**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CIVIL CASE NO. 170 OF 2019**

**OYSTER VILLAGE LIMITED……..PLAINTIFF**

**VS**

**SAVANNA JUA KALI ASSOCIATION…….1ST DEFENDANT**

**NAIROBI CITY COUNTY…….2ND DEFENDANT**

**JUDGEMENT**

1. The Plaintiff filed this suit against the Defendant vide Plaint dated 21st May 2019 amended on 21st February 2022 seeking for the following orders;
   a. An order directed at the Defendants their servants, employees, agents, representatives, associates, servants, agents and/or any other persons claiming through them and or otherwise howsoever to cease and desist from trespassing onto the Suit Property forthwith;
   b. A Permanent Injunction restraining the Defendants their servants, employees, agents,representatives, associates, servants, agents and/or any other persons claiming through them and or otherwise howsoever from transferring, selling, dealing with or otherwise interfering with the Plaintiff's and the owners of the homes' on the Suit Property's ownership and/or usage of the Suit Property.

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c. A Permanent Injunction restraining the Defendants their servants, employees, agents, representatives, associates, servants, agents and/or any other persons claiming through them and or otherwise howsoever from transferring or in any other way interfering with the Plaintiff's and the owners of the homes' Title to the Suit Property.

d. General damages for trespass on the Plaintiff's property;

e. Costs of this suit.

f. Such further and/or other relief as the honourable court may deem fit and expedient so to grant.

2. The Plaintiff stated that they are the registered owner of land known as Nairobi/Block 82/9102 *herein after referred to as* ***"the suit property"***, which it purchased from Shepherds Group Companies Ltd. It has pleaded that they developed Oyster Village comprised of mixed residential and commercial project comprising over 100 homes, apartments, and shops. That the development was partly financed by a Kshs. 472,912,726 loan from Kenya Commercial Bank, secured by a charge over the suit property. The Plaintiff stated that Phase One of the project has been completed, and units have been purchased and occupied by third-party buyers.

3. They averred that on 23rd March 2018, the National Land Commission (NLC) issued a determination adverse to the Plaintiff's ownership. That the Plaintiff

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challenged the decision in ELC JR Case No. 58 of 2018, and on 29th April 2021, Justice Obaga ruled in the Plaintiff's favour, confirming that it was a bona fide purchaser for value and that its title was valid and lawful. The judgment also established that the 1st Defendant is a trespasser.

4. That despite existing conservatory orders during the proceedings and the final judgment, the 1st Defendant and its members have continued to trespass on the suit property, offering portions of it for sale and issuing threats to residents. The Plaintiff states that the 2nd Defendant, County Security Committee or its officers, has been aiding and abetting these actions, including convening an irregular meeting on 17th June 2020 that excluded the Plaintiff.
5. The Plaintiff asserts that unless restrained by the court, the 1st Defendant will continue trespassing on, fraudulently selling parts of the land, and intimidating homeowners.
6. The 2nd Defendant filed a statement of defence dated 2nd March 2020 stating that they are strangers to the Plaintiff's claim and that there is no cause of action disclosed against them.

**Evidence**

7. Moses Nyaga Muriithi, describing himself as the Chairman, director and largest shareholder of the Plaintiff testified as Pw1. He adopted his witness statement dated 21/2/2022 as evidence in chief and produced documents in the amended list

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as exhibits. The witness stated that Oyster Village Limited (OVL), is the registered owner of the suit property, Nairobi/Block 82/9102, purchased and subsequently amalgamated with Nairobi/Block 82/1765 and 82/1767. It is their evidence that before buying the land from Shepherds Group of Companies Ltd for Kshs 130,000,000, the Plaintiff conducted thorough due diligence, which confirmed that the titles were clean, unencumbered, and duly owned by the vendor

