



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MOMBASA

COUNTY COURT NAME: MOMBASA ENVIRONMENT AND LAND COURT

CASE NUMBER: ELCEPPET/E004/2025

CENTER FOR LITIGATION ON ENVIRONMENT AND GOVERNANCE - CLEG VS STATE LAW  
OFFICE AND COUNTY GOVERNMENT OF MOMBASA AND 3 OTHERS

## RULING

### Introduction

1. This ruling is in respect of the Notice of Preliminary Objection dated 27th May 2025, brought by the Coast Regional Surveyor and the Mombasa County Land Settlement Officer hereinafter referred to as the 2nd and 3rd Respondents and supported by the honourable Attorney General hereinafter referred to as the 1st Interested Party.

2. The Objectors seek to strike out the Petition and Application dated 21st May 2025 on grounds of locus standi, failure to exhaust statutory remedies, and lack of constitutional particularity.

### Factual Background

3. The Petitioner, Center for Litigation on Environment and Governance (CLEG), commenced this suit on behalf of Mr. Fulgence Mwanyalo Kisomba, a 75-year-old citizen who owns Plot Nos. 1683 & 1693 in Ziwa La Ngombe, Mombasa County.

4. The heart of this grievance lies in a decade-long struggle that began on 26th June 2014, when Mr. Fulgence first raised complaints regarding the encroachment of access roads to his properties. It is alleged that despite a ground survey by the 2nd Respondent confirming that Mr. Fulgence's plots do not encroach on road reserves, and multiple interventions by the Commission on Administrative Justice, the 1st Respondent has failed to remove the obstructions.

5. Mr. Fulgence, in a statement to the Petitioner, expressed that his strength was wearing out day by day and that without court intervention, his family would remain condemned to a life of perpetual poverty due to his inability to develop his land for income in his old age.

### The Respondents' Contention

6. The 2nd and 3rd Respondents, joined by the 1st Interested Party, raise the following primary grounds for objection:

- a) The Petitioner lacks locus standi as it is a non-recognised entity suing in a private capacity for private remedies without a Power of Attorney.
- b) The Petitioner failed to exhaust available statutory remedies under the Physical and Land Use



Planning Act (PLUPA) and the Public Roads and Roads of Access Act.

c) The Petition fails to meet the threshold of particularity set in *Anarita Karimi Njeru v Republic eKLR*

Issues for Determination

7. Having considered the pleadings and submissions, the court identifies the following issues for determination:

- i. Whether the Petitioner has the locus standi and legal capacity to maintain this suit.
- ii. Whether the doctrine of exhaustion applies in these circumstances.
- iii. Whether the Petition discloses a prima facie constitutional grievance

Analysis and Determination  
Locus Standi and the Legal Capacity of Organizations

8. The Objectors submit that CLEG is acting without proper standing in the matter and that the suit is incompetent ab initio, on the basis that CLEG is not the registered proprietor of the land in question.

9. This court finds such a restrictive interpretation of standing to be at odds with the transformative nature of the 2010 Constitution. The issue that immediately arises is the need to comprehend what locus standi is and why it is important for a court to satisfy itself as to locus standi. The Black's Law Dictionary, 9th Edition defines locus standi at page 1026 as follows: -"The right to bring an action or to be heard in a given forum".

The Supreme Court has on numerous occasions discussed the meaning and implication of locus standi. In the case *Khelef Khalifa El-Busaidy v Commissioner of Lands & 2 Others* [2002] eKLR the Apex the Court Observed as follows: "...for an individual to have a locus standi, he must have an interest either vested or contingent in the subject matter before the court, which interest must be a legal one. Such interest must be above that of other members of the public in general."

The Court of Appeal has also weighed in on the topic. In *Mombasa Civil Appeal No. 75 of 2016, Juletabi African Adventure Limited & another v Christopher Michael Lockley* [2017] eKLR the Court referred to its earlier decision in *Alfred Njau & 5 others v City Council of Nairobi* [1983] eKLR where locus standi was described as follows:... The term locus standi means a right to appear in Court and, conversely, as is stated in *Jowitt's Dictionary of English Law*, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.

The only circumstances where the strict application of locus standi is waived is in Constitutional and Human Right Petitions. Article 21, 22, 23, 258 and 260 of the Constitution widens the scope of 'persons' who can move the court to protect the Constitution or human rights and fundamental freedoms.

In Civil Application 29 of 2014, *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2014] eKLR the learned Supreme Court Judges spoke to wide scope of locus standi in constitutional petitions as follows;"

"(92) the Constitution enlarges the capacity to file a claim in defence of the Constitution thereby laying the basis for rights and constitutional enforcement. Article 3(1) provides that "every person has an obligation to respect, uphold and defend this Constitution."

It further defines "person" to "include a company, association or other body of persons whether incorporated or unincorporated." the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, adopts the constitutional definition of person. Article 258(1) in turn provides that "every person has the right to institute court proceedings, claiming that this Constitution has been contravened or is threatened with contravention." In constitutional adjudication therefore, the traditional strictures of locus have been broken to allow every person the capacity to file a constitutional claim.



