



**Kinuthia & another v Assumption Sisters of Nairobi (Environment & Land Case E006 of 2024) [2024] KEELC 5667 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5667 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E006 OF 2024**

**LN MBUGUA, J  
JULY 18, 2024**

**BETWEEN**

**WILLIAM KARIUKI KINUTHIA ..... 1<sup>ST</sup> PLAINTIFF**

**OUR LADY OF PEACE NURSERY AND KEILTY TRUST PRIMARY SCHOOL ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ASSUMPTION SISTERS OF NAIROBI ..... DEFENDANT**

**RULING**

1. This ruling relates to the application for injunction dated 9.1.2024 filed contemporaneously with the plaint by the Plaintiffs/Applicants, as well as the Preliminary Objection raised by the Defendant/Respondent dated 13.2.2024.
2. In the application dated 9.1.2024, the applicants seek orders that pending the hearing and determination of this suit, an order be issued for the 2<sup>nd</sup> applicant's Our Lady Of Peace, Nursery & Keilty Trust Primary School to be unconditionally reinstated, restored and/or put back the into possession, occupation, operation and control over the property known as Title No. 209/KAREN/2259/139 and 209/11377 Karen (225/137), that the respondents be restrained from evicting the applicants or in any other way be restrained from dealing with the suit parcels, and that the OCS Karen police station be directed to assist in the implementation of the said orders.
3. The application is premised on grounds on its face and on the supporting affidavit and supplementary affidavit of the 1<sup>st</sup> applicant dated 9.1.2024 and 24.4.2024 respectively.
4. The deponent (1<sup>st</sup> applicant) introduces himself as a Donee of a Power of Attorney dated 17.11.2023, the donor being sister Josephine Warau Kariuki, and that he is therefore competent to swear the aforementioned affidavits.



5. He avers that the 2<sup>nd</sup> applicant owns the two suit parcels namely 209/KAREN/2259/139 and 209/KAREN/11377 (225/137), and that the said 2<sup>nd</sup> applicant is an education institution which has been in operation for the last 20 years and has been paying the land rates.
6. He contends that the respondent has unlawfully and illegally acquired the suit parcels and has commenced demolition of the structures thereon including classrooms, has disrupted learning in the school and has detained the goods of the applicants. The net result is that the applicants have suffered great loss including financial loss.
7. In opposition thereof, the respondent has filed a PRELIMINARY OBJECTION dated 13.2.2024 where it is averred that the applicants have no locus standi to institute this suit in light of the provisions of Section 10 (2) (2) of the *education Act*, and that the Power of Attorney held by the 1<sup>st</sup> applicant is defective for none compliance with the provisions of *Registration of Documents Act*. Further, it is contended that the 2<sup>nd</sup> applicant is owned and managed by the respondent.
8. The respondent has also filed a replying affidavit dated 12.2.2024 sworn by Sister Margaret Wahungu, the current Supervisor General of the respondent. She contends that the 1<sup>st</sup> applicant's principle, one Sister Josephine Warau Kariuki is purportedly hiding behind the 1<sup>st</sup> plaintiff to bring a false and illegal claim of ownership. Adding that the applicants have failed to disclose that sister Josephine is a member of the respondent.
9. The deponent further avers that the 2<sup>nd</sup> applicant is fully owned by the respondent and that the dispute concerns the management of the school. It is further argued that the power of Attorney granted by Sister Josephine without the authority of the respondent is ultra vires.
10. There is also another affidavit jointly sworn by sisters Leah Wambui, Benedicta Kainda and Teresia Ndeto dated 13.2.2024 where they contend that they belong to the respondent which is a body cooperate under Assumption sisters of Nairobi Registered Trustees, and that they fully own the 2<sup>nd</sup> applicant. They aver that Sister Josephine was only a manager nominee of the respondent in relation to the 2<sup>nd</sup> applicant.
11. I have duly considered the rival arguments including the submissions. The issue for consideration is whether, the Preliminary Objection brought forth by the respondent is merited and whether the application of the plaintiffs has met the criteria for issuance of the various injunctive orders.
12. The documents of title availed by the applicants indicate that parcel 209/KAREN/11377/ (225/137) is registered in the name of Our Lady Of Peace Secondary School, while parcel 209/2259/137 is registered in the name of Our Lady Of Peace Nursery And Primary School. There appears to be a dispute concerning the ownership of the suit parcels as well as management of the institutions set up on the said suit properties. On one hand, the 1<sup>st</sup> applicant contends that he has a power of attorney given to him by sister Josephine enabling him to bring forth this suit. On the other hand, the respondent avers that it owns the 2<sup>nd</sup> applicant via its 4 nominees namely Sister Josephine Warau Kariuki, Leah Wambui, Benedicta Kainda and Teresia Ndeto, and that sister Josephine had no mandate to issue the aforementioned power of Attorney.
13. The court will first consider the preliminary objection, since if the same is argued as a preliminary point, it may dispose of the suit; See *Litein Tea Factory Company Limited & another v Davis Kiplangat Mutai & 5 others* [2015] eKLR.



