



REPUBLIC OF KENYA



Standard Court Residents Association v Arusha Court Residents' Associations (Formally known as (Kandara) Mavoko Municipality Block 29) & 3 others (Environment and Land Case E024 of 2025) [2026] KEELC 270 (KLR) (27 January 2026) (Ruling)

Neutral citation: [2026] KEELC 270 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE E024 OF 2025
NA MATHEKA, J
JANUARY 27, 2026**

BETWEEN

STANDARD COURT RESIDENTS ASSOCIATION PLAINTIFF

AND

ARUSHA COURT RESIDENTS' ASSOCIATIONS (FORMALLY KNOWN AS (KANDARA) MAVOKO MUNICIPALITY BLOCK 29) 1ST DEFENDANT

THE COUNTY SURVEYOR, MACHAKOS COUNTY 2ND DEFENDANT

THE COUNTY PLANNER, MACHAKOS 3RD DEFENDANT

THE COUNTY REGISTRAR MACHAKOS COUNTY 4TH DEFENDANT

RULING

1. Arusha Court Residents Association, the 1st Defendant/Respondent raised a Preliminary Objection dated 17th March 2025 on the following grounds;
 1. That the Plaintiff/Applicant has no locus standi to institute this suit in its own name.
 2. That the 1st Defendant/Respondent lacks capacity to be sued in its own name.
 3. That a Society registered under the *Societies Act* Chapter 108 Law of Kenya is not a body corporate for it to sue or be sued as a legal personality.
 4. That consequently, the suit herein is fatally defective, bad in law and an abuse of the court process as the Applicant lacks the capacity to institute proceedings in its own name nor to sue the 1st Defendant/Respondent in its own name and ought to be struck out with costs.
 5. That further, the application is sub judice as the issues raised in the application and Plaint herein are directly and substantially in issue in another suit pending at Mavoko



Chief Magistrate's Court being Mavoko MCELC E030 of 2015: Stephen Namanda, Patrick Lumumba and 5 others vs. County Executive Committee Member for Lands, Machakos County, John N. Kamonde and 4 others.

6. That the Application and the entire suit is also an abuse of the court process as the Plaintiff/Applicant herein had filed a similar matter at Mavoko Chief Magistrate's Court being Mavoko MCELCMISC/E002/2025: Standard Court Utawala Residents Association vs. Arusha Court Residents Association & Others, which application was struck out by the court suo moto for being fatally defective and the entire Application and Complaint herein is thus an abuse of the court process and ought to be dismissed.
 7. That the Application and the suit herein is thus incurably bad in law, fatally defective and a blatant abuse of the court process and ought to be struck out with costs.
2. This court has considered the Preliminary Objection and submissions therein. According to the Black Law Dictionary a Preliminary Objection is defined as being;
- In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”
3. The above legal proposition has been made in the case of Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd. (1969) E.A. 696 where the court held that;
- The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurer it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought in the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”
4. In the case of Attorney General & Another vs Andrew Mwaura Githinji & another (2016) eKLR the court outlined the scope and nature of preliminary objection as;
- (i) A preliminary objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
 - (ii) A preliminary objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
 - (iii) The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.
5. It is trite law that a preliminary objection can be brought at any time at least before the final conclusion of the case. Ideally, all facts remaining constant, it should be filed at the earliest opportunity of the subsistence of a case, in order to pave way for the smooth management and determination of the main dispute in a matter. I find that the filed preliminary objection by the Defendant herein was properly brought before the court.
6. This court has considered the application and the submissions therein. The Applicant submits that the Plaintiff has no locus standi to institute this suit on its name contrary to Section 41(1) of the [Societies](#)



Act as such the Plaintiffs lacks capacity to institute proceedings in its own name. that the matter is also subjudice.

7. In the case of Alfred Njau & Others vs City Council of Nairobi (1982) KAR 229, the court held as follows;

The term locus standi means a right to appear in court and conversely to say that a person has no locus standi means that the has no right to appear or be heard in such and such proceedings.”

8. Similarly, in the case of Law Society of Kenya vs Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000, the court held that;

Locus standi signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in court of law.”

9. In the case of Mumo Matemo vs Trusted Society of Human Rights Alliance & 5 Others, the court stated that while the court should not sanction hurdles to access to justice by restricting the definition of locus standi, it should nevertheless not entertain litigation that is hypothetical, abstract or is an abuse of the judicial process.

10. Therefore, locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.

11. The Plaintiff states that it is an association registered as such by the Registrar of Societies whose members are residents of Block 25 Mavoko County. In the case of Seely vs Schenck & Denise quoted with Approval in Richarson vs Smith & Co. (1885) 21 FLA. 336, 341

12. Thus, a society is a number of persons taking to themselves a fictitious name, and by that name, protruding themselves into a court of justice.... But by this assumed name, they cannot appear in a court of justice. They can neither sue nor be sued by it. This is a privilege appertaining to corporate bodies only ... To sue and be sued, in their corporate name, is one of the great privileges granted to corporate bodies. It can only be authorized by statute. It is too plain for any argument that the unincorporated societies in their own name cannot be so sued. The right to sue and be sued is a corporate franchise.”

