



**Embakasi Youth Jua Kali Project v Registered Trustees of Edelvale & 2 others (Environment & Land Petition E014 of 2023) [2024] KEELC 166 (KLR) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 166 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION E014 OF 2023  
EK WABWOTO, J  
JANUARY 18, 2024**

**BETWEEN**

**EMBAKASI YOUTH JUA KALI PROJECT ..... PETITIONER**

**AND**

**THE REGISTERED TRUSTEES OF EDELVALE ..... 1<sup>ST</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**NAIROBI CITY COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is in respect to the 3<sup>rd</sup> Respondent's preliminary objection dated 17<sup>th</sup> October 2023. The objection was premised on the following grounds:
  - (i) The Petitioner/Applicant lacks the requisite *locus standi* to file and or prosecute the instant Petition for reasons that the Petitioner/Applicant is not a juristic person capable of instituting a suit under Article 22 of the Constitution of Kenya, 2010.
  - (ii) The petition is defective, frivolous, vexatious, and superfluous and an abuse of the process of this Honourable Court for the foregoing reason.
  - (iii) This petition should be struck out with costs to the 3<sup>rd</sup> Respondent against the Petitioner/Applicant.
2. The 3<sup>rd</sup> Respondent filed submissions dated 26<sup>th</sup> October 2023 in which three main issues were highlighted for determination:
  - (a) Whether the issue raised by the 3<sup>rd</sup> Respondent qualifies as a preliminary objection and;
  - (b) Whether the Petitioner/Applicant has *locus standi* to institute the present suit and;



- (c) Whether the 3<sup>rd</sup> Respondent has made up a case for striking of the suit herein;
3. It was argued that the Petitioner is a Community based organization registered as such with the office of the District Gender & Social Development Officer- (Registration No. particulars withheld) and the question is whether the organization could sue in its own name. Relying on the case involving Kirinyaga United Bar Owners organization County Secretary Kirinyaga County Government & 6 others (2014), it was submitted that right of associations to sue on behalf of their members cannot be done in their names but in the name of their officials or persons authorized by the said association.
  4. It was also argued that the issue of *locus standi* is not a mere technicality. Relying on [\*Julian Adoyo Ongunga v Francis Kiberenge Abano Migori\*](#) (2016), it was argued that the issue of *locus* goes to the root of the matter and that the oxygen principle and principles of Article 159 of the [\*Constitution\*](#) only apply to parties who are rightfully before the Court.
  5. The Petitioner filed submissions dated 25<sup>th</sup> October 2023 and 3<sup>rd</sup> November 2023. Relying on the cases of [\*Kituo Cha Sheria v John Ndirangu Kariuki & Another\*](#), Election Petition No 8 of 2013 and [\*Free Pentecostal Fellowship in Kenya vs Kenya Commercial Bank\*](#) (1992) KLR, it was submitted that Embakasi Youth Jua Kali Project has no legal personality and cannot institute proceedings in its own name,
  6. I have considered the rival submission and the only issue for determination herein is whether the Petitioner has *locus* to bring the instant petition.
  7. The [\*Constitution\*](#) of Kenya 2010 has expanded *locus standi* in Petitions as was expressed by Court of Appeal in the case of [\*Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others\*](#) (2013) eKLR where the court stated as follows;

“It still remains to reiterate that the landscape of *locus standi* has been fundamentally transformed by the enactment of the [\*Constitution\*](#) in 2010 by the people themselves. In our view, the hitherto stringent *locus standi* requirements of consent of the Attorney General or demonstration of some special interest by a private citizen seeking to enforce a public right have been buried in the annals of history. Today, by dint of Articles 22 and 258 of the [\*Constitution\*](#), any person can institute proceedings under the Bill of Rights, on behalf of another person who cannot act in their own name, or as a member of, or in the interest of a group or class of persons, or in the public interest. Pursuant to Article 22 (3) aforesaid, the Chief Justice has made rules contained in Legal Notice No. 117 of 28th June 2013 - the [\*Constitution of Kenya \(Protection of Rights and Freedoms\) Practice and Procedure Rules\*](#), 2013—which, in view of its long title, we take the liberty to baptize, the “Mutunga Rules”, to inter alia, facilitate the application of the right of standing. Like Article 48, the overriding objective of those rules is to facilitate access to justice for all persons. The rules also reiterate that any person other than a person whose right or fundamental freedom under the [\*Constitution\*](#) is allegedly denied, violated or infringed or threatened has a right of standing and can institute proceedings as envisaged under Articles 22 (2) and 258 of the [\*Constitution\*](#).” [Para 28, Emphasis Mine]

8. It is evident that Article 22 of the [\*Constitution\*](#) stipulates that court proceedings may be instituted by a person acting on behalf of another person who cannot act in their own name, a person acting as a member of, or in the interest of, a group or class of person, a person acting in the public interest or an association acting in the interest of one or more of its members.



9. The *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 defines a Petitioner to include any person who institutes proceedings or cross petitions under these rules and for the purposes of a cross petition includes a cross petitioner. A person is further defined to include an individual, organisation, company, association or any other body of persons whether incorporated or unincorporated. In this instance, the Petitioner would qualify as an incorporated organization as evidenced by its certificate of registration.
10. In view of the foregoing, this court finds the 3<sup>rd</sup> Respondent's objection to be unmerited and hereby issues the following orders;
- (a) The 3<sup>rd</sup> Respondent's notice of preliminary objection dated 17<sup>th</sup> October 2023 is hereby dismissed.
- (b) Each party to bear its own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF JANUARY 2024.**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

Mr. Wesonga for the Petitioner.

Mr. Lagat for the 1<sup>st</sup> Respondent.

N/A for the 2<sup>nd</sup> Respondent.

Mr. Mayogi for the 3<sup>rd</sup> Respondent.