For an organization to sue, it must be a registered entity. The Petitioner has provided its Registration Certificate (K1) and KRA PIN (K2), confirming it is a Public Benefit Organization (PBO) incorporated under the PBO Act of 2013. As held in *Commission for Human Rights & Justice v Mwakubo & 5 others* KEELC 15710 (KLR), the definition of a "person" under Article 260 includes an association or other body of persons, and a registered NGO has the capacity to enforce the Bill of Rights.

The Petitioner is not a "busy-body" but is acting on a specific mandate. Annexed to the supporting affidavit is a Letter of Authorization (K35) from Mr. Fulgence. This satisfies the principle that organizations can initiate representative actions where they share a common grievance with the individual—in this case, the protection of property rights and the right to fair administrative action. This matter is distinguishable from cases involving deceased persons where letters of administration are a prerequisite; here, a living, vulnerable citizen has formally sought the Petitioner's assistance

#### The Doctrine of Exhaustion

10. The Respondents argue that Mr. Fulgence should have appealed to the County Physical and Land Use Planning Liaison Committee. However, the Petitioner submitted, and this court takes judicial notice, that the Mombasa County Physical and Land Use Planning Liaison Committee is not operational and is not sitting.

On the issue of exhaustion, this court finds that the jurisdiction to hear the petition lies squarely with this court as the issues raised of violation of property rights cannot be entertained by the County Physical and Land Use Planning Liaison Committee which has no power to determine the violation of rights and fundamental freedoms.

The Supreme Court in the case of *Abidha Nicholas v the Attorney General & 7 Others* [2024]eKLR and which case mentioned their position in *Kibos Distillers v Benson Adeg* and several other cases. At paragraph 104 held thus:-

"Having considered the above complaints, we reiterate our earlier finding in this judgment that the mandate and jurisdiction to determine these questions lie with the ELC under Articles 22, 23(3) and 162(2)(b) of the Constitution as read with Section 4(1) of the Environment and Land Act. We say so because neither the NET, EPRA nor EPT have the jurisdiction to determine alleged violations of the Constitution. That right to access the court for redress of alleged constitutional violations, should not be impeded or stifled in a manner that frustrates the enforcement of fundamental rights and freedoms. We say this persuaded by the elegant reasoning in *William Odhiambo Ramogi & 3 others v Attorney General & 6 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] eKLR where the High Court (Achode (as she then was), Nyamweya (as she then was), & Ogola, JJ) stated: "In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court."

Justice cannot be deferred by referring a 75-year-old man to a statutory body that does not exist. As noted in *Mombasa ELCPET No. E001 of 2024*, the absence of a functional committee renders the doctrine of exhaustion inapplicable.

#### Humanizing the Constitutional Threshold

11. The Objectors claim the petition lacks particularity. This court disagrees. The petitioner is very clear that 1st respondent violated the rights of Mr Fulgence to property as guaranteed by Article 40(3) of the Constitution of Kenya 2010 without any valid reason. The petitioner allege that by



approving developments on an access roads that obstructed the public and specifically Mr Fulgence access to plots nos 1683 and 1693, the 1st respondent violated Article 62(4) of the constitution of Kenya 2010 which prohibits the disposal of public land unless through an Act of Parliament.

12. The petitioner further alleges that by approving developments on an access roads to plot nos 1683 and 1693 and failure to remove obstructions caused by developments on access roads to the said plots, the 1st respondent violated Article 42 of the Constitution that guarantees clean and healthy environment.

13. This court finds that the particulars of infringement are clearly brought out in the petition. To ignore a citizen's plea for 11 years—while his land is rendered useless by developments the 1st Respondent has a mandate to regulate—directly engages Article 47 (Fair Administrative Action) and Article 57 (Rights of Older Members of Society).

14. The law is a shield for the weak, not a sword for the powerful to evade accountability. Mr. Fulgence has waited since 2014 for the Respondents to take action. The Petitioner has sufficiently pleaded these violations to merit a full hearing.

#### Disposition

15. The upshot of the above is that the Preliminary Objection lacks merit. A valid preliminary objection should spare the court's time, not serve as a shield against the merits of a 75-year-old man's cry for justice. The upshot of the foregoing is:

- a. The Preliminary Objection dated 27th May 2025 is without merit and is hereby rejected.
- i. The Petition shall proceed to a full hearing on its merits. The respondents to file and serve their reply to petition within 21 days. The petitioner to file and serve supplementary affidavit with submissions within 21 days of service. The respondents to file submissions within 21 days of service. Judgment on 21st May 2026.
- b. Costs shall abide the outcome of the Petition. It is so ordered.

SIGNED BY/FOR:  
HON. JUSTICE ANTONY O. OMBWAYO



THE JUDICIARY OF KENYA. MOMBASA  
ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT

DATE: 2026-03-12 08:04:26