



**Yussuf & another (Suing for and on behalf Massai Lodge Road Mosque)
v Abdalla & another (Environmental and Land Originating Summons
E001 of 2023) [2024] KEELC 5617 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5617 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2023
LC KOMINGOI, J
JULY 18, 2024
SUING FOR AND ON BEHALF OF MASSAI LODGE ROAD MOSQUE**

BETWEEN

**MOHAMED FOWZI HASSAN YUSSUF 1ST PLAINTIFF
NOOR ABDI JAMA 2ND PLAINTIFF
SUING FOR AND ON BEHALF MASSAI LODGE ROAD MOSQUE**

AND

**ABDI JUMA ABDALLA 1ST DEFENDANT
MUSTAFA ABDI JUMA 2ND DEFENDANT**

RULING

1. This Defendants' Preliminary Objection dated September 7, 2023 is premised on the grounds that the Plaintiffs have no *locus standi* to institute the suit which is brought in favour of a non-existent entity. Further that, the suit offends order 4 rule 1(4) of the *Civil Procedure Rules* which provides that where the plaintiff is a corporation, the verifying Affidavit should be sworn by an officer of the Company duly authorised to do so. As such, the suit is incompetent, legally untenable, an abuse of the court process and should be dismissed with costs.
2. The Plaintiffs in response to the objection averred that in matters of public interest or infringement of the Bill of Rights, a suit can be instituted by any individual as long as they can show how their rights have been or will be infringed as per article 22, 32 and 258 of the *Constitution of Kenya*. Therefore, demolishing the mosque would affect their rights as worshippers of the mosque who have been using it as their place of worship for over thirty (30) years and the suit had thus been instituted on behalf of the worshippers. They also averred that on August 4, 2023, the Maasai Lodge Road Mosque committee appointed them to represent the institution in this matter and the objection ought to be dismissed.



3. The application was canvassed by way of written submissions.

The Plaintiffs Submissions

4. By the time of writing this ruling, the Submissions had not been filed.

The Defendant's Submissions

5. Counsel submitted that the suit should be dismissed because it had been brought in favour of a non-existent legal entity and the Plaintiffs neither had locus standi nor capacity to sue. Counsel also submitted that there was no proof that the said Maasai lodge Road Mosque and Maasai lodge Road Mosque Muslim Community, which the Plaintiffs in their Supporting Affidavit deponed to be suing on behalf were legal entities. It is further submitted that, these were two distinct entities. The suit had also offended order 4 rule 1(4) of the [Civil Procedure Rules](#) which provides that where the Plaintiff is a corporation, the verifying affidavit should be sworn by a duly authorised officer. To support this, counsel made reference to [Kenya Power and Lighting Co. Ltd & Benzene Holdings Ltd T/A Wyco paints](#) [2016] eKLR, [Russian and English Bank v Baring Brothers & co. Ltd](#) 1932 I. CH 435, [Law Society of Kenya v Commissioner of Lands & 2 others](#) [2003] eKLR, [Kenya Commercial Bank Ltd v Stage Coach Management Ltd](#) (2014) eKLR and [Satya Bhama Gandhi v Director of Criminal Prosecutions & 3 others](#) [2018] eKLR.

Analysis and determination

6. I have considered the Preliminary Objection and the response thereto, the written Submissions and the authorities cited. The issues for determination are:
 - i. Whether the Defendant's Preliminary Objection is merited.
 - ii. Who should bear the costs?
7. It is trite law that a Preliminary Objection should be on a pure point of law which can be discerned and determined on the face of the pleadings (See [Mukisa Biscuits Manufacturing Co. Ltd v. West End. Distributors Ltd](#) [1969] EA 696). The Supreme Court of Kenya in [Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others \(Interested Parties\)](#) [2020] eKLR also pronounced itself as follows on the issue of a Preliminary Objection:

“(78) ...Thus a preliminary objection may only be raised on a ‘pure question of law’. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”

(16) It is quite clear that a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law.”
8. I am guided by the above authorities and I am satisfied that the instant preliminary objection raises pure points of law.
9. This suit instituted through the Originating Summons dated 8th August 2023 is brought under order 37 rule 1(a) and (2) of the [Civil Procedure Rules](#) and section 38 of the [Limitation of Actions Act](#).



The Plaintiffs indicate that they are suing for and on behalf of Maasai Lodge Road Mosque. In their Supporting Affidavit they aver that they have the consent and authority of the Maasai Lodge Road Mosque Muslim Community to file the suit. Although, the Plaintiffs annexed minutes of members of Maasai Lodge Road Mosque granting them authority to represent others in suits, the court is unable to ascertain the legal status and capacity of Maasai Lodge Road Mosque or the Maasai Lodge Road Mosque Muslim Community.

10. The nature of this entity must be established to determine its capacity to confer authority for legal representation. Is Maasai Lodge Road Mosque/ Maasai Lodge Road Mosque Muslim Community an organization, a company, an institution, an association, or another form of legal entity? Without this determination, the court cannot ascertain the Plaintiffs' locus standi to bring this suit.
11. While, in their reply to the objection the Plaintiffs asserted that in public interest matters a suit can be instituted by any person whose rights have been infringed and this is legally correct, the court is once again confused on the nature of the suit. Is it a public interest suit; is it a representative suit? This lack of clarity impedes the court's ability to properly categorize and adjudicate over the matter.
12. While the courts have been urged not to give undue regard to procedural technicalities, the issues presented here transcend mere procedural concerns and strike at the very core of the suit. The ambiguity regarding the Plaintiffs' authority and the nature of the suit are substantive issues that affect the legitimacy and justifiability of the case. These are fundamental aspects that cannot be overlooked or dismissed as mere technicalities.
13. The preliminary objection raised is hereby found to be meritorious. Due to the unresolved issues concerning the Plaintiffs' capacity to represent the Maasai Lodge Road Mosque community and the unclear nature of the suit, the court is compelled to dismiss the suit without costs. This dismissal is grounded in the necessity to address and rectify these core issues before the court can proceed.
14. I find the preliminary objection herein to be merited and the suit is struck out with costs to the Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 18TH DAY OF JULY 2024.

L. KOMINGOI

JUDGE.

In The Presence Of:

Mr. Aminar for Mr. Okoth for the Plaintiffs.

Mr. Ondari for the Defendants.

Court Assistant – Mutisya.

