



Komarock Saika Market/Shopping Center CBO v Kenya Power & Lighting Company Limited; Nairobi City County (Interested Party) (Environment and Land Case E063 of 2025) [2025] KEELC 18556 (KLR) (17 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18556 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E063 OF 2025
J OMANGE, J
DECEMBER 17, 2025**

BETWEEN

KOMAROCK SAIKA MARKET/SHOPPING CENTER CBO PLAINTIFF

AND

KENYA POWER & LIGHTING COMPANY LIMITED DEFENDANT

AND

NAIROBI CITY COUNTY INTERESTED PARTY

RULING

1. This matter comes up for determination of the Defendants Preliminary Objection and the Plaintiffs application dated 21st February 2025 in which the Plaintiff sought the following orders;
 - a. That service of this application be dispensed with and the application be heard ex-parte in the first instance.
 - b. That pending the hearing and determination of the instant Application inter parties the Honourable court be pleased to grant an interim order of injunction restraining the Defendant/Respondent, their employees, servant, workers and/or agents from claiming, selling, subdividing, demolishing, carrying out any building, fencing, cutting down trees evicting the applicant, or any other activity whatsoever on the parcel of lands known as NAIROBI BLOCK 190 or any part thereof, alienating or interfering by any means howsoever.
 - c. That pending the hearing and determination of the main suit, the Honourable court be pleased to grant an interim order of injunction restraining the Defendants, their employees, servant, workers and/or agents from selling subdividing, charging, demolishing, carrying out any construction thereon or excavation therefrom, carrying out any building fencing, farming



activity, cutting down trees, evicting the applicant, uprooting crops, trespassing or any other activity whatsoever on the parcel of lands known as NAIROBI BLOCK 190 or any part thereof, alienating or interfering by any means howsoever.

- d. That such further and/or other orders be made as the court may deem fit and expedient.
 - e. That the OCS Kayole Police Station does enforce the orders of this court.
 - f. That Costs of this application be provided for.
2. The Plaintiffs application is premised on the grounds that the applicant is the owner of Nairobi Block 190 which was part of LR NO 11344 which was registered in the name of Kayole Estate Limited before it was sub divided and allocated to the applicants for purposes of establishing a market. That the provision for establishment of a market was adopted the vide minutes of the Social Development and Housing Committee on 16th October 2020.
 3. That the said allocation was communicated to the Respondent by the Nairobi City County vide a letter dated 9th January 2003 addressed to the Respondents Way Leaves Manager.
 4. The application is supported by the affidavit of Anthony Mwangi Mbuthia who deposes that the applicant a CBO is the owner of Nairobi Block 190 which was part of LR NO 11344 registered in the names of Kayole Estate. That the resolution for establishment of a market was approved and communicated to the parties by the 1st interested party. The applicants seek the courts protection from the Respondents who have been making verbal threats to evict them.
 5. The application is strenuously opposed by the Respondent who through its officer Gladys Karani has sworn a detailed Replying Affidavit. She deposes that the Plaintiff has no locus standi to initiate the suit as it has no interest beneficial, registered or otherwise on the suit property. That further the applicant have not complied with section 41 and 14 of the Community Groups Act.
 6. The Respondent strongly opposes the application as an attempt to prevent it from executing the Judgement in rem it obtained in Milimani ELC 1453 of 2007 which affirmed that the Respondent is the legal, lawful, and beneficial owner of the suit property. The Respondent states that the Plaintiff is one and the same with Jada B Jua Kali Association which was a party in the previous suit and that the deponent herein is the same.
 7. The Respondent holds that the Plaintiff is guilty of perjury, fraud and dishonesty and is evidence of the challenges facing public land which has been encroached upon by cartels and rogue individuals, an issue which has been discussed at the National Security Council Committee.
 8. In a further affidavit dated 23rd April 2025, Anthony Mwangi Mbuthia depose that the Plaintiffs were not parties in 1453 of 2007. Crucially the Plaintiffs depose that the Respondents who were the Plaintiffs in 1453 of 2007 were claiming 23.277 acres hence cannot evict everyone from their entire portion but should restrict themselves to the portion allocated to them. He further refutes the averment that Jada B who were parties in 1453 of 2007 are the same as the current plaintiff.
 9. While he concurs with the Plaintiff that public land should not be grabbed, he also stresses that ordinary citizens should be protected from loss of their hard earned property.
 10. Counsel for the Plaintiff submitted that the Preliminary Objection does not have merit as it is not based on a pure point of law. Counsel further submitted that given that the lease of the Respondent is about to expire, they do not have proprietary rights over the suit property.



