



**In re Compensation for Illegal Demolition of Kibuye Jua Kali Association Properties  
Carried out by the County Government of Kisumu on 11/12/2020 (Environment  
& Land Case E001 of 2023) [2025] KEELC 969 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 969 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE E001 OF 2023**

**E ASATI, J**

**FEBRUARY 27, 2025**

**IN THE MATTER OF COMPENSATION FOR ILLEGAL DEMOLITION  
OF KIBUYE JUA KALI ASSOCIATION PROPERTIES CARRIED OUT  
BY THE COUNTY GOVERNMENT OF KISUMU ON 11/12/2020.**

**BETWEEN**

**PAUL A WAINDI ..... 1<sup>ST</sup> PLAINTIFF**

**MAURICE OKUMU OKWA ..... 2<sup>ND</sup> PLAINTIFF**

**SUING FOR THEMSELVES AND AS THE REGISTERED OFFICIALS OF  
KIBUYE JUAKALI ASSOCIATION AND THEREFORE ITS THREE HUNDRED  
(300) REGISTERED MEMBERS**

**AND**

**COUNTY GOVERNMENT OF KISUMU ..... 1<sup>ST</sup> DEFENDANT**

**CITY MANAGER - KISUMU CITY ..... 2<sup>ND</sup> DEFENDANT**

**GOVERNOR - KISUMU COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**WORLD BANK GROUP KENYA ..... INTERESTED PARTY**

**MICRO & SMALL ENTERPRISES AUTHORITY ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect of the Preliminary Objection raised on behalf of the Defendants vide the Notice of Preliminary Objection dated 24<sup>th</sup> August, 2024.



2. A brief background of the case is that the Plaintiffs, suing on behalf of themselves and as the registered officials of Kibuye Jua Kali Association and its 300 registered members vide the plaint dated 3<sup>rd</sup> July, 2023 sued the Defendants claiming for;
  - a. general damages for loss of property and business
  - b. declaratory order that the Defendants have been in breach of the Plaintiff Economic and Social Right as envisaged under Article 43 of the Constitution of Kenya 2010 and
  - c. compensation for the breach.
3. The Plaintiffs' complaint in the suit is that the Defendants unlawfully conducted forced evictions of the Plaintiffs whereby the Plaintiffs lost goods and equipment of trade worth Kshs.150,000,000.
4. In response to the suit, the Defendants raised the Preliminary Objection on the grounds that;
  - a. the prayers being sought are incapable of being issued in a civil suit.
  - b. that the suit before court while filed as a suit is substantially constitutional in nature, making it difficult for the Defendant to make out whether to respond to it as a suit or a constitutional suit.
  - c. the suit offends the provisions of Rule 4 and 10 of the Constitution of Kenya (Protection of Fundamental Right and Freedoms) Practice and Procedures Rules, 2013 (Mutunga Rules).
  - d. the Plaintiff lack the locus standi to present the current suit since they admit the land in question is not registered in their name.
15. It was submitted on behalf of the Defendants vide the written submissions dated 1<sup>st</sup> October, 2024 that the Defendants have been at pains as to how to respond to a civil suit initiated by way of a plaint but whose content is made up of purely constitutional grievances which should ordinarily be ventilated by way of a constitutional suit. That further, the Plaintiffs have admitted to not being the registered owners of the suit property raising questions as to their legal standing to institute the current proceedings.
16. Further that the Plaintiffs have no locus standi to file the suit. That it is not possible to assert proprietary rights over a property you admit is registered in the name of the very entity you seek orders against.
17. On whether the suit is properly before court, it was submitted on behalf of the Defendants that the suit raises entirely constitutional issues which should be handled by a court sitting as a constitutional court over a suit originated as a constitutional suit.
18. That the Plaintiffs allege, inter alia, violation of the right to life, breach of set World Bank guidelines on conduct of evictions, violation of the Plaintiffs' children's right to education and violation of the national principles and values of governance. That these are constitutional issues which a court sitting as a civil court cannot determine on a balance of probabilities.
19. That there is a reason why there is a clear distinction between Civil, Criminal and Constitutional suits – that the threshold of proof, the manner of determination and the principles guiding their determination are different.
20. Reliance was placed on the case of Godfrey Paul Okutoyi (suing on his own behalf and on behalf of and representing and for the benefit of all past and present customers of Banking Institution of Kenya) -vs- Habil Oloka – Executive Director (Secretary) of the Kenya Bankers Association (being sued on behalf of the Kenya Bankers Association) & Another [2018]eKLR where it was held that breach of