8. Subsequent to obtaining all statutory approvals including from the statutory bodies like the NLC, NEMA, and the Survey and Lands offices, the Plaintiff amalgamated the parcels, obtained a Certificate of Lease, and proceeded to develop Oyster Village into a mixed development financed partly by a Kshs 472,912,726 loan from Kenya Commercial Bank. Phase One of the project was successfully completed, with maisonettes, apartments, and shops sold and occupied by third-party purchasers.
9. The witness further states that the 1st Defendant has been aided by officials of the 2nd Defendant, including through a questionable meeting convened by the County Security Committee on 17th June 2020, which was conducted and appeared intended to exert pressure on the Plaintiff. That multiple demands to cease the trespass have been ignored, and the Defendants remain on the land, continuing to claim ownership and interfering with the Plaintiff's property rights.

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10. With no other suit pending between the parties on the same subject matter, the Plaintiff asserts that unless the court grants the orders sought in the amended plaint, it will continue to suffer ongoing loss, damage, intimidation, and infringement of its proprietary rights. The witness also affirmed that he had not presented any evidence that the 1st Defendant is Savannah jua kali Association and if indeed it is registered as such.

**Submissions:**

11. 1st Defendant filed submissions dated 12th May 2025 stating that the suit was filed in 2019 while Judicial Review Application No. 58 of 2018 involving the same parties was still pending. They did not call any witness maintaining from the outset that the suit was improperly brought against them.

12. The 1st Defendant challenged the competency of the suit on the grounds that the Plaintiff has wrongly sued an association without legal capacity, and that the Plaintiff's witness lacked authority to represent the company because no board resolution authorizing him to testify had been filed. On the question of capacity, the 1st Defendant relied on established jurisprudence affirming that unincorporated associations cannot sue or be sued in their own names.

13. For instance, in the cases of **Mwanyagetinge Munetwa Welfare Association v Cabinet Secretary for Interior [2024] KEHC 8337 (KLR), Islamia Madrassa Society v Zafar Niaz & Others [2021] eKLR, Pentecostal Fellowship in Kenya**

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**v Kenya Commercial Bank (HCCC No. 4116 of 1992),** and **Supreme Council of Kenya Muslims (SUPKEM) v Registrar of Societies & Others [2024] KENC 1320 (JR No. 104 of 2023),** it was consistently held that societies registered under the Societies Act lack legal personality and can only litigate through their officials.

14. On the issue of capacity PW1 to give evidence, the 1st Defendant relied on **Bugerere Coffee Growers Ltd v Sebaduka & Another [1970] EA 147,** which held that a company may only commence or defend proceedings when duly authorized by a board or members' resolution, failing which the suit is incompetent. That the Plaintiff did not cure these defects through timely amendment thus the suit should be dismissed with cost.

**Analysis and Determination:**

15. Having read the pleadings, considered the evidence and submissions tendered on record, I frame two issues for determination as follows;

    a. ***Whether the 1st Defendant is a properly sued party?***

    b. ***Whether this suit is subjudice ELC JR 58 of 2018?***

    c. ***Whether the reliefs sought should be granted?***

**Is the 1st Defendant a proper party?**

16. The 1st Defendant contends that it is an unincorporated association lacking legal personality and therefore incapable of being *sued eo nomine*, in its own name. As provided under the Societies Act **Cap 108, registered societies have no capacity**

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**to sue or be sued in their own names**, unless expressly granted such capacity by statute.

17. In the case of **Peter Ngugi Geoffrey & 3 Others vs Mithini SDA Church (2019) eKLR** the court held that;

> ***"In the plaint the Defendant is described as a church registered under the Societies Act. The plaint has not exhibited any form of registration in respect to the Defendant's entity. It is trite that a non-juristic person is incapable of suing or being sued in its name. If indeed the Defendant is registered under the Societies Act, then the right thing was to have it sued through its officials. None has been disclosed."***

18. In this case, the Plaintiff described the 1st Defendant under paragraph 2 of the amended plaint thus;

***"the 1st Defendant is a registered association whose main stated objective is to champion the interest of squatters occupying disputed properties in the area known as Donholm estate"***

19. The Plaintiff does not disclose both in the pleadings and in evidence under what law the 1st Defendant is registered. There was no search produced in evidence to confirm if indeed the 1st Defendant is registered and if so whether the registration granted it capacity to be sued in its own name. If its an association under the Societies Act, it can only sue or be sued through its officials.

