



**Ndambuki v County Government of Makueni & 4 others (Environment & Land
Petition E001 of 2023) [2024] KEELC 4333 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4333 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ENVIRONMENT & LAND PETITION E001 OF 2023

TW MURIGI, J

MAY 22, 2024

**IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLES 10,28,40,42,60,69&70 OF THE CONSTITUTION**

AND

**IN THE MATTER OF THE ENFORCEMENT OF THE BILL
OF RIGHTS UNDER ARTICLE 22 OF THE CONSTITUTION**

AND

**IN THE MATTER SECTIONS 3,42,58,59,86 OF THE ENVIRONMENTA
MANAGEMENT AND COORDINATION ACT, 1999 AND ITS REGULATIONS**

AND

IN THE MATTER OF SECTIONS 7,11,70,110 AND 139 OF THE WATER ACT, 2016

AND

**IN THE MATTER OF THE AFRICAN CONVENTION ON THE
CONSERATION OF NATURE AND NATURAL RESOURCE, 2016.**

BETWEEN

THOMAS NDUNDA NDAMBUKI PETITIONER

AND

COUNTY GOVERNMENT OF MAKUENI 1ST RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 2ND
RESPONDENT**

WATER RESOURCES AUTHORITY 3RD RESPONDENT

RUTH MBENEKA 4TH RESPONDENT

PENINNAH MWIKALI 5TH RESPONDENT



RULING

1. This ruling is in respect of the Preliminary Objection dated 26th September, 2023 raised by the 1st Respondent on the following grounds: -
 - i. That the Plaintiff is not the registered owner of the suit land Makueni/Uvaleni/161 as the same is registered to one Philip Ndambuki Mukekelia who was issued with a title deed on 8/8/16.
 - ii. That the Plaintiff has no locus to institute the instant proceedings since he is neither an appointed executor under any valid will or an appointed administrator ad colligenda bona for the Estate of Philip Ndambuki Mukekelia whose right to the subject land he claims.
 - iii. The Plaintiff has neither been granted nor filed for Grant of Letters of Administration ad litem and as such has no locus standi to file and/or prosecute the instant proceedings on behalf of the estate of Philip Ndambuki Mukekelia.
 - iv. That the court lacks jurisdiction to hear and determine the case in view of Section 47 of the [Law of Succession Act](#) Cap.
2. In light of the above, the 1st Respondent urged the court to dismiss the Petition with costs.
3. The parties were directed to canvass the Preliminary objection by way of written submissions.
4. As at the time of writing this ruling, the 1st Respondent had not filed its submissions as directed.

The Petitioner's Submissions

5. The Petitioner's submissions were filed on 12th February 2024.
6. On his behalf, Counsel submitted that the only issue for determination is whether the Petitioner has capacity to institute the Petition herein. Counsel submitted that Article 22 of [the Constitution](#) permits the Petitioner to institute the proceedings herein to claim that his rights have been violated or are threatened with violation. Counsel argued that the rule relating to locus standi has limited space in Constitutional Petition. To buttress this point, Counsel relied on the case of Kenya Bankers Association vs Minister of Finance & Another(200) 1KLR 61 and the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others (2014) eKLR. Counsel submitted that the Petitioner is seeking to stop violation of his right to property.
7. Concluding his submissions, Counsel submitted that the preliminary objection is intended to delay the proceedings herein and urged the court to dismiss the same with costs.

Analysis And Determination

8. The law on preliminary objection is well settled. A preliminary objection must be on a pure point of law. In *Mukisa Biscuits Manufacturing Company Ltd Vs West End Distributors Ltd* (1969) EA 696, Law JA stated;

“So far as I'm aware, a preliminary objection consists of point of law which have been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or



a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

9. Further on Sir Charles Newbold JA stated;

“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 demurrer. It raises a 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 had to be ascertained or if what is sought is 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.”

10. In *Oraro Vs Mbaja* (2005) eKLR Ojwang J. (as he then was) described it as follows: -

“I think the principle is abundantly clear. A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed”.

11. The issue of locus standi and jurisdiction is a pure point of law which can determine the matter without having to consider the merits of the case. This Court is satisfied that the 1st Respondent’s Preliminary Objection is based on a pure point of law.

