



**Mbaazi Avenue Residents Association v Abundant Blessing Limited;
NEMA & another (Interested Parties) (Environment and Land Petition
E006 of 2023) [2025] KEELC 6399 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6399 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND PETITION E006 OF 2023
AA OMOLLO, J
SEPTEMBER 25, 2025**

BETWEEN

MBAAZI AVENUE RESIDENTS ASSOCIATION PETITIONER

AND

ABUNDANT BLESSING LIMITED RESPONDENT

AND

NEMA INTERESTED PARTY

NAIROBI CITY COUNTY INTERESTED PARTY

RULING

1. There are two applications under consideration. First is the application is dated 10th February, 2025 brought by the Respondent. It is anchored on order 2 rule 15 of the Civil Procedure Rules and the orders sought are:
 - a. The Petition dated 12th November 2023 herein be struck out.
 - b. Costs be awarded to the Respondent and Interested Parties.
2. The application is premised on the grounds inter alia this Honourable Court has already held in its Ruling dated 6/2/2025 that:
 - i. Section 41 of the *Societies Act* states that a society registered under the *Societies Act* is an unincorporated entity and does not have the locus standi to sue or be sued in its own name, but through its registered officials.



- ii. Without locus standi, as was held in *Mitikenda Residents Association V Niuguna & N3 Others*, ELC Case NO. 624 OF 2017, such a suit was and remains a non-starter, thus fatally incompetent.
 - iii. Locus standi being a jurisdictional issue, it is expected that the court downs its tools, in tandem with the principle in *Owners of Motor Vesel 'Lilian S' vs. Caltex Oil (Kenya) Ltd.*, [1989] eKLR.
3. Instead of filing a replying affidavit, the Petitioner filed the notice of motion dated 7th March 2025 and supported the affidavit sworn by Bernard M Kinara on the same date seeking the following orders;
 - a. Spent
 - b. Under Rule 5 of the Mutunga Rules, the court be pleased to order that the petition be amended to substitute or add Bernard Kinara as chairperson of Mbaazi Avenue Residents' Association as Petitioner
 - c. As a consequence of order (b) above, the court be pleased to reinstate the conservatory orders on record pending hearing and determination of the petition on the merits.
4. The motion is premised on the grounds inter alia that Bernard Kinara as Applicant's Chairman, should be substituted to indicate the status. Further that the court reinstate the conservatory orders on record pending hearing and determination of the petition on the merits because the Petitioner's right to a clean and healthy environment will be irreparably violated.
5. The Respondent opposed the motion vide replying affidavit sworn on 18th March 2025 by Ying Yang stating that the Petitioner, a society registered under the *Societies Act*, lacks the legal standing (locus standi) to institute the proceedings in its own name. Citing the Court's Ruling of 6th February 2025, the Respondent argues that the Petition is fatally defective and incompetent from the outset as such entities must sue through their registered officials. They contend the Court lacks jurisdiction to proceed with the matter.
6. In addition, the Respondent avers that it has fully complied with all the legal and environmental requirements in relation to its intended development project on L.R. NO. NAIROBI/BLOCK 15/497, including obtaining approvals from NEMA and Nairobi City County after conducting a thorough Environmental Impact Assessment and public participation.
7. Further, it denies any violation of environmental rights, emphasizing that the project is aimed at benefiting the public while ensuring environmental sustainability.
8. The 2nd Interested party opposed the application vide a replying affidavit sworn by Cynthia Korir, an Advocate who stated that the motion is frivolous because this court already rendered a ruling dated 6/2/2025 that the Petitioner, a society registered under the *Societies Act*, Cap 108, Laws of Kenya, had no locus standi to sue or be sued in its own name, but through its registered officials.
9. Ms Korir deposes that the Petitioner has failed to demonstrate that the initial filing of the Petition was due to a genuine mistake under Rule 5(c) of the Mutunga Rules. Instead of appropriately challenging the Court's ruling dated 6th February 2025, either by seeking a review, setting it aside, or filing an appeal, the Petitioner has opted to file a fresh application, despite lacking locus standi.
10. The 2nd Interested party stated that since the Court's earlier decision has not been overturned or appealed, it remains binding, rendering the current application incompetent and the proceedings a



nullity. Consequently, the Court lacks jurisdiction to entertain or reinstate the conservatory orders sought.