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20. The Plaintiff did not sue the officials of the 1st Defendant, nor seek an amendment to cure the defect. Consequently, I hold that the suit as framed is incompetent as against the 1st Defendant.

**Whether the Existence of JR No. 58 of 2018 Renders this Suit *Sub Judice* ?**

21. The 1st Defendant argues that the instant suit was filed in 2019 while JR No. 58 of 2018 involving the same parties was pending thus *sub judice.* The doctrine of *sub judice* is founded under ***Section 6 of the Civil Procedure Act, CAP. 21*** which provides as follows

> **"6. No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed."**

22. This explicitly puts it that, *sub judice* rule applies only where the parties, subject matter, and issues are directly similar.

23. I have looked the judgement adduced by the Plaintiff on JR 58 OF 2018, and the the proceedings thereon centered on the legality of the NLC's determination, whether the NLC exceeded its powers while the present suit concerns with

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trespass, injunctive relief and protection of the Plaintiff's proprietary rights post-judgment. This shows that the causes of action are distinct noting that the JR suit was already concluded by the time this suit was prosecuted, therefore, the *sub judice* doctrine is not applicable.

**d. Whether the reliefs sought should be granted?**

24. The Plaintiff's claim is for trespass, seeking a permanent injunction and damages against the Defendants. From the uncontested evidence, the Plaintiff holds a registered title to the suit property. This ownership was affirmed in JR No. 58 of 2018, where the Plaintiff was declared a bona fide purchaser for value.

25. Under **Sections 24 and 25 of the Land Registration Act**, a registered proprietor is entitled to quite possession and use. It provides;

> **"24. Subject to this Act—**
>
> **(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and**
>
> **25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances**

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**belonging thereto, free from all other interests and claims whatsoever, but subject….**

26. What constitutes trespass was elaborated by the Court of Appeal in the case of **Doshi v Chemutut & 7 others [2025] KECA 776 (KLR)**, where the court stated as hereunder;

> ***"39.Trespass, as stated by this Court in the case of Charles Ogejo Ochieng v Geoffrey Okumu [1995] KECA 169 (KLR), is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who has title to it, or a person who is deemed to have been in possession at the time of the trespass. As for the ingredients of trespass, the Court in William Kamunge Gakui v Eustace Gitonga Gakui (Civil Appeal 16 of 2013) [2014] KECA 39 (KLR) stated that trespass is a violation of the right to possession, and that a plaintiff must prove that he has the right to immediate and exclusive possession of the land. Justice Chemutut did not name Mr. Doshi as a defendant in the suit."***

26. Therefore, for this court to find in favour of the Plaintiff that the suit land has been trespassed upon, there must be evidence identifying the trespasser and the actions that constitute the trespass. Unfortunately, in this case, the 1st Defendant, whose members are alleged to have trespassed, was not properly sued. No evidence was presented regarding who these members are, including mentioning any names.

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27. Courts cannot issue orders in vain and the rules of natural justice requires that parties shall not be condemned unheard. Although the Plaintiff holds a valid title and is entitled to join quite possession, it failed to identify the persons interfering with its quite possession by suing an incompetent party.

28. The claim against the 2nd Defendant was not proved as the Plaintiff did not state with clarity how the 2nd Defendant was aiding trespass by the 1st Defendant and or its members.

29. Consequently, I conclude that the suit was not proved and it is dismissed. Since the suit against the 1st Defendant is found to be incompetent, I award its counsel half costs of the suit. No costs is awarded to the 2nd Defendant.

**Dated, Signed and Delivered at Nairobi this 4th day of December, 2025**

**A. OMOLLO**

**JUDGE**

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