



Kiragu & 2 others v Mbae & 8 others (Environment and Land Petition E003 of 2025) [2025] KEELC 5813 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5813 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND PETITION E003 OF 2025**

**JA MOGENI, J
JULY 31, 2025**

BETWEEN

**JAMES KIRAGU 1ST PETITIONER
DAVID KARIUKI 2ND PETITIONER
PATRICIA KARIUKI 3RD PETITIONER**

AND

**JULIA MBAE 1ST RESPONDENT
JOAN MUOTI 2ND RESPONDENT
ALFRED LULU 3RD RESPONDENT
JOHN OMBIJA 4TH RESPONDENT
PATRICK KAPTWAY NJAMMET 5TH RESPONDENT
PIUS K NG'ANG'A 6TH RESPONDENT
JARED N MUSIMA 7TH RESPONDENT
COUNTY EXECUTIVE COMMITTEE MEMBER 8TH RESPONDENT
COUNTY GOVERNMENT OF KIAMBU 9TH RESPONDENT**

RULING

1. Coming up before me for determination are two Applications and a Preliminary Objection. The first Application is dated 7/02/2025. It is brought by the Plaintiffs and it seeks conservatory orders of injunction against the Respondents. The second Application is dated 12/03/2025. It is brought by the 1st - 7th Respondents and it seeks review of conservatory orders issued on 10th February 2025 and



restraining orders against the Petitioners from interfering with the suit property parcel number LR 154/33, LR No. 154/34 and LR 154/36.

2. Further that an order be issued directed at the OCS Tigoni Police Station to ensure compliance of the orders issued. The Preliminary Objection is dated 28/02/2025. It is brought by the 1st to 7th Respondents and it attacks the Petitioners' Petition and Application dated 7/02/2025 on the following grounds:
 1. That the parties included as 1st to 7th Respondent are not proper Respondents as they have a separate legal personality from title Registered Trustees of the Young Mens' Christian Association in Kenya which is a body corporate registered under the and should be struck out in line; with Rule 5(d) (1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice Rules, 2013.
 2. That the continuation of this Petition in the names of persons listed as 1st to 7th Respondents will be an exercise in futility and waste of judicial time for reasons that any orders issued will not be enforceable against the as 1st to 7th Respondents herein pursuant to the rule in *Salmon vs A. Salmon & Co. Ltd* [1896] UKHL1 which set up the principle of corporate character and the doctrine of separate legal personality
 3. That the 1st to 7th Respondents do not own the parcels of lands cited by the Petitioners and the Petitioners have not disclosed any specific rights or interest against the persons listed as 1st to 7th Respondents.
 4. That in the premises, the Petitioner's Notice of Motion as well as the Petition both dated 7th February 2025 are incompetent, bad in law and an abuse of the Court process, such as such this Honorable Court ought to down its tools
3. The 8th and 9th Respondents filed Grounds of Opposition to the Petitioner's Application and Petition dated 23/04/2025 and contended that the Petitioner had not demonstrated breach of Section 55 and the Third Schedule of the Physical and Land Use Planning Act. Thus, there is no reasonable cause of action against the 8th and 9th Respondents and so the Petition should be struck out against the 8th and 9th Respondents.
4. The parties were directed to file written submissions in respect of the two Applications and the Preliminary Objection. The Petitioner filed joint submissions in support of the Notice of Motion Application dated 7/02/2025 and against the Preliminary Objection, whereas the 1st to 7th Respondents filed joint submissions dated 2/04/2025 in opposition to the Notice of Motion Application dated 7/02/2025 and in support of the Preliminary Objection.
5. For the instant case, upon reading the Preliminary Objections as well as the submissions of the parties herein, the Court is satisfied that there is only two issues to be determined to adequately deal with the objection raised to wit:-
 - a. Whether the 1st to 7th Respondents have the legal capacity namely locus standi to be sued.
 - b. Who pays the cost of the Applications and Preliminary Objection?
6. It is the contention of the Objectors that the 1st to 7th Respondents are not the owners of the suit property but trustees of the Young Mens' Christian Association (YMCA) which is a body corporate and this being the case they cannot be sued in their personal capacity as trustees. The issue raised certainly refers to the locus standi of the Respondents to defend the Petition.



