



**Malindi Rights Forum (MRF) & another v National Land Commission & 10 others;
County Government of Kilifi & another (Interested Parties) (Environment &
Land Petition 11 of 2020) [2023] KEELC 190 (KLR) (25 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 190 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION 11 OF 2020
NA MATHEKA, J
JANUARY 25, 2023**

BETWEEN

MALINDI RIGHTS FORUM (MRF) 1ST PETITIONER

KABUKI FARMERS ASSOCIATION 2ND PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

**NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY 4TH
RESPONDENT**

KURAWA INDUSTRIES 5TH RESPONDENT

KENSALT LIMITED 6TH RESPONDENT

KRYSTALLINE SALT LIMITED 7TH RESPONDENT

KEMU SALT PACKERS PRODUCTION LIMITED 8TH RESPONDENT

MOMBASA SALT WORKS LIMITED 9TH RESPONDENT

MALINDI SALT WORKS LIMITED 10TH RESPONDENT

SOLAR SALT WORKS LIMITED 11TH RESPONDENT

AND

COUNTY GOVERNMENT OF KILIFI INTERESTED PARTY

**KENYA NATIONAL COMMISSION FOR HUMAN RIGHTS INTERESTED
PARTY**



RULING

1. The 6th respondent raised a preliminary objection dated October 12, 2022 on the following grounds;
 1. The petitioners as named, have no legal capacity to institute these proceedings.
 2. The petitioners as named, are not persons in law and cannot be the litigants in these proceedings in their own standing.
 3. As a result of (1) and (2) hereinabove, this honourable court cannot grant and/or enforce any of the orders sought for in the petition as against the 6th respondent.
 4. Pursuant to (1), (2) and (3) hereinabove, the petition is misconceived, fatally defective, incurable and untenable in law and is an abuse of the process of the court.
2. That the petition dated May 13, 2019 should be struck out with costs to the 6th respondent.
3. This court has considered the preliminary objection and the submissions therein. *Locus standi* is defined in *Black's Law Dictionary*, 9th Edition (page 1026) as “ the right to bring an action or to be heard in a given forum”. The Court in *Alfred Njau and others v City Council of Nairobi* (1982) KAR 229, defined the term *locus standi* as such; -

“ 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”.
4. Further in *Law Society of Kenya v Commissioner of Lands & others*, Nakuru High Court Civil Case No 464 of 2000, the court stated 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.”
5. The issue of *locus standi* has been raised herein as a preliminary objection by the 6th respondent. A preliminary objection, was aptly described in the case of *Mukisa Biscuit Manufacturing Company Ltd v West End Distributors Ltd* (1969) EA 696, as that which,

“ 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”
6. The issue of *locus standi* therefore falls within the category of preliminary objection as it raises the issue of the legal capacity of a party to institute a suit failure to which the proceedings in question will be null and void and the suit will be disposed. This was echoed in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* (2014) eKLR. The court stated thus,

“ The issue of locus standi raises a point of law that touches on the jurisdiction of the court, and it should be resolved at the earliest opportunity. In *Mary Wambui Munene v Peter Gichuki Kingara and Six Others*, Sup Ct Petition No 7 of 2013; [2014] eKLR, this court held (at paragraphs 68 and 69) that the question of jurisdiction is a “pure question of law,” and should be resolved on a priority basis.”



7. It is the 6th respondent contention that the petitioner herein have no legal capacity to institute proceedings as there are not persons in law whereas the petitioners contend that there an organization of 3000 members who have entrusted their leaders to file a suit on behalf their behalf and are well within the ambits of the 2010 Constitution to file such a case and the 1st respondent agrees with this position.
8. The Kenyan 2010 Constitution provide elaborately for person’s rights to move the court. A person under article 260 of the 2010 Constitution is a described as;

“company, association or other body of persons whether incorporated or unincorporated”

Article 22 of the 2010 Constitution provides thus; -

- “(1) 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. “(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” [emphasis supplied].

article 258 thus provides:

- “(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”

9. In Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others (2013) Eklr, the Court of Appeal held that;

“(28) It still remains to reiterate that the landscape of locus standi has been fundamentally transformed by the enactment of the Constitution in 2010 by the people themselves. In our view, the hitherto stringent locus standi requirements of consent of the Attorney General or demonstration of some special interest by a private citizen seeking to enforce a public right have been buried in the annals of history. Today, by dint of articles 22 and 258 of the Constitution, any person can institute proceedings under the bill of rights, on behalf of another person who cannot act in their own name, or as a member of, or in the interest of a group or class of persons, or in



the public interest. Pursuant to article 22 (3) aforesaid, the Chief Justice has made rules contained in legal notice No 117 of June 28, 2013 –The Constitution of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013—which, in view of its long title, we take the liberty to baptize, the “Mutunga Rules”, to inter alia, facilitate the application of the right of standing. Like article 48, the overriding objective of those rules is to facilitate access to justice for all persons. The rules also reiterate that any person other than a person whose right or fundamental freedom under the Constitution is allegedly denied, violated or infringed or threatened has a right of standing and can institute proceedings as envisaged under articles 22 (2) and 258 of the Constitution.

(29) It may therefore now be taken as well established that where a legal wrong or injury is caused or threatened to a person or to a determinate class of persons by reason of violation of any constitutional or legal right, or any burden is imposed in contravention of any constitutional or legal provision, or without authority of law, and such person or determinate class of persons is, by reason of poverty, helplessness, disability or socio-economic disadvantage, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under articles 22 and 258 of the Constitution.”

10. I find that article 258 of the Constitution makes it clear that an association whether incorporated or unincorporated as the one herein can institute legal proceedings on behalf of its members. I find the preliminary objection is not merited and is dismissed with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF JANUARY 2023.

N.A. MATHEKA

JUDGE