13. The Plaintiff describes itself as an association registered under the Societies Act, Laws of Kenya which is undisputed. The question is whether the Plaintiff has the capacity to sue or be sued?

14. Constitution Article 22 provides as follows;

(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by--

- (a) a person acting on behalf of another person who cannot act in their own name;
- (b) a person acting as a member of, or in the interest of, a group or class of persons;
- (c) a person acting in the public interest; or
- (d) an association acting in the interest of one or more of its members.



- (3) The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that--
- (a) the rights of standing provided for in clause (2) are fully facilitated;
 - (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;
 - (c) no fee may be charged for commencing the proceedings;
 - (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and
 - (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.
- (4) The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.”
15. Further that Article 260 of *the Constitution* defines a person to include;
- includes a Company, Association or other body of persons whether incorporated or unincorporated;”
16. Section 41 of the *Societies Act* provides;
- Whereby a Society is charged with an offence under this Act or any rules made thereunder, the Society may appear by a representative, who may enter a plea on behalf of the Society and conduct the Society’s defence on its behalf.
- (2) In this Section representative in relation to a Society means a person who the Court is satisfied has been duly appointed in writing by the Society to represent it.”
17. Be that as it may, the Plaintiff is not envisaged in the interpretation of a person as provided for under Article 260 of *the Constitution* and neither does it fall under Article 22 which deals with the infringement of the bill of rights.
18. In the case of Peter Taracha & Anor vs Holiness Church & Anor (2016) eKLR, the court stated as follows;
- I have carefully gone through the entire *Societies Act* Chapter 108 of the Laws of Kenya and I have not come across a single provision that provides for the institution of suits by or against entities registered under the Act. I thus wholly agree with the sentiments expressed by Justice Bosire (as he then was) in John Ottenyo Amwayi & others V Rev. George Abura & others HCCC No. 6339 of 1990 when he stated as follows:-
- “The *Societies Act* does not contain provisions with regard to the presentation and prosecution of suits by or against unincorporated societies. It would appear to me that the legislature did not intend that suits be brought by or against those societies in their own names”



19. In *Kiserian Isinya Pipeline Road Resident Association & others V Jamii Bora Charitable Trust and Another* Civil Appeal No. 307 of 2006 Hon. Justice Alnashir Visram (as he then was) relying on several authorities including the case of *Free Pentecostal Fellowship in Kenya V Kenya Commercial Bank* HCC No. 5116 of 1992 (O.S) struck out an appeal with costs on grounds inter alia that it had been lodged by appellants whose majority consisted of unincorporated entities which did not have capacity to sue. In the *Free Pentecostal Fellowship in Kenya* case (supra) Justice Bosire (as he then was) expressed himself in the following terms :-

“The position at common law is that a suit by or against unincorporated bodies of persons must be brought in the names of, or against all the members of the body or bodies. Where there are numerous members the suit may be instituted by or against one or more such persons in a representative capacity pursuant to the provisions of Order 1 rule 8 Civil Procedure Rules.

20. In the instant matter, the suit was instituted in the name of a religious organization. It is not a body corporate which would then mean it would sue as a legal personality. That being so it lacked the capacity to institute proceedings in its own name”.

..... It is important to appreciate that lack of capacity to sue or be sued is a weighty matter that goes to the root of the validity of proceedings before a court. It is not a mere procedural issue. The consequences of instituting a suit without legal capacity to sue are grave: such a suit is incompetent and any proceedings flowing from it are a nullity in law.”

21. In the case of *Mavoko Land Development Company Limited vs Mlolongo Catholic Church & 2 others* (2022) eKLR the court held that it is trite that a society registered under the [Societies Act](#), including a religious organizations, can only sue or be sued through its officials.
22. In the case of *Kisumu ELC Case No 225 of 2014, Evans Otiende Omollo vs School Committee Union Primary School and Another* (2015) eKLR Kibunja J stated that;

The parties described as Defendants herein do not exist as they are not legal entities under the [Basic Education Act](#) capable of being sued or to defend this suit. He further stated at paragraph 5 that 'having found that the four named defendants are nonexistent as entities capable of being sued, the court finds that to allow the suit as filed to continue to further hearing would be an abuse of the courts' process”

23. I find that the Plaintiff being an Association under the [Societies Act](#) has no locus standi. Having found so there would be no need to determine the other grounds in the objection as the Plaintiff has no locus in the first place to institute the suit. I find the preliminary objection is merited and the suit is therefore struck off with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 27TH DAY OF JANUARY 2026.

N.A. MATHEKA

JUDGE

