



**Republic v Director General Kenya Maritime Authority & another;
Blue Luminous Food Limited (Exparte Applicant) (Judicial Review
E005 of 2024) [2025] KEHC 3566 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 3566 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
JUDICIAL REVIEW E005 OF 2024
M THANDE, J
FEBRUARY 28, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**DIRECTOR GENERAL KENYA MARITIME AUTHORITY .. 1ST RESPONDENT
THE OFFICE OF THE ATTORNEY GENERAL 2ND RESPONDENT**

AND

BLUE LUMINOUS FOOD LIMITED EXPARTE APPLICANT

JUDGMENT

1. The ex-parte Applicant (“the Applicant”) moved this Court vide an application dated 6.12.24 seeking the following ORDERS:
 1. That the Application be certified Urgent and heard on a priority basis.
 2. That an Order of Certiorari directed at the Director General of the Kenya Maritime Authority the 1st Respondent herein quashing his decision in the Gazette Notice No.14740 of 25th October 2024.
 3. That an Order of Prohibition do issued directed at the Director GeneRal of the Kenya Maritime Authority the 1st Respondent herein preventing him from issuing un-procedural and otherwise illegal decisions or directives in contravention with the rights of the Ex Parte Applicant under the Kenya Maritime Authority.



4. That Orders of Mandamus do issue directed at the Director General of the Kenya Maritime Authority the 1st Respondent herein compelling him to revoke the Gazette Notice No. 14740 of 25th October 2024.
 5. That an order for general damages for loss suffered do issue against the Respondents for destroying, interfering and unlawfully dealing with the Marine Motor Vessels being AHADI 001 and AHADI 002 causing it to be destroyed and dismantled.
 6. That costs of this Application be provided for.
2. The grounds upon which the Application is premised as set out in the statutory statement and the verifying affidavit of Chen Xiangling, director of the Applicant, are that the Applicant is the registered owner of marine motor vessels known as AHADI 001 and AHADI 002 (the marine vessels).
 3. The Applicant's case is that vide Gazette Notice No. 14740 of 25.10.24, the 1st Respondent declared the marine vessels as abandoned under Section 323 of the *Merchant Shipping Act*, 2009 (the Act). The Applicant added that it had taken possession of the marine vessels on allegations that the same were abandoned and posed a threat to the marine environment. Additionally, that the notice was published without first issuing any notices to the Applicant to relocate the marine vessels and without affording the Applicant a fair hearing prior to infringing on its rights to benefit from its marine vessels. Further, that the said notice was issued without taking into account that the marine vessels were not abandoned and the Applicant has had actual possession and control of the same.
 4. The Applicant claims that on or around 2.12.24, unidentified individuals trespassed onto the marine vessels and damaged the same and that from the foregoing, it was apparent that the 1st Respondent does not intend to remove the same safely but intends to have the same sold out as scrap materials. The Applicant further alleged that the Respondents, by themselves, agents, employees or persons working under their instructions caused the marine vessels to be destroyed, demolished and their apparatus, and goods disposed of without the Applicant's involvement.
 5. It is the Applicant's contention that the 1st Respondent's decision in the Gazette Notice is ultra-vires its powers under the Act, is un-procedural, irrational, and illegal. The decision is also manifestly unconstitutional as it infringes on the right of the Applicant to benefit from its property, being the marine vessels.
 6. The Application is opposed by the 1st Respondent vide a replying affidavit sworn on 24.12.24 by Julius Kiprono Koech, its acting Director General. The 1st Respondent denied all the allegations of violations as claimed by the Applicant. Its case is that when the marine vessels entered Kenya's territorial waters in May 2019, they were registered in the China Ship Registry as HANRONG 108 and HANRONG 109 and owned by a Chinese company known as Zhejiang Hairong Ocean Fisheries Co. Ltd (Zhejiang). As required under Section 18 of the Act, Zhejiang entered into a joint venture agreement with Everland Foods Limited (Everland), a Kenyan company, for the purpose of registering the marine vessels in the Kenya Ship Registry. The 1st Respondent registered the marine vessels on 28.8.19 as AHADI 001 (IMO No. 8531043) with Certificate of Kenya registry of Serial No. 1361 and AHADI 002 (IMO No. 8530738) with Certificate of Kenya registry of Serial No. 1362 respectively. The 1st Respondent asserted that the registered owner of the marine vessels, is Zhejian in joint venture with Everland.
 7. The 1st Respondent has challenged the locus standi of the Applicant to institute the proceedings herein, on ground that it is not the registered owner of the marine vessels. The 1st Respondent thus contended that the removal of the wrecked and abandoned marine vessels from Malindi beach does not directly affect any legal rights of the Applicant.



8. The challenge by the 1st Respondent of the Applicant's locus standi, is in effect a challenge to the jurisdiction of this Court to hear this matter. It is therefore imperative that the issue of the Applicant's locus standi be resolved at the outset, before considering whether the judicial review orders sought by the Applicant should be granted. In so saying, I am guided by the decision in *Legal Advice Centre t/a Kituo Cha Sheria v Attorney General (Advisory Opinion Reference E001 of 2023) [2024] KESC 15 (KLR) (12 April 2024) (Ruling)* where the Supreme court stated:

That question raised in regard to locus standi of a party goes directly to the issue of whether the Court has jurisdiction to hear this matter. It is therefore imperative that this Court should settle this question at the onset before moving forward with the hearing of the reference itself.