7. Locus standi is defined in Black's Law Dictionary, 9th Edition (page 1026) as:-

“The right to bring an action or to be heard in a given forum.” In the case of Alfred Njau and Others ..Vs.. City Council of Nairobi (1982) KAR 229, the Court 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.”

8. A claim that one has no locus standi challenges a party's right to be heard before a Court and if a determination is made in the affirmative then this issue has the capability of disposing of the suit. A claim that a party lacks locus standi therefore is a pure point of law and one that needs to be raised and determined at the earliest opportunity.

9. In essence therefore, locus standi is a fundamental principle ensuring that only those with a genuine interest in a legal matter are allowed to participate in the proceedings. This applies to all parties involved, whether they are initiating the action (Plaintiff/Applicant) or defending against it (Defendant/Respondent).

10. It is now a well settled principle that a Preliminary Objection must be on pure points of law not blurred by any factual details liable to be contested or proved through the production of evidence. In other words, a matter that requires investigation or the production of evidence for authentication does not qualify as a point to be raised in a Preliminary Objection.

11. What constitutes a Preliminary Objection was discussed in the case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696, where it was held that:

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of 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 had to be ascertained or if what is sought is the exercise of judicial discretion.”

12. It is trite that prioritizing a Preliminary Objection (PO) on the grounds of suing the wrong Respondents is a sound point of law. Since a Preliminary Objection essentially raises a pure point of law, it has the potential to resolve the entire matter if successful, making it a logical first step in the proceedings. In addressing a Preliminary Objection first, the Court is always presented an opportunity, where if the objection is found to be legally sound then the Court will avoid unnecessary consideration of other Application(s) or the merits of the main Petition or suit if the initial objection is upheld.

13. The argument is that the individuals named as Respondents in a legal case should be struck out because they are distinct from the Registered Trustees of an Association, which is a registered body corporate. This distinction is relevant because the Association, as a registered entity, has its own legal personality and the ability to sue and be sued in its own name. Therefore, the individuals are not the proper parties to be sued and should be removed from the case in accordance with Rule 5 (d) (I) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice Rules, 2013.

14. Now although the Petitioners have sued the trustees of the YMCA, they should have sued the YMCA as a body corporate as was deposed vide the Replying Affidavit sworn on 28/02/2025 by Patrick Kaptway Njammet with the authority of the 1st - 7th Respondents sworn on 28/02/2025. From the



documents filed it is clear that the Petitioners instituted the Petition against the wrong parties. The 1st to 7th Respondents despite being trustees of the YMCA cannot be sued in their personal capacity.

15. YMCA is a body corporate with perpetual succession and it can be sued and also can sue in its own capacity. This means that the instant Petition is unsustainable. Mrima, J aptly captured the legal position with regard to where a party institutes a suit without a locus standi and/or capacity in the case of Julian Adoyo Ongunga & Another –vs- Francis Kiberenge Bendera (suing as Administrator of the Estate of Fanuel Evans Amudavi, Deceased) (2016) eKLR where he stated:-

“Further the issue of locus standi is so cardinal in a Civil matter since it runs through the heart of the case. Simply put, a party without locus standi lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly so the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a Court acting without jurisdiction, it all amounts to null and void proceedings.”

16. In the premises it is my considered view that the 1st to 7th Respondents’ Preliminary Objection was properly taken. The 1st to 7th Respondents sued were not the proper parties in the proceedings as the YMCA is a body corporate and the 1st to 7th Respondents could not be sued on its behalf.
17. In the premises I uphold the Preliminary Objection on the ground that the jurisdiction of this Court has not been properly invoked. The suit is Petition since it was misconceived and incompetent and the same is hereby struck out. Each party to bear their own costs.
18. Orders accordingly.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 31ST DAY OF JULY 2025.

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MOGENI J

JUDGE

In the presence of:-

Mr. Mutiso for the Petitioners

Mr. Mutisya for the 1st – 7th Respondents

Ms. Maina for 8th – 9th Respondents

Melita – Court Assistant

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MOGENI J

JUDGE

