



Gichuki & another v Maregwa & 9 others (Enviromental and Land Originating Summons 109 of 2015) [2024] KEELC 14022 (KLR) (20 December 2024) (Judgment)

Neutral citation: [2024] KEELC 14022 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 109 OF 2015**

JO OLOLA, J

DECEMBER 20, 2024

BETWEEN

ERASTUS KIAMA GICHUKI 1ST PLAINTIFF

DAVID NGUNJIRI MUREITHI (SUNG AS THE REGISTERED TRUSTEES OF THE UNITED MEMBERS SOCIAL CLUB) 2ND PLAINTIFF

AND

JOHN MAREGWA 1ST DEFENDANT

JAMES NDERITU MUKUNDI 2ND DEFENDANT

STANLEY KINYUA KAGURE 3RD DEFENDANT

STEPHEN GICHUKI GITHAIGA 4TH DEFENDANT

PETER MWANGI MUTUYA 5TH DEFENDANT

JOSEPH NGANGA KAMENJU 6TH DEFENDANT

HARON MWANGI 7TH DEFENDANT

JOHN MWANZIA 8TH DEFENDANT

MAMA WAMUYU 9TH DEFENDANT

NJERI 10TH DEFENDANT

JUDGMENT

1. By an Originating Summons dated 2nd April 2015 as amended on 3rd November 2016, Erastus Kiama Gichuki and David Ngunjiri Mureithi suing as the Registered Trustees of the United Members Social Club (the Plaintiffs) have sought for a determination of the following issues:



- i). Whether or not the Defendants have any registrable interest as tenants, licencees or otherwise in any other way upon LR. No. Nyeri/Municipality Block III/99 which property is solely and exclusively registered in the name of the Plaintiff;
 - ii). Whether or not the Defendants are trespassers to the suit property by virtue of them entering the suit property, erecting make-shift structures and sheds for purposes of conducting various trades to the public;
 - iii). Whether or not the Defendants should be forcefully evicted from the suit property; and
 - iv). Whether or not the Defendants should be condemned to pay the cost of these proceedings.
2. The Originating Summons is supported by an affidavit sworn by the Chairman of the Registered Trustees Erastus Kiama Gichuki wherein he asserts that he has the authority of the 53 members of the Plaintiff Club to conduct these proceedings.
 3. The Plaintiff asserts that the said Nyeri/Municipality Block III/99 is its property and accuses the Defendants of invading the same and erecting make-shift sheds thereon for selling second hand goods, groceries and operating car wash business. The Plaintiff asserts that they have tried to physically evict the Defendants but they turned violent and thereby necessitating this suit. The Plaintiff further asserts that they intend to develop the property by building commercial structures for the benefit of its members but are unable to do so due to the Defendants' occupation.
 4. The ten (10) Defendants are opposed to the Plaintiff's claim. In a Replying Affidavit sworn on their behalf by Lucy Wairimu Wahome alias Mama Wamuyu (the 9th Defendant) on 26th February 2020, the Defendants aver that the suit is fatally defective as the suit property was illegally transferred to a private company called Umplosh Company Limited during the pendency of the suit and hence the prayers sought are erroneous and meant to hoodwink the court.
 5. The Defendants further assert that they have been paying for licences for the business that they conduct on the suit property to the Municipal Council of Nyeri and its successor and that the property was registered in the name of the Government of Kenya before the County Government of Nyeri gave its consent to have the same transferred to the Plaintiff's name.

The Plaintiff's Case.

6. At the trial, the Plaintiff called one witness who testified in support of their case.
 7. PW1- Erastus Kiama Gichuki is the Chairman of the Plaintiff Club. Relying on his Affidavit sworn on 8th April 2015, PW1 told the court that the Defendants had forcefully entered the suit property which belongs to the club and have since refused to vacate.
 8. PW1 denied that the Defendants were on the suit property before the same was transferred to the club's name. On cross-examination, he testified that both the Club and Umplosh Company Limited were one and the same thing even though Umplosh had been registered under the [Companies Act](#).
- The Defence Case.
9. The Defendants equally called one witness in support of their case.
 10. DW1-Lucy Wairimu Wahome is the 9th Defendant. Relying on her Affidavit sworn on 26th February 2020 in reply to the Originating Summons, she told the court that she runs a clothes business outside the beacons making the suit property. It was further her case that when the Plaintiffs had instituted



this suit, the Defendants had produced documents demonstrating that the property belonged to the Government.

11. DW1 testified that she does not know the parcel number on which she runs her business. She told the court that they refused to vacate the land as demanded by the Club since they have a right to be on the land.

Analysis and Determination.

12. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties herein.
13. By the Originating Summons herein dated 2nd April 2015 as amended on 3rd November 2016, Erastus Kiama Gichuki and David Ngunjiri Mureithi instituted this suit as the Registered Trustees of the United Members Social Club accusing the ten (10) Defendants sued herein of unlawfully trespassing upon the parcel of land known as Nyeri/Municipality Block III/99 (the suit property) and therein erecting various make-shift structures in which the Defendants now carry out various businesses.
14. It is the Plaintiff's case that the suit property belongs to the Club and that they intend to develop the same by building commercial structures thereon but are unable to do so due to the Defendants' invasion and subsequent occupation thereof. The Plaintiff therefore urged the court to declare the Defendants as trespassers on the suit property and to cause them to be forcefully evicted therefrom.
15. The Defendants do not deny being in occupation of the land. It is however their case that they have been in occupation of the land long before the Plaintiff came to be registered as the owner thereof and that they have been licensed by the County Government of Nyeri and its predecessors in title to operate thereon.
16. It is further the Defendants' case that the suit as framed against them is fatally defective as the suit property has since been transferred to a private company by the name Umplosh Company Limited.
17. In support of their case the Plaintiff produced a Certificate of Lease for the suit land issued in the name of United Members Social Club on 29th October 2014. On the other hand, the Defendants produced among others, a Certificate of Official search dated 3rd April 2015 which certificate indicated that on 30th March 2015, some two days before this suit was instituted, the suit property had been transferred to the name of the said Umplosh Company Limited.
18. On that account the Defendants have submitted that the Plaintiffs do not have locus standi to institute the suit as the registered Trustees of the United Members Social Club as the same and Umplosh Company Limited are two separate entities. It was further submitted by the Defendants that the two persons who initiated this suit as the Registered Trustees of the Club did not have authority from the said Umplosh Company Limited to institute this suit on behalf of the company.
19. As it were, Locus-standi signifies a right to be heard on a particular issue. One must have sufficiency of interest to sustain his/her standing to sue in a court of law. For a party to have locus standi in a matter he/she ought to show that his/her own interest particularly has been prejudiced or is about to be prejudiced. Indeed even when a party has a meritorious case he cannot be heard by the court if he/she has no locus standi.
20. In the matter herein, there was no doubt from a casual glance of the pleadings that the two Plaintiffs instituted this suit in their capacity as the Registered Trustees of the United Members Social Club. The



said Trustees did subsequently authorize Erastus Kiama Gichuki (PW1) to represent them in the suit and to execute all necessary documents.

21. Asked about the said Umplosh Company Limited during cross-examination, PW1 responded that the Club and Umplosh Company Limited are one and the same thing although the company was registered under the *Companies Act*. As it were PW1 did not produce any documents to demonstrate the relationship between the two entities. It was therefore not clear to me how persons said to have instituted the suit as Registered Trustees of a Social Club could be said to have instituted the suit on behalf of a private company which was registered as the owner of the property 2 days before the suit was filed.

22. As was stated by the by the Court of Appeal in *Amin Akberali Manji & 2 Others –vs- Altaf Abdulrasul Dadani & Another* [2015] eKLR:

“It is a fundamental principle of our law that a company is a legal person with its own corporate identity, separate from the directors or shareholders and with its own property rights and interests to which alone it is entitled. If it is defrauded by a wrongdoer, the company itself is the one person to sue for the damage.Such is the rule in *Foss – vs- Harbottle* [1843] 2 Hane 461. The rule is easy enough to apply when the company is defrauded by outsiders. The company itself is the one who can sue. Likewise, when it is defrauded by insiders of the minor kind, once again the company is the only person who can sue.”

23. Arising from the foregoing, it was clear to me that having been registered as the proprietor of the suit property prior to the institution of this suit, it was only the company that was capable of instituting and sustaining this present suit. While the Plaintiff submitted that the technicalities of the registration of the suit premises cannot be used as a defence to justify trespass by the Defendants, I did not think that the issue of locus was a mere technicality.

25. As was stated in the case of *Julian Adoyo Ongunga & Another –vs- Francis Kiberenge Bondera* [2016] eKLR:

“...the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings.”

25. In the premises I hereby find and hold that the Plaintiff Club and its trustees herein lack the locus standi to institute this suit. Accordingly I hereby strike out the Plaintiff’s suit as against the Defendants.

26. In the circumstances of this case, each party shall bear their own costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 20TH DAY OF DECEMBER, 2024.

In the presence of:

Mr. Ombongi for the Plaintiff.

No appearance for the Defendants.

Court Assistant: Kendi.



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J. O. OLOLA
JUDGE

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