



REPUBLIC OF KENYA



Baraza & another v PCEA Oloo Sirkon Church & 3 others (Environment and Land Case E094 of 2022) [2025] KEELC 8583 (KLR) (3 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8583 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E094 OF 2022
LC KOMINGOI, J
DECEMBER 3, 2025**

BETWEEN

PATRICK WAFULA BARAZA 1ST PLAINTIFF

CANPAN INVESTMENTS LIMITED 2ND PLAINTIFF

AND

PCEA OLOO SIRKON CHURCH 1ST DEFENDANT

ABDI YUSSUF AHMED 2ND DEFENDANT

BONIFACE KOBINGI ORIOKI 3RD DEFENDANT

LAND REGISTRAR, KAJIADO 4TH DEFENDANT

RULING

1. This is the Ruling in respect of the Notice of Motion dated 10th September 2024.
2. It seeks orders;
 1. That the Plaintiff be ordered to pay Kshs. 4,000,000/= for security for costs.
 2. That the costs of this application be provided for.
3. The grounds are on the face of the Application and are set out in paragraphs 1 to 5.
4. The Application is supported by the affidavit of Steller Njeri Kinuthia, Chairperson of the 1st Defendant, sworn on the 10th September 2024.
5. It appears the Notice of Motion is not opposed. On the 20th March 2025 the plaintiff was granted 14 days to file a response to the Notice of Motion. They have not filed.
6. There is also a preliminary objection dated 23rd January 2025 by the 2nd Defendant.



7. On the 9th July 2025, the court with the consent of the parties, directed that the Notice of Motion and the Preliminary Objection be heard together. Parties were also directed to file and exchange written submissions.
8. It appears that only the 2nd Defendant filed written submissions in respect of the preliminary objection. They are dated 18th November 2025.
9. The grounds of the preliminary objection are;
 - i. That this Honourable Court has no jurisdiction to determine this matter.
 - ii. That the 2nd Plaintiff's alleged representative has no locus standi.
10. I have looked at the prayers in the plaint dated 31st August 2022. The plaintiffs claim that the defendants have trespassed on the suit property. The claim is not about a boundary dispute but of trespass. This court has jurisdiction to hear and determine this matter.
11. On the second limb of the preliminary objection, I agree with the 2nd Defendant's submissions that the said John Warungu Kiine is not an agent of the 2nd plaintiff. The 2nd plaintiff is a limited liability company and under 4 rule 1 (4) of the Civil Procedure Rule there has to be authority given by the company to the said John Warungu Kiine to institute this suit on its behalf.
12. Order 4 rule 1 (4) of the Civil Procedure Rules provides that;

“Where the plaintiff is a corporation the verifying affidavit shall be sworn by the officer of the Company duly authorized under the Seal of the Company to do so.”
13. I agree with the 2nd Defendants submissions that the verifying affidavit is sworn by John Warungu Kiine, who is an Administrator of the Estate of Patrick Ndegwa Warungu who was allegedly the director of the 2nd Plaintiff. It is clear that the said John Warungu Kiine is not an agent or official of the 2nd plaintiff and cannot swear an affidavit to institute a suit on its behalf.
14. In the Case of East African Portland Cement Limited v Capital Markets Authority & 4 Others (2014) eKLR the court held;

“that as an artificial body, a company can take decisions only through the agency of its organs, the Board of Directors and the shareholders; and that where a company's powers of management are, by the articles, vested in the Board of Directors, the general meeting cannot interfere in the exercise of those powers...The upshot of these considerations is that in the absence of a board resolution sanction in the commencement of this action by the company, the company is not before the court at all. For that reason, the preliminary objection succeeds and the action must be struck out with costs, such costs to be borne by the advocates for the plaintiff.”

I find that there is no competent suit in court as filed by the 2nd plaintiff. The same is struck out with costs to the defendants.
15. With respect to the Notice of Motion dated 10th September 2024, Order 26 rule 1 of the Civil Procedure Rules provides that;

“In any suit the court may order that security for the whole or any part of the costs of any defendant or third or subsequent party be given by any other party”.



16. It is clear that the court has discretion to grant the orders above. However I find no compelling reasons to order that security for costs be deposited at this stage. I therefore decline to grant the orders sought.
17. The upshot of the matter is that I find no merit in the application and the same is dismissed. The costs shall abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 3RD DAY OF DECEMBER 2025.

L. KOMINGOI

JUDGE.

In The Presence Of:

Mr. Kori for Mr. Githui for the plaintiff.

Mr. Ojwang Agina for the 1st Defendant.

Mr. Maobe for the 2nd Defendant.

Court Assistant – Peter.

