IN THE COURT OF
APPEAL AT NAKURU

(CORAM: WARSAME, MATIVO & GACHOKA, JJ.A.)

CIVIL APPEAL (APPLICATION) NO. NAK E052 OF

2025 BETWEEN

COUNTY GOVERNMENT OF NAROK......................APPLICANT

AND

LIVINGSTONE KUNINI NTUTU.........................1ST RESPONDENT OLKIOMBO LIMITED..2ND RESPONDENT THE ATTORNEY GENERAL.................................3RD RESPONDENT

AN

D MAASAI MARA DISABLES

SELF-
HELP GROUP........APPLICANT/PROPOSED INTERESTED PARTY

(Being an application to be joined to the appeal as interested party from the judgment of the Environment and Land Court of Kenya at Narok ***(C. Mbogo, J.)*** *dated 6th March 2025*

in

ELC Case No. 21 of 2021
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RULING OF THE COURT

1. Maasai Mara Disables Self-Help Group, (the applicant) in its application dated 21st November 2025, the subject of this ruling seeks leave of this Court to join this appeal as an interested party and that upon joinder, it be allowed to file

submissions in the main appeal. The application is brought under rule 47 of the Court of Appeal Rules, 2022 and section

3B of the Appellate Jurisdiction Act.

2. The grounds in support of the application enumerated in the application and the supporting affidavit dated annexed thereto dated 21st November 2025 are: (a) that the Maasai Mara National Park occupies the suit land which has always been used for the betterment of the lives of the people of Narok County including the persons living with disabilities in Narok;

(b) the said land was irregularly allocated to the 1st respondent (Livingstone Kunini Ntutu); (c) the trial court in Narok ELC Case No. 21 of 2021 upheld the allocation of the said land thereby sanctioning the impugned title; (d) if the appeal is not successful, the suit land which is community land will become the 1st respondent's private property and the people of Narok county who benefit from the disputed land and have a stake in any property that generates revenue to the appellant will suffer great prejudice; (e) the appellant (County Government of Narok) and the 3rd respondent (Attorney General) handling of this appeal shows that they are not interested in defending the rights of the people of Narok since the appellant is headed by Governor, Hon. Patrick Ntutu who is the brother to the 1st

respondent and in light of family interest in the disputed/community land, the appellant may deliberately fail

to urge crucial points of the appeal so that the appeal fails; (f) the Attorney General in a show of lack of interest in the matter filed a notice of discontinuance dated 13th October 2005 which was approved by the court vide order issued on 18th October 2005, thereby withdrawing the Attorney General's counter- claim and Statement of Defence, an absurd decision that left the people of Narok exposed; (g) that the appellant is clearly conflicted and cannot deal with the matter firmly and without looking over its shoulder; (h) the applicant lacks confidence that the appellant will firmly argue the appeal since the appellant has even entered into a consent to the effect that its defence and counterclaim be struck out while the disputed land was given to the 1st respondent; (i) the application for joinder and stay of execution orders filed by Tipapa Sayialel, Nteri Rakwa, James Somoine Tira, Keswe Sairowua, Charles Njonjo Loigero, Kikanae Kirokor, Mara Explorer Camp, Mara Intrepids Camp & Lorian Mara Camp was not prosecuted due to suspected influence by 1st respondent.

3. The applicant deponed that it intends to argue that: (a) The creation of parcel number 155 was not sanctioned by the

statute; (b) The purported privatization of the suit property did

not take into account the views of the affected community; (c) The purported privatization of the suit property did not consider the impact on the environment, specifically impact on human-wildlife relations; (d) Much as the previous Constitution did not provide for public participation in governance and decision making, the same is an inalienable right that every citizen is born with. The 2010 Constitution simply recognized what was already in existence; (e) The Universal Declaration of Human Rights which was enacted in 1948 provides that no one (including a community) should be arbitrarily deprived of property; (f) Though the suit was instituted before the 2010 Constitution, it was heard and determined after the enactment of the 2010 Constitution and therefore the 2010 Constitution should have been applied to the dispute; (g) The mere fact that the appellant benefited from the survey and adjudication process does not sanitize the 1st respondent's title; (h) The 1st respondent did not prove the legality of the root of his title; (i) The 1st respondent did not seek an injunction stopping the collection of revenue and cannot seek refund of what the government has already utilized.

4. The appellant opposed the application vide affidavit sworn on 2nd December 2025 by John Mayiani Tuya who is the appellant's County Secretary. According to him, the appellant has consistently, diligently and transparently defended the matter for over 26 years in order to safeguard public interest and therefore it is unfair for the applicant to accuse it of any impropriety and furthermore, the unfounded allegations concerning the relationship between the 1st respondent and the current governor are irrelevant, misconceived and legally untenable since the matter was filed way back in 2000 well prior to the assumption of office by the current Governor and thus the alleged conflict bears no relevance or connection to the proceedings.