11. Counsel refuted the averment that this suit is Res Judicata as the parties are different, the prayers are different and lastly the subject matter is different as the property numbers are different. He urges the court to grant the temporary injunction. As at the date of writing the Ruling the Respondent had not filed submissions.
12. Having considered the Preliminary Objection, the application, the Replying Affidavit and the submissions herein the court distills the following issues for determination; Whether the preliminary objection has merit Whether the court should grant injunctive reliefs.
13. The Preliminary Objection raises twin issues namely that the Plaintiff has no locus and secondly that the suit is Res Judicata. 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 proceedings".
14. In the case of Kipsiwo Self Help Group Vs Attorney General & 6 others (2013) Eklr the court underscored the importance of clearly defining who the plaintiff in a particular suit is thus; Kipsiwo Self Help Group had no capacity to institute action in its own name. A person recognized in law had to sue on behalf of members of Kipsiwo Self Help Group and such members had to be named and identified with precision. The person bringing action has to demonstrate that he has permission to bring the action on behalf of the members of the Group, or on behalf of the people he seeks to represent, if it is a representative suit. The importance of this, is so as to recognize the persons who seek legal redress, and so that orders are not issued in favour or against people who cannot be precisely identified. This may look minor, but it is extremely significant. In litigation, rights and duties will be imposed on the litigants. If the court does not know who the litigants are, then it becomes impossible for the court to enforce its own orders, for it will never be clear, who the beneficiary of the order was, or who had obligation to obey or enforce such order. (emphasis mine).
15. From this decision, the Plaintiff becomes a critical document in determining the issue of locus. The Plaintiff is the document to guide the court on the identity of the Plaintiff. In the instant case, the court at the time of writing this Ruling was unable to access the Plaintiff in the Efiling system as the document appearing under the title Plaintiff was the application. The Respondent who raised the issue of locus had not attached the Plaintiff to their affidavit, In these circumstances I am unable to make a definitive decision on the issue of locus at this stage.
16. The second jurisdictional issue raised by the Defendant was that this suit is Res Judicata ELC 1453 of 2007. Section 7 of the [Civil Procedure Act](#) provides that: "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... and has been heard and finally determined by such court."
17. The elements for a successful plea of res judicata were set out in *Uhuru Highway Development Ltd v Central Bank of Kenya & Others* [1996] eKLR and *Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others* [2017] eKLR, namely:
 4. The court determining the former suit must have been competent to do so.
 3. The matter must have been heard and finally determined; and
 2. The former suit must have been between the same parties or their privies;
 1. The matter must have been directly and substantially in issue in the former suit;



18. There is no doubt at all that LR 113044/R was the subject matter of ELC 1453 of 2007 in which the Defendant herein was the Plaintiff. The Defendants were Isaac Gachagua, Hussein Godana and Peter Njiru sued as officials of Jada B Jua Kali Association, Gamau Wainana, David Gathi and Rachel Njeri suing as officials of Jada A Jua Kali Association, Panel Grace Centre, Chrisco Church and Nairobi City Council. The final orders of the court were that an eviction order do issue against the Defendants and secondly that a mandatory injunction compel the Defendants to remove structures on the LR 113044/R.
19. On the contested issue of whether Jua Kali A and B are the same party as Komarock Saika Market this is an issue that will require more definitive evidence which at this stage the court does not have. As to the subject matter of the previous suit, the Defendants obtained a Judgement over LR 113044/R. Is this the same as Nairobi Block 190 in LR 113044? Especially taking into account that LR 113044 is a vast parcel of land that has had numerous court cases filed over it. It is instructive that the court in ELC 1493 of 2007 took Judicial notice of the fact that litigation of a portion of LR 113044 has been subject of litigation that went upto the Supreme Court in the case of Torino Enterprises Lts Versus Attorney General Petition no 5 (eoo6) of 2022. In view of this, the court asks itself what is the extent and reach of LR 113044/ R?
20. In view of these questions that I am unable to find an answer to at this stage, I am of the view that it is in the interest of justice not to make a determination on the issue of Res Judicata at this stage.
21. Lastly the court has to determine whether to grant injunctive reliefs. The Plaintiffs have not produced any ownership document. However, they are in occupation of Nairobi Block 190 and thus have a right to be heard before any eviction is carried out. In the case of Standard Chartered Financial Services & A. D Gregory and Manchester Outfitters & others the Court of Appeal unequivocally stated... indeed the right to a fair trial is not just a fundamental right. It is one of inalienable rights enshrined in Article 10 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Convention of Civil and Political Rights(ICCPR) among other conventions which this country has ratified. Article 25(C) of *the Constitution* of Kenya 2010 elevates it to an inderogable right which cannot be limited or taken away from a litigant. The Right to fair trial is one of the cornerstones of a just and democratic society, without which the rule of law and public faith in the justice system would inevitably collapse...
22. As the matter is being heard, it is essential that the substratum of the case is not lost. The courts have held that even where the stringent elements for grant of an injunction are not met, the court in the interest of preserving the substratum of the suit can give a status quo order.
23. Justice Murithi J in the case of Mombasa Misc. Civil Application (JR) No.26 of 2010 Republic –vs- The Chairperson Business Premises Rent Tribunal at Mombasa (Bench Mochache) Exparte Baobab Beach Resort (Mombasa Limited) & Monica Clara Schriel sought to draw the distinction and opined:“In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.” (see in The Matter of an Application By Saifudeen Abdullabhai & 4 Others For Leave To Apply For Judicial Review And For Orders Of Certiorari And Prohibition [2013] eKLR).



24. I find that this is a fit case to grant a status quo order. I emphasize that all parties should ensure that the status relating to title and occupation is maintained as it today 17th December 2025. This order should not be used to delay the matter endlessly. As such the parties will be required to comply with the courts time table for hearing the case failing which the orders will be discharged.
25. In the end the court makes the following orders;
- a. The status quo obtaining us at 17th December 2025 is to remain in place. None of the parties is to interfere with title or occupation as it is today.
 - b. The parties are to strictly comply with the courts time table to be agreed upon by all parties for hearing of the case failing which the status quo orders are to be discharged.
 - c. The issue of locus and Res Judicata shall be determined at the full hearing.
 - d. Costs shall abide the outcome of the main suit

RULING SIGNED DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 17TH DAY OF DECEMBER 2025

JUDY OMANGE

JUDGE

In the presence of

Court Assistant Catherine

Ms Kadenge for Plaintiff

Mr. Maanzo for Defendants

Mr. Kibukosya for Mr Awele for Interested Party