12. This court is called upon to determine whether the Petitioner has capacity to commence the proceedings herein and whether the court has jurisdiction to hear and determine this Petition.

13. As regards the first issue, this Court is called upon to determine whether the Petitioner has locus standi to institute the Petition herein.

14. Locus standi is defined in Black’s law dictionary 9th Edition as “the right to bring an action or to be heard in a given forum.”

15. In the case of *Alfred Njau and Others vs City Council of Nairobi* (1982) KAR 229, the Court defined the word Locus Standi 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 he has no right to appear or be heard in such and such proceedings.”

16. Further 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.”

17. The 1st Respondent contended that the Petitioner has no locus standi to institute the Petition herein. The basis of this argument is that the Petitioner did not obtain letters of administration in respect of the Estate of Philip Ndambuki Mukekelia the registered owner of the suit property before he instituted the Petition herein. The Petitioner on the other hand argued that the rule regarding locus standi is limited



in Constitutional Petitions. He asserted that the instant Petition is a public interest litigation as it represents all those whose constitutional rights are threatened with violation by the acts and omissions of the Respondents herein.

18. Article 22(2)(b) of *the Constitution* provides that 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.
19. Similarly, Article 258 of *the Constitution* provides that:
 1. Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
 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.
20. In *Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 Others* (2014) eKLR the court observed as follows:-

“It is to be noted that the promulgation of the 2010 Constitution enlarged the scope of locus standi in Kenya. Articles 22 and 258 have empowered every person whether corporate or non incorporated to move the court contesting any contravention of the Bill of Rights or *the Constitution* in general”.
21. In *Republic vs. The Commissioner of Lands Ex parte Lake Flowers Limited Nairobi HCMISC*. Application No. 1235 of 1998,

“Even on the important principle of establishing standing for the purposes of judicial review the Courts must resist being rigidly chained to the past defined situations of standing and look at the nature of the matter before them.”
22. The Petitioner articulated the acts which constitute a violation of his Constitutional rights. To that extent, I find that the Petitioner has the requisite locus standi to institute these proceedings. The Petitioner is not motivated by malice or bad faith in filing this petition. From the foregoing, it is clear that the Petitioner has the capacity to institute the present Petition.
23. As regards the second issue, the 1st Respondent contended that this court has no jurisdiction to hear and determine this Petition by dint of Section 47 of the *Law of Succession Act*.
24. It is trite law that jurisdiction is everything and without it the court cannot take one more step in the case. The locus classicus on jurisdiction is the celebrated case of *Owners of Motor Vessel ‘Lillian S’ Vs Caltex Oil (Kenya) Limited* (1989) eKLR where Justice Nyarangi held as follows:-

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings...”



25. Similarly, the Supreme Court in the case of Samuel Kamau Macharia & Another Vs Kenya Commercial Bank Limited & 2 Others [2012] eKLR pronounced itself thus:

“ A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation....”

26. It is trite that a court derives its jurisdiction from *the Constitution* or legislation or both. Jurisdiction of this court is derived from Article 162(2)(b) of *the Constitution* as read together with Section 13 of the *Environment and Land Court Act*.

27. Article 162(2) (b) of *the Constitution* provides that Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land.

28. To give effect to Article 162 (2) (b) of *the Constitution*, Parliament enacted the Environment & Land Court Act. Section 13(1) and (2) of the said Act provides as follows:-

“ 13. Jurisdiction of the Court

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
2. In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
 - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b. relating to compulsory acquisition of land;
 - c. relating to land administration and management;
 - d. relating to public, private and community land and contracts, chose in action or other instruments granting any enforceable interests in land; and
 - e. any other dispute relating to environment and land.”

29. Section 47 of the *Law of Succession Act* provides for the jurisdiction of the High Court as follows:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient;



Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

30. The prayers as sought by the Petitioner in his Petition dated 23rd August 2023 are based on the environmental rights, occupation, use and ownership of land. It is crystal clear that this Court has jurisdiction to hear and determine the dispute before it.
31. In the end I find that the Preliminary Objection dated 26th September 2023 is devoid of merit and the same is hereby dismissed with costs.

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HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 22ND DAY OF MAY, 2024.

In the presence of:

Court assistant Alfred.

In the absence of the parties.