14. In *Mukisa Biscuit Company Ltd v West End Distributors* 1969 it was stated that:-
- “A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which, if argued as a Preliminary point may dispose of the suit”.
15. I now pose the question; Do the applicants have the locus standi to institute this suit?
16. In the case of *Daykio Plantations Limited v National Bank of Kenya Limited & 2 others* [2019] eKLR, the court cited the case of *Law Society of Kenya v Commissioner of Lands & Others*, Nakuru High Court Civil Case No. 464 of 2000, where it was 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”.
17. I pose a second question; Just who are the plaintiffs?. As earlier stated, parcel 209/KAREN/11377/225/137 is registered in the name of Our Lady Of Peace Secondary School, while parcel 209/2259/137 is registered in the name of Our Lady Of Peace Nursery And Primary School. That being the case, who then is “Our Lady Of Peace, Nursery & Keilty Trust Primary School” identified as the 2<sup>nd</sup> plaintiff/applicant. The description of the 2<sup>nd</sup> plaintiff at paragraph 2 of the plaint is that “it is a religious women organization under the roman catholic church”, while at paragraph 5 thereof, the description of the 2<sup>nd</sup> plaintiff is given as “an education institution ..”. At paragraph 4 of the plaint, it is indicated that “the 2<sup>nd</sup> applicant is the registered proprietor of an absolute interest of all that parcel of land known as TITLE 209/2259/139 and 209/KAREN/11377(225137)”.
18. The discrepancy above is not only unexplained, but it tends to invite murphy’s law that; “Anything that can go wrong will go wrong”. And in this case, nothing seems write in the description of the 2<sup>nd</sup> plaintiff, who is certainly not the registered proprietor of the two suit parcels. It follows that the 2<sup>nd</sup> applicant is from the word “go” not a proper party which makes the suit by the said entity dead on arrival!
19. As for the 1<sup>st</sup> applicant, his ties to this case is rooted in the power of attorney given to him by sister Josephine Warau which enabled him to file the suit. However, it is apparent that he was filing the suit to protect the interests of the 2<sup>nd</sup> applicant, whom the court has already found that it is not a proper party. It follows that the 1<sup>st</sup> applicant too has no basis to file the suit.
20. Now, assuming that there is a dispute relating to the “title, use and occupation” of the two aforementioned suit parcels, it would necessitate some entities with juridical persona to file the suit on behalf of the registered owners. This is because the said registered owners are schools which in their innate brick and motar appearance and form cannot breadth, speak and act, they can only do so through their registered owners or such other authorized persons.
21. This now leads to the 3<sup>rd</sup> question; Are the two applicants the owners or authorized persons in relation to the two suit properties?
22. The provisions of Section 43 (1) of the *Basic Education Act* Cap 211 laws of Kenya categories schools as public and private as follows;