5. The appellant further deponed that it is misleading to suggest that the appellant acted improperly or failed to defend the public interest yet it took proactive steps to challenge and ultimately set aside the impugned consent Judgment mentioned by the applicant and the matter went through the appellate hierarchy to the Supreme Court.

6. It is the appellant's case that the instant application is frivolous, vexatious and brought in bad faith since the

applicant has no corporate personality and therefore lacks *locus standi* to sue or be sued in its own name. Additionally, the appellant maintained that the purported CBO being relied upon by the applicant was only registered in the year 2024 decades after the initial proceedings commenced, and has not demonstrable historical or legal connection to this matter, has not demonstrated any special, direct or legally protectable interest capable of warranting joinder and appears to have been introduced in this matter solely for the purpose of introducing unnecessary parties into a long standing litigation.

7. It is also deponed that the attempt by the applicant to rely on the disability status of any party as a ground for joinder or a basis for the delay is misguided and constitutes an abuse of the Court process since disability has never been raised as a hindrance to the litigation over many years and disability cannot be invoked belatedly as a tactic to derail or delay the finalization of the dispute.

8. It is also the appellant's case that the applicant's joinder would prejudice it by unnecessarily expanding the scope of the dispute and delaying the resolution of issues that have

already

been adjudicated upon by the Superior Courts. Furthermore, the applicant has failed to demonstrate violation of the Constitution or any right requiring vindication through joinder.

9. The appellant further depones that, it will be greatly prejudiced since the averments in the application consist largely of factual matters which can only be verified through production of evidence and cross-examination that ought to have been done before the trial court and not at the appellate stage.

10. Livingstone Kunini Ntutu (the 1st respondent) opposed the application through his replying affidavit maintained that: (a) the application ought to be struck out since it is incurably defective and incompetent because, whereas the applicant is a registered community group under the relevant registration regime, the same is not an incorporated legal person or body corporate capable of suing and being sued in its name; (b) it has no legal capacity to institute legal proceedings in its name;
(c) there is no evidence that even the applicant's deponent one Jimmy Parnyumbe Luka, is even a member of the

applicant, let alone being the chairperson and the applicant, has not

produced the applicant's Constitution, its members' register, or the minutes and resolutions of any meeting authorising him to file the application and to sign the supporting affidavit; (d) that the 1st respondent is the registered proprietor of all that parcel of land known as L.R. No. Cis-Mara/Talek/155 from 14th October 1997 as a result of land adjudication process at Talek Land Adjudication section which gave forth to 155 parcels of land. Accordingly, the suit land is not part of the Maasai Mara National Park and the applicant cannot have any interest in private land; (e) pursuant to the provisions of Article 62 and 63 of the Constitution, public/community land is vested upon the appellant and it is the appellant that defended the suit before the ELC and subsequently this instant appeal against the Judgment of the trial court. Therefore, the appellant duly protects and advances the collective interest of its residents, including persons with disabilities residing within Narok County and any issue the applicant intends to canvass are already within the purview of the existing parties and are either a replica of the appellant's submissions or matters not pleaded and therefore not addressed by the trial court; (f) the applicant

has not established proximate interest

that would distinguish its position from one that is merely peripheral; (g) the issues identified in the notice of motion on which the applicant proposes to submit on have been fully submitted on by the appellant; while some of them were not pleaded, proved and considered by the trial court. Consequently, no submissions can be made on those issues;

(i) regarding the refund of monies collected by the appellant for the last twenty-five years, the 1st respondent deponed that the said issue was fully argued and the trial court was satisfied with the merits of the claim and even went ahead to issue a permanent injunction against the appellant from collecting rent, tariffs, levies, fees, and royalties from the suit land.

11. The 1st respondent also deponed that the appellant is represented by an independent, reputable, experienced and well-respected senior counsel who is legally duty bound to represent the interests of the appellant to the highest possible standard. Therefore, the issue of the appellant's Governor being his brother is speculative since when the consent between the appellant and him was entered into

on 16th November 2005, his brother was not the appellant's Governor and that his brother has been the Governor for only three

years yet the suit has existed for the last twenty-five 25 years. Additionally, the 1st respondent maintained that he was not aware and he could not speculate why some applicants withdrew their stay applications. Nevertheless, it is for the applicant to present reasons and evidence for their withdrawal.