11. Further, the 2nd Interested Party contends that the Petitioner has failed to exhaust the statutory dispute resolution mechanisms under the *Physical and Land Use Planning Act*, 2019. That, the issues raised relating to planning and development permissions fall squarely within the mandate of the County Physical and Land Use Planning Liaison Committee. It asserts that by bypassing these procedures, the Petitioner has prematurely approached the Court, in violation of the doctrine of exhaustion.

Submissions:

12. The Respondent filed submissions dated 26th March 2025 in opposition to the motion stating that it is an attempt to ask the Court to sit on appeal against its own ruling of 6th February 2025, which already found the Petition fatally defective and a non-starter due to lack of locus standi. It cited the case of *Mitikenda Residents Association v. Njuguna & 3 Others* (ELC 624 of 2017), for the proposition that a society registered under the *Societies Act*, Cap 108, lacks legal standing to sue in its own name and must act through its registered officials.
13. That this Court's ruling, based on this principle, rendered the entire Petition incompetent from inception, a jurisdictional defect that cannot be cured through amendment. Therefore, this Court no longer has jurisdiction to entertain or revive the Petition through the present application.
14. The Respondent submits further that the application is frivolous, misconceived, and an abuse of court process being a clear afterthought made in bad faith and lacking legal merit. Relying on *Joseph Ochieng & Others v. First National Bank of Chicago* (Civil Appeal 149 of 1991), the Respondent emphasizes that courts have consistently held that fatal legal defects, such as those arising from limitation or jurisdiction, cannot be cured by amendment.
15. That similar position was taken in *Japhet Nzila Muangi v. Hamisi Juma Maleet* (ELC No. 71 of 2016) and *Geeta Bharat Shah & Others v. Omar Said Mwatavari* (Civil Appeal No. 46 of 2008), the courts held that proceedings commenced against non-existent or improperly designated parties are nullities ab initio and cannot be salvaged by joinder or amendment.
16. The Petitioners had filed submissions on 10th March, 2025 touching on their application only. They place reliance on Article 159 (2) of *the Constitution* of Kenya is that justice shall be administered without undue regard to procedural technicalities. The Petitioner also rely on Rule 5 (c) of the Mutunga Rules which further provides that,

“Where proceedings have been instituted in the name of the wrong person as petitioner, or where it is doubtful whether it has been instituted in the name of the right petitioner, the Court may at any stage of the proceedings, if satisfied that the proceedings have been instituted through a mistake made in good faith, and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as petitioner upon such terms as it thinks fit.”
17. The Petitioner also cited inter alia the case *William Kiprono Towett & 1597 Others v Farmland Aviation Ltd & 2 Others* (2016) eKLR the Court reiterated that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.



Analysis and Determination:

18. The question for determination is whether to strike out the suit or to allow the amendment to introduce the Chairman of the Petitioner to rectify the anomaly. Section 41 of the *Societies Act* provides thus;
- (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
19. Can the officials of the Petitioner be introduced by way of amendment where the suit was commenced in the name of the Society? Order 1 Rule 10 of the Civil Procedure Rules, 2010 states that:
- “(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.
 - (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
20. The provisions of Order 1 rule 10 are in consonance with Rule 5(c) of the Mutunga Rules quoted supra. I am persuaded to find that the nature of amendment by way of substituting the Petitioner by including the names of its officials is permissible under the Rules referred to. It is also my considered view that the failure to bring the suit in the name of its officials was a mistake which cannot be stated to be intentional on the part of the Petitioner.
21. This will enable the court to effectually determine the issues in dispute and any prejudice likely to be occasioned to the Respondent and the Interested Parties can be cured by an award of costs. For this reason, I decline to grant the order to strike out the Petition as prayed in the motion dated 10th February, 2025.
22. In reference to the request to re-instate the conservatory orders pending determination of the Petition, I decline on account that time is gone since the orders were discharged on 6th February, 2025. The Petitioner did not, in its affidavit in support of the motion, explain the status quo obtaining as at the time of prosecuting the current applications.
23. In conclusion, I make the following orders:
- i. The application seeking to strike out the petition is dismissed with no order as to costs.



- ii. The petition be amended within seven (7) days of this order to substitute or add Bernard Kinara as chairperson of Mbaazi Avenue Residents' Association as Petitioner. In default, the Petition stands struck out.
- iii. Costs of the application dated 7th March 2025 awarded to the Respondent and the 2nd Interested Party
- iv. The costs awarded are assessed at Kshs Fifteen Thousand each (Kshs 15000) payable within 30 days hereof. In default, execution to issue.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2025

A.OMOLLO

JUDGE

