



**Kiboko Water Resource Users Association v Kenya Pipeline
Company Limited & 3 others (Environment and Land Petition
13B of 2019) [2025] KEELC 8047 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8047 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ENVIRONMENT AND LAND PETITION 13B OF 2019

EO OBAGA, J

NOVEMBER 20, 2025

**IN THE MATTER OF: THE CONSTITUTION OF KENYA ARTICLES 2(1),
(2) & 23(1) & (3) A, B, C, D, & E, 27 & 73 OF THE CONSTITUTION**

AND

IN THE MATTER OF ARTICLE 20 (1)(2)(3) A & B, ARTICLE OF THE CONSTITUTION.

**IN THE MATTER OF CONTRAVENTION AND VIOLATION OF FUNDAMENTAL
RIGHTS AND FREEDOM OF INDIVIDUALS AS ENSHRINED UNDER
ARTICLE 27, 28, 32, 40, 42, 43, 47 AND 70 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013 IN THE
MATTER OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT, 1999**

**IN THE MATTER OF THE ENVIRONMENTAL (IMPACT
ASSESSMENT AND AUDIT) REGULATIONS, 2003**

IN THE MATTER OF RULE 88 (3) OF WATER RESOURCES MANAGEMENT RULES

BETWEEN

KIBOKO WATER RESOURCE USERS ASSOCIATION PETITIONER

AND

KENYA PIPELINE COMPANY LIMITED 1ST RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 2ND
RESPONDENT**

WATER RESOURCES AUTHORITY 3RD RESPONDENT

**ENERGY AND PETROLEUM REGULATORY AUTHORITY 4TH
RESPONDENT**



RULING

1. This is a ruling in respect of a notice of motion dated 31st October, 2025 in which the Applicants seeks the following orders:
 1. Spent
 2. That the Applicants/intended petitioners herein be enjoined as petitioners in this petition.
 3. That the costs of this application be in the cause.
2. The Applicants contend that they are the current registered officials of the petitioner which has membership of about 5,000 members. They state that they participated in this petition upto 14th February, 2024 when the court delivered a ruling. They contend that from then, they did not know what was happening until they learnt that this petition was set for judgment on 12th November, 2025.
3. The Applicants contend that the members of the association have neither been participating in the petition nor appeared in the substantive proceedings out of reasons beyond their knowledge. They therefore state that their interests may not have been addressed adequately. They state that they have an identifiable stake in this matter and that their joinder will enable the court to address all their issues.
4. The Applicants' application was opposed by the petitioner/Respondent through grounds of opposition dated 7th November, 2025. The Petitioner contends that the Applicants' application is res judicata in view of the ruling of the court delivered on 20th December, 2022. The interest of the Applicants if at all are represented in the suit by virtue of being members of the petitioner.
5. The Petitioner further contends that this application is meant to delay the finalization of this matter and that it is an abuse of the process of the court.
6. The 1st Respondent opposed the Applicants application through grounds of opposition dated 8th November, 2025. The 1st Respondent contends that the Applicants' application is res judicata in view of the ruling of 20th December, 2022.
7. The 1st Respondent further contends that the application is fatally defective as it fails to disclose who are the intended applicants. The 1st Respondent further contends that the Applicants' application is an abuse of the process of court as the Applicants have always known the existence of the petition but have decided to file an application for joinder six years after the filing of the petition.
8. The 1st Respondent finally states that if the Applicants are members of the petitioner, then their interests are taken care of by the petitioner and this application is brought in bad faith.
9. This application was argued orally. I have considered the Applicants' application and the opposition thereto by the petitioner and the 1st Respondent. I have also considered the oral submissions. There are two issues for determination. The first is whether the application is res judicata. The second is whether the Applicants should be joined in this petition.
10. The principle of res judicata is predicated on Section 7 of the *Civil Procedure Act* which states as follows:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court



competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”.

11. The issue which was determined vide ruling of 20th December, 2022 was the legal standing of the petitioner. The 2nd Respondent had raised a preliminary objection on the ground that the petitioner being an association did not have legal capacity to sue. There was no issue raised on whether members of the petitioner could be joined in the petition. I therefore find that this application is not res judicata.
12. The Applicants concede that they were aware of the petition up until on 14th February, 2024. Thereafter they claim not to know what happened thereafter until they learned in late October, 2025 that this petition was set for judgment on 12th November, 2025.
13. The Applicants who are sought to be joined have not been identified. The Applicants have stated that the petitioner has about 5,000 members. It is not clear whether it is the 5,000 members who are sought to be joined or the 203 members who are listed in a list which was filed together with this application.
14. By ruling of 20th December, 2022 the court ruled that the petitioner had the locus standing to file the petition. The Applicants concede that indeed the petitioner has power or locus to bring this petition. This being the case, the Association can adequately represent the interest of its members. During the hearing, Mr. Ngumbau seemed to suggest that Mr. Mboya of Apollo & Co. Advocates had not instructions to represent the Association and that the officials who sanctioned the filing of the petition were imposters.
15. The supporting affidavit to the Applicant’s application has been sworn by the Association’s secretary Benson Kyalo Mwangi. The affidavit in support of the petition was sworn by the chairman Wilson Mbithi Munguti. These two are still among officials of the petitioner as per the documents filed together with the petition and those filed together with this application.
16. If there are any internal wrangles amongst the officials, this court does not have jurisdiction to address the same. Equally if there is an issue of representation that is not an issue which can be raised in this application.
17. Section 25 of the Societies Act provides on how members register is kept and maintained. If the Applicants are members of the petitioner they cannot seek to be joined in this petition as their interests are catered by the petitioner. I therefore find that this application is devoid of merit. The same is dismissed with no orders as to costs as this is a public interest litigation.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 20TH DAY OF NOVEMBER, 2025.

In The Presence Of:

Mr. Mboya for the Petitioner

Ms. Aremo for Mr. Angwenyi for 1st Respondent.

Mr. Ngumbau for the Applicants.

Court assistant - Nelima