a normal contract has available redress which is through court process but constitutional petition is a litigation initiated to either challenge breach of constitutional provisions or violation or infringement of rights and fundamental freedoms granted or recognized by the Constitution.

21. On behalf of the Plaintiffs', written submissions dated 30<sup>th</sup> August, 2024 were filed. It was submitted that the preliminary objection dated 24<sup>th</sup> August, 2024 is misconceived as it seeks to strike out a suit filed on 3<sup>rd</sup> July, 2023 and served on the Defendants on 10<sup>th</sup> July, 2023. Reliance was placed on the case of the Owners of the Motor Vessel Lillian "S" -vs- Caltex Oil (Kenya) Ltd (1989) KLR where it was held inter alia that the question of jurisdiction ought to be raised at the earliest opportunity.
22. Further that the court has jurisdiction to determine both issues related to violation of constitutional provisions as well as those related to use, occupation and title to land. Counsel relied on the provisions of articles 165 (3)(b), 165 (5)(b) and 162 (2)(b) of the Constitution and sections 4 and 13 of the Environment and Land Court Act.
23. On locus standi, Counsel submitted that it is erroneous to submit that the Plaintiffs lacked locus standi notwithstanding documents highlighted on page 15 of the plaint where the 2<sup>nd</sup> Interested Party expounds the locus of the Plaintiffs. That a Preliminary Objection should be appoint of law as held on the case of Mukisa Biscuits Manufacturing Co. Ltd. -vs- West End Distributors Ltd (1969)EA.
24. Counsel prayed that the preliminary objection be dismissed with costs to the Plaintiffs.
25. I have considered the grounds of the Preliminary Objection and the submissions made in support and in opposition thereof.
26. It is not denied that the court has jurisdiction to grant the relief sought. Indeed, the jurisdiction of the as provided for inter alia in article 162 (2) (b), sections 4 and 13 of the Environment and Land Court Act covers the relief sought. The contest is on the procedure adopted in seeking the relief.
27. Considering the pleadings in the plaint, especially on the violation of constitutional rights and fundamental freedoms, the ideal position would have been to approach the court through a constitutional petition. However, my considered view is that approaching the court by way of plaint in the circumstances of the case is not so fatal as to necessitate striking out of the entire claim.
28. The Plaintiffs are seeking relief as a result of losses they claim to have suffered due to the actions of the Defendants. They will need to call evidence to prove the losses. The ideal forum for this is in a civil suit. Secondly, the 1st Interested Party is not a government agency against whom constitutional petition can be lodged.
29. Guided by the provisions of article 159 2(d) of the Constitution, the overriding objective under the Civil Procedure Act and the Environment and Land Court Act and for the interest of substantial justice, I find that the suit is properly before court.
30. On the issue of whether or not the Plaintiffs have locus standi, the preliminary objection invites the court to look beyond points of law and the pleadings and delve into the evidence so as to determine whether the plaintiffs have documents of ownership of or rights over the land the subject matter of the suit or not. Guided by the authority in Mukisa Biscuits case cited by the Respondents, this is a matter to be determined upon hearing the evidence.
31. The preliminary objection is therefore disallowed. Costs to the Plaintiffs.  
Orders accordingly.



**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 27<sup>TH</sup> OF FEBRUARY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

Ometo for the Defendants/ Applicants.

Nyambeki for the Plaintiffs/Respondents.