12. In its rejoinder, the applicant vide further affidavit sworn on 4th December 2025 sworn by Jimmy Parnyumbe Luka, contended that the applicant is a duly registered community group under the Directorate of Social Development as evidenced by the Certificate of Registration issued on 16th January 2009 and he is duly authorized as the applicant's Chairperson through a unanimous resolution that the group be joined as an Interested Party in this appeal. Therefore, the assertion by the 1st respondent that the applicant lacks legal capacity is factually and legally inaccurate.

13. Regarding why the applicant did not seek joinder before the trial court, the applicant maintained that it only became aware of the Judgment in September 2025 long after the trial court had concluded the matter. Nevertheless, the

previous regime was keen on prosecuting the matter unlike the current regime

hence the apprehension by the applicant that its interest would not be well represented since the appellant's Governor is the 1st respondent's brother.

14. The deponent further averred that the applicant's members are directly affected by the changes in land governance, access and revenue implications arising from the impugned Judgment and therefore those issues carry significant public and community interest that are not fully represented by the appellant since the historical record reflects inconsistent positions taken by the appellant and its predecessor including the consent entered on 16th November 2005 which the Supreme Court later vitiated.

15. It is the applicant's case that it does not seek to introduce new issues that were not pleaded before the trial court or to relitigate matters outside the scope of the appeal. Instead, the applicant only intends to solely reinforce issues already arising in the record particularly issues concerning public interest, community land governance and the impact of revenue collection on disadvantaged and vulnerable groups.

16. In response to the applicant's further affidavit, the 1st

respondent swore an affidavit dated 8th December 2025

wherein he deponed that the applicant had raised completely new issues at paragraph 10 to 14 of its further affidavit and the same ought to be struck out together with the Hansard record produced as exhibit JPL-3.

17. The 1st respondent further deponed that the survey was for the entire Talek Adjudication Section, resulting in 155 parcels including the suit land. Therefore, the remarks by the cabinet secretary were made *per incurium* since the Director of Surveys simply has no role whatsoever, by operation of the law, in a land adjudication section.

18. In conclusion, the 1st respondent maintained that the amended plaint and the defences filed did not raise a constitutional issue under Articles 10, 56, 62 and 63 of the Constitution. Accordingly, the applicant cannot change the character of the dispute that was before the trial court.

19. We have duly considered the notice of motion, the affidavits filed as well as the parties' submissions. We have also read the judgment that is being appealed against. In our view, the key issue for determination is whether the applicant, which is an unincorporated entity, has the *locus standi* to be admitted to

participate in this appeal. This is a jurisdictional question that must be resolved before we delve into the merits of the dispute.

20. Counsel for the appellant and the 1st respondent asked this Court to dismiss the application on this preliminary point urging that the applicant lacks the legal capacity since the alleged self-help group has no corporate personality and therefore, it lacks *locus standi* to sue or be sued in its own name.

21. On the other hand, the applicant was adamant that the 1st respondent's assertion that it lacks legal capacity to sue or be sued in its own name is misguided since it is duly a registered community group under the Directorate of Social Development. The applicant even went ahead to annex a copy of its registration certificate issued on 16th January 2009. While registration under the Directorate of Social Development offers some operational benefits and formal recognition, the issue at hand turns on the question whether a self-help group in Kenya possess the full legal attributes of a body corporate. Put differently, does the applicant possess the legal capacity to sue or be sued

which is a critical legal requirement for it to be admitted in this appeal?

22. At common law, an unincorporated association cannot sue nor be sued in its own name but only in the names of the individual members. (See ***Michigan Law Review, Vol. 20, No.***

2 (Dec., 1921), pp. 245-246). In ***Grand International Brotherhood of Locomotive Engineers vs. Green (Ala., [I929], 89,*** an unincorporated association was sued in its own name. It was held that even though there was a general appearance by the defendant, the court did not get jurisdiction because a "*suable party*" is necessary to jurisdiction.

23. The above decision confirms that the jurisprudence that an unincorporated entity lacks the legal capacity to sue stems primarily from the common law principle that it is not a distinct legal person or entity separate from its individual members. This core justification is centered on the nature of legal personality, liability, and procedural practicalities which include: (a) Lack of Separate Legal Identity: It is trite that an unincorporated association is legally viewed as a collection of individuals united by a contract (usually a constitution or set of rules) for a common non-profit

purpose. Therefore, it has no existence in law apart from its members, unlike a corporation, which is an artificial "*person*" created by statute.