- “(1) Basic educational institutions shall be categorised as—
- (a) Public schools which are schools established, owned or operated by the Government and includes sponsored schools;
  - (b) Private schools as those established, owned or operated by private individuals, entrepreneurs and institutions”.
23. The documents availed by both protagonists indicate that the schools in question set up on the two suit parcels are private. It follows that they are owned or operated by private individuals, entrepreneurs and institutions as set out in the aforementioned statute.
24. The power of Attorney given to the 1<sup>st</sup> applicant indicates that “The Donor hereby appoints the Donee to be the attorney of the donor and to perform the specific acts noted above in relation to the Donor’s interests in the above mentioned school known as Our Lady Of Peace Nursery & Keilty Trust Primary School On The Title No. 209/KAREN/2259/137 and 20911377 (225/137) REGISTRATION NUMBER PE/2381 2004.”
25. The 1<sup>st</sup> applicant has not demonstrated that the Donor of the power of attorney Sister Josephine had any rights and or interests of proprietorship in the two suit properties, thus the aforementioned power of attorney did not transmit any such rights of proprietorship to the 1<sup>st</sup> applicant.
26. The certificate of registration No. 2381 of the subject school with the ministry of education availed by the applicants indicate that sister Josephine is listed as a manager, with the respondent indicated as the manager/sponsor. It follows that any authority that sister Josephine had was derived from the respondent. There being no nexus of the power of attorney to the respondent, it follows that the said Sister Josephine had no mandate to empower the 1<sup>st</sup> applicant to file the suit.
27. It is not lost to this court that the aforementioned certificate of registration No. 2381 availed by the applicants relates to the naming of the school which appears to be the 2<sup>nd</sup> applicant. It is further worthy to note that the respondents have availed similar certificates in relation to the names of the school, the first one being exactly (well, almost) exactly like the one held by the applicants and is No. 2381. The only notable difference is that the name of the school in the 1<sup>st</sup> certificate of the respondent is; Our Lady Of Peace Nursery School on plot No. 2259/137. This is consistent with the documents availed by the respondents indicating that the school is registered as a business name under the Registration of Business Act Cap 499 laws of Kenya. This gives credence to the averments of the respondent that there is a management issue in regard to the institutions set up on the two suit properties.
28. On the other hand, the 1<sup>st</sup> applicant has not given any cogent evidence as to what the 2<sup>nd</sup> applicant is, whether it is a registered business etc. The scope of the mandate of the 2<sup>nd</sup> applicant in relation to the two suit properties, has remained unexplained by the 1<sup>st</sup> applicant.
29. What is clear beyond peradventure is that there is nothing to indicate that Sister Josephine owned the suit properties or the businesses set up thereon which are schools. That being the case, the 1<sup>st</sup> applicant’s mandate to file this case is again baseless.
30. At this juncture, I must add that the 1<sup>st</sup> applicant is guilty of material none disclosure in failing to state that Sister Josephine is a member of the respondent. In the case of *Re Estate of Julius Ndubi Javan*



(Deceased) [2018] eKLR, the court had this to say on issue of none disclosure albeit in a succession matter;

“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (*uberimae fidei*) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law”.

31. It is also pertinent to note that the jurisdiction of this court is anchored on the provisions of Article 162 (2) (b) as well as Section 13 of the Environment and Land Court Act where the mandate of the court is restricted to use, occupation of and title to land.

32. The preamble of the Basic Education Act Cap 211 describes the Statute as;

“An Act of Parliament to give effect to Article 53 of the Constitution and other enabling provisions; to promote and regulate free and compulsory basic education; to provide for accreditation, registration, governance and management of institutions of basic education; to provide for the establishment of the National Education Board, the Education Standards and Quality Assurance Commission, and the County Education Board and for connected purposes.”.

33. Thus issues relating to governance and management of schools certainly do not fall under the jurisdiction of this court and Sister Josephine’s powers were in the realm of a manager of the school.

34. In the case of Gems National Academy Limited t/a Regis Schools V Regis Runda Academy Limited & 3 Others (Environment & Land Case E95 of 2023) [2024] KEELC 923 (KLR) (22 February 2024) (Ruling) this court while declining to interrogate issues relating to the management of a school stated that;

“On the question of the management of the school, the fall back is the Basic Education Act at section 76 which makes provisions of; Licensing, registration and accreditation of persons and institutions of education, training and research.”

35. The foregoing analysis leads to a conclusion that the Preliminary Objection raised by the respondent is merited and the same is hereby allowed. The net effect is that the entire suit, and the application dated 9.1.2024 are hereby dismissed with costs to the respondents, the said costs to be paid by the 1<sup>st</sup> applicant/plaintiff.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

M/s Kamau for Swaka for Plaintiff

Ouma Odhoch for Defendant



Court assistant: Eddel

