



**Kimonyi & 2 others (Suing as the Trustess of Nakuru Municipality
Jua Kali Association) v Leiro & 4 others (Environment & Land Case
E37 of 2021) [2024] KEELC 1028 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1028 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E37 OF 2021
MAO ODENY, J
FEBRUARY 28, 2024**

BETWEEN

**MUTHINI KIMONYI 1ST PLAINTIFF
ASSUMPTA WANGUI MUIRURI 2ND PLAINTIFF
JOHN MWANGI KIGUTA 3RD PLAINTIFF
SUING AS THE TRUSTESS OF NAKURU MUNICIPALITY JUA KALI
ASSOCIATION**

AND

**ROBINSON LEIRO 1ST DEFENDANT
ELIJAH LETANGULE 2ND DEFENDANT
NATIONAL LAND COMMISSION 3RD DEFENDANT
CHIEF LAND REGISTRAR NAIROBI 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT**

RULING

1. This ruling is in respect of a Notice of Motion dated 2nd November, 2023 by the 1st and 2nd Defendants seeking the following orders:
 - a. That this Honourable Court do make a finding that the Plaintiffs have no locus standi to institute and sustain this suit.



- b. That this Honourable Court do make a finding that this suit is incompetent and that it be struck out with costs to be borne by Muthini Kimonyi, Assumpta Wangui Muiruri & John Mwangi Kiguta.
2. The application was based on the grounds on the face of the motion and supported by the affidavit of Robinson Leiro, where he deponed that the Plaintiffs filed an amended Plaint in their capacities as Trustees of Nakuru Municipality Jua Kali Association. He further deponed that he has established that the Plaintiffs are neither officials nor trustees of Nakuru Municipality Jua Kali Association.
 3. The Applicant stated that Jua Kali Association are registered under the Micro and Small Enterprises Authority. That on 19th December 2022, his secretary wrote to the Registrar of Micro and Small Enterprises Authority to inquire on the registration status of Nakuru Municipality Jua Kali Association and Nakuru Jua Kali Association whereby the Registrar wrote a letter dated 21st December, 2022 and confirmed that the same are not registered with the Authority.
 4. He therefore urged the court to find that the Plaintiffs have no locus standi to institute the suit hence should be struck out with costs.
 5. The 2nd Plaintiff filed a replying affidavit dated 7th December, 2023 whereby he deponed that Nakuru Municipality Jua Kali Association was registered under the Kenya National Federation of Jua Kali Association and not Micro and Small Enterprises Authority. That the same was registered in 1997 long before the enactment of *Micro and Small Enterprises Act* of 2012
 6. In rebuttal, the 1st Defendant filed a Supplementary Affidavit on 22nd January, 2024, and deponed that the only mandated legal body that registers and issues registration certificates for Jua Kali Association is Kenya is Micro and Small enterprises. The 1sts Defendant further stated that the Kenya National Federation of Jua Kali Association is simply an umbrella body but neither registers nor issues certificates of registration to any Jua Kali Association.

1st and 2nd Defendant's Submissions

7. Mr. Karanja, counsel for the 1st and 2nd Defendants relied on the cases of *Mbwoji Self Help Group v Nzoia Sugar Company Ltd*, Court of Appeal Civil Appeal No 256 of 1997, *Christopher Mutiembu Machimbo & 3 others v County Surveyor, Trans-Nzoia & 4 others* [2022] eKLR and *Justus Aloo Ogeka & Others v Chemelil Sugar Company Ltd* Kisumu High Court Civil Case No 309 of 2002 and submitted that the Plaintiffs have not filed any document in this case to show that they have locus standi to sue as trustees.
8. Counsel submitted that the only mandated and legal body that registers and issues registration certificates for Jua Kali Association in Kenya is the Micro and Small Enterprises Authority which is a State Corporation established under the *Micro and Small Enterprises Act* of 2012 and that the Authority establishes the office of the Registrar as per Section 4 of the *Act*.
9. Counsel urged the court to allow the application as prayed with costs.

Plaintiffs' submissions

10. Mr. Opar, counsel for the Plaintiffs relied on the case of *Law Society of Kenya v Commissioner of Lands and 2 Others* (2001) eKLR and submitted that locus standi means the right of a party to appear and to be heard by a court of law.
11. Counsel submitted that the Plaintiffs in their Replying Affidavit dated 7th December, 2023 have annexed a registration certificate for Nakuru Municipality Jua Kali Association dated 6th February,



1997 and the said certificate confirms that the Nakuru Municipality Jua Kali Association is thus a registered entity.

12. It was counsel's further submission that the Plaintiffs have annexed a letter dated 16th April, 2021 by the Kenya National Federation of Jua Kali Association in their Replying Affidavit confirming that Muthini Kimonyi, Assumpta Wangui Muiruri and John Mwangi Kiguta are the official trustees of Nakuru Municipality Jua Kali Association. Counsel therefore urged the court to find that the Plaintiffs have locus standi to institute this suit.

Analysis and Determination

13. The issue for determination is whether the Plaintiffs have the *Locus Standi* to institute this suit.
14. In the case of *Law Society of Kenya v 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”. Further in the case of *Alfred Njau and Others v City Council of Nairobi* (1982) KAR 229, the Court also held that:

“the term *Locus Standi* means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

15. The Plaintiffs have stated that the association was registered on 3rd February, 1997 by the Kenya National Federation of Jua Kali Association and not the Micro and Small Enterprises Authority which was enacted in 2012. This means that the *Act* cannot act retrospectively. The firms that were registered before the coming into operation of the *Micro and Small Enterprises Act* of 2012 are still valid.
16. The Plaintiff have annexed letters indicting that they are the officials recognized official trustees of the Association who have the capacity to sue and be sued. The presence of proper parties before the court is akin the exercise of jurisdiction of the court.
17. In the case of *Apex Finance International Limited & another v Kenya Anti-Corruption Commission* [2012] eKLR citing with approval the Nigerian Supreme Court case of *Goodwill & Trust Investment Ltd & Anor v Will & Bush Ltd* where the court held as follows:

“it is trite law that to be competent and have jurisdiction over a matter, proper parties must be identified before the action can succeed. The parties to it must be shown to be proper parties whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the suit in limine. When proper parties are not before the court the court lacks jurisdiction to hear the suit, and where the court purports to exercise jurisdiction which it does not have, the proceedings before it, and its judgment will amount to a nullity no matter how well reasoned.”

18. Section 5 (1) of the *Micro and Small Enterprises Act* provides that:

“Every association or umbrella organization which intends to be registered under this Act shall, within twenty-eight days after its formation, make an application to the Registrar for registration under this Act.



19. Section 7 of the *Micro and Small Enterprises Act* goes on to provide that:

Upon registering an association or umbrella organization, the Registrar shall issue a certificate of registration in the prescribed form.

The act goes on to define an "umbrella organization" to mean an organization of micro and small enterprise associations.

20. The above sections deal with new registrations where new parties or associations require registration. In the present case the association had already been registered in 1997 with the Kenya National Federation of Jua Kali Associations

21. I find that the application lacks merit and is therefore dismissed with costs to the Plaintiffs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF FEBRUARY 2024.

M. A. ODENY

JUDGE

NB: In view of the *Public Order No. 2 of 2021* and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the *Civil Procedure*.

