and 8, it appears the plaintiffs have brought this suit on behalf of the schools as officials. However there is no description on the position they hold whether as chairman nor secretary of the management team within the entire plaint.

As pointed out by the respondent, they have not annexed any letter of authority from Webuye Muslim Academy for the plaintiffs to commence this suit on its behalf. I have perused the file and find no minutes filed passing resolution for the suit to be instituted. In the absence of such, it cannot be treated as a matter that can be cured by amendment. On the submission that the point raised does not meet the bar set out in *Mukisa Biscuits* case *supra*, locus standi is such a core matter in filing of suits that it cannot be ignored.

Consequently, I find the preliminary point of law is merited. I therefore strike out the suit. It follows that the application also collapses. The costs of the application and suit is awarded to the defendant.

**RULING DATED, SIGNED, READ and DELIVERED** in open court this 5th day of July 2013.

**A. OMOLLO**

**JUDGE.**