(b) Difficulty in Attributing Rights and Liabilities: Since the association itself is not a legal entity, it cannot hold rights, own property, or incur liabilities in its own name. (c) Rights: The rights and property are considered to be vested in the individual members, often held by trustees on their behalf. Therefore, the proper parties in a lawsuit are the individual members themselves or a few members bringing a representative action on behalf of the others. (d) Liabilities: The members and officers are personally liable for the association's debts and obligations. A judgment against the association in its own name would be difficult to enforce because there is no "*entity*" with assets separate from its members. (e) Procedural Difficulties: Allowing an unincorporated entity to sue in its own name creates practical and procedural problems, such as identifying all members, determining individual liability and enforcing judgments or recovering costs. If an unincorporated association's claim fails, safeguarding the defendant's ability to recover costs becomes challenging if there is no single, identifiable legal entity responsible. (f) Agency Theory: The affiliation between the association's committee/officers and the general members is

governed by the principles of agency. An officer or member who enters a contract acts as an agent for the other members (as principals). To establish liability, it must be shown that the individual members authorized or ratified the action. This complex framework makes suing in the collective name impractical under traditional private law.

24. There appears to be paucity of Kenyan Court of Appeal decisions on this subject. However, there are several High Court and Environment and Land Court decisions affirming that an incorporated entity lacks the *locus standi* to sue. The most erudite pronouncement on the subject was articulated by ***Munyao Sila, J.*** in ***Kipsiwo Community Self Help Group vs Attorney General and 6 Others [2013] eKLR*** in which he stated:

> ***"...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 be clear, who the beneficiary of the order was, or who had obligation to obey or enforce such order...".

Justice Munyao went on to say,

"It is clear that Self Help Groups are not incorporated bodies. In fact, I know of no law that recognizes them or incorporates them. They are probably the brain –child of administrators who at times had to come with a tool to identify specific groups of people that needed assistance, or needed to undertake projects together. They seem to have helped harness resources at community level. The only problem is that the Government has not put in place any legal framework under which they can be registered and managed. Such groups, in absence of a legal framework, indeed stand the risk of being declared unlawful societies as held in the case of Dennis Ololoigero…… Self Help Groups having no legal personality, cannot therefore institute proceedings in their own name."

25. In ***Lumfa Self Help Group vs. Mwangi [2024] eKLR,*** the High Court confirmed that a Self-Help Group cannot file a suit using its registered name because it is not an incorporated body. In

Shiundu & Another (suing on behalf of Nzoia Kabras Self

Help Group) vs AG [2023] eKLR, an initial suit by a self-

help group was dismissed for lack of legal capacity leading to an appeal that clarified the appropriate procedure for such claims.

26. While the rigid common law position on the question of the capacity of an unregistered entity to sue still holds sway, the law is not static. Modern developments including the emergence of liberal, progressive and transformative Constitutions have elevated the right to access justice to a high pedestal. For example, a person as defined under article 260 of the Constitution includes a company, association or other body of persons whether incorporated or unincorporated. A perusal of the Constitution of Kenya Review Commission Final Report shows that it was the intention of the drafters of the Constitution to have a properly functioning judicial system that is accessible to all persons to ensure and promote equality of all persons before the law.

27. The rigid common law position has been modified by statute or judicial interpretation, particularly in public law matters (like judicial review and constitutional petitions) where the focus is on "*sufficient interest*" rather than private legal rights. However, in private law claims, the traditional rule that an unincorporated entity lacks locus standi (legal standing) to sue in its own name remains

influential unless the Constitution or legislation provides otherwise.

28. However, a distinction must be drawn between public law and private law litigation. In private law, the individual has to be able to show that they have a legal right which has been infringed, therefore it is fundamental that they have legal capacity to sue. In contrast the critical question in public law litigation is whether the claimant is a person aggrieved or has standing to challenge, which is not a test of legal capacity but rather one of sufficient interest in the decision. In other words, the person or entity suing is invoking the powers of the Court to exercise its supervisory jurisdiction to quash, curb or correct decision(s) of bodies subject to public law. The personal rights of individual applicants, must not be in play. (See

Turner J. in R. vs. Traffic Commissioner for the North

***Western Traffic Area, ex parte Brake* [1996] C.O.D 248).**

29. We think we have expressed our views in detail and laid down sufficient reasons to arrive at the conclusion that the present application has no legal foundation. Before the trial court was a civil suit relating to a land ownership dispute. We are not persuaded that the applicant has demonstrated

that it possesses the legal capacity for this Court to admit it to participate in this appeal. The upshot of the foregoing is that,

Maasai Mara Disables Community Self Help Group has no capacity to institute action in its own name. Accordingly, we have no option but to disallow the applicant's application for joinder having been filed by an entity which is unknown in law and which has no capacity to institute action in its own name.

30. Accordingly, the notice of motion dated 21st November 2025 is hereby dismissed. Each party shall bear their own costs.

Dated and delivered at Nakuru this 16th day of January, 2026.

M. WARSAME

....
JUDGE OF APPEAL

J. MATIVO

....
JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

....
JUDGE OF APPEAL

I certify that this is

a true copy of the

original.

Signed.

DEPUTY REGISTRAR.