9. In response to the challenge of the Applicant's capacity to institute the proceedings herein, Chen Xiangling filed a further affidavit on 17.2.25 in which he stated that the joint venture between Zhejiang and Everland under which the marine vessels were registered in Kenya, was dissolved and that the 1st Respondent was informed of the same. It was deponed that a request was made to the 1st Respondent to register the vessels under a new joint venture between Zhejiang and the Applicant. Pending the approval of the new registration of the ownership of the marine vessels, Zhejiang entered into a charter with the Applicant authorizing the Applicant to act, commence and defend any proceedings on behalf of Zhejiang. Chen Xiangling argued that having been made aware of the existence of the Applicant, and its interests in the ownership of the marine vessels, the 1st Respondent's allegation that the Applicant lacks locus is erroneous and in bad faith. Further that the Respondents are estopped from denying recognition of the Applicant, having by their conduct acknowledged the ownership of the marine vessels by Zhejiang and Everland.
10. Locus standi is the right or legal capacity of a party to bring or sustain a suit in court. In the case of *Juletabi African Adventure Limited & another v Christopher Michael Lockley [2017] eKLR*, the Court of Appeal had this to say about locus standi:

Locus standi is defined in Black's Law Dictionary, 9th Edition at page 1026 as-

"The right to bring an action or to be heard in a given forum".

This Court in *Alfred Njau & 5 others vs. City Council of Nairobi [1983] eKLR* put it in the following terms:-

"The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt's Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding."

11. The matter in contestation herein is that the Applicant is not the registered owner of the motor vessels and for that reason is a stranger.
12. Registration of ships is one of the functions of the 1st Respondent. Section 5 of the *Kenya Maritime Authority Act* stipulates the functions of the 1st Respondent which include under subsection (1)(g), to maintain and administer a ship register. The Registrar of Ships is appointed by the 1st Respondent under Section 14(1) of that Act. Qualifications for owning a Kenyan ship is provided for under Section 18 which stipulates that a ship shall not be registered in Kenya unless it is owned wholly by persons qualified to own a Kenyan ship. Relevant to the matter herein, is that persons qualified to own a ship include inter alia individuals or corporations in bona fide joint venture shipping enterprise relationships with nationals of Kenya as may be prescribed.



13. The 1st Respondent as the entity charged with the responsibility of registering ships has stated that the marine vessels herein are not registered to the Applicant but to Zhejian in joint venture with Everland. Moreover, the exhibited certificates of registration of the marine vessels as local fishing vessels by the Director of Fisheries, indicate Everland and not the Applicant as the owner of the vessels. No document has been placed before the court to demonstrate ownership of the marine vessels by the Applicant.
14. The Court notes that the Applicant relies on correspondence informing the 1st Respondent of the termination of the joint venture between Zhejian and Everland and the request to register the marine vessels under another joint venture which included the Applicant. The only challenge with this contention is that it has not been demonstrated that the request was acceded to. There is nothing on record to show that fresh registration of the marine vessels was in fact done as requested. The Court cannot therefore be persuaded by mere intention or request.
15. In a bid to persuade the Court to grant orders in its favour, the Applicant further cited the charter agreement between itself and Zhejian, paragraph 19 of which reads as follows:

Power of Attorney

The owner hereby appoints the Charterer during the Charter Period to act on Owner's behalf in executing any deed or agreement that requires the Owner's signature and sign or commence and defend legal action on behalf of the Owner pertaining to the Vessels in any jurisdiction where the Vessels may be or issued. This Power of Attorney shall lapsed (sic) and be determined upon termination of this Agreement.

16. It is the Applicant's argument that the charter agreement allowed the Applicant to commence any proceedings on behalf of the Chinese company.
17. The Civil Procedure Rules provide that a party may make an application, appear or do any act in court in person, by a recognized agent or by an advocate. Order 9 Rule 1 thereof stipulates as follows:

Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by an advocate duly appointed to act on his behalf:

18. While the law permits a party to make an application, appear or do any act in court by a recognized agent, this may only be done with the approval of the court. Order 9 Rule 2(a) provides:

The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

- a. subject to approval by the court in any particular suit persons holding powers of attorney or an affidavit sworn by the party authorizing them to make such appearances and applications and do such acts on behalf of parties;

19. In the case of *Carolyn Mpenzwe Chipande v Wanje Kazungu Baya* [2014] eKLR, Meoli, J. had occasion to consider the import of the above provisions and stated:
19. The foregoing issue was not canvassed before me and there is not sufficient material to enable me draw any conclusions. Be that as it may, the wording of Order 9 rule 1 and 2 of the Civil Procedure Rules leaves no doubt that the court has wide discretion in determining whether or not to allow an agent to appear or do any act in a suit. That discretionary power must be invoked by way of an application and is exercised judicially. No party should presume to act or appear before the court merely on the basis of



the power of attorney without first obtaining the court's approval, howsoever sought. The appellant believed himself properly authorized by the power of attorney alone to act on behalf of the donor. That was an erroneous understanding of the rules.

20. I fully concur with the learned Judge. If indeed the Applicant relied on the power of attorney donated by Zhejian to file the present suit, then the Applicant presumed to do so without first obtaining the Court's approval. The requirement to seek and obtain approval is not a procedural technicality that can be overlooked. It goes to the root of the capacity of the Applicant as a recognized agent to bring the suit or to act on behalf of the donor of the power of attorney. The Court notes that the Applicant did state that it was the owner of the motor vessels and there is nothing in the Applicant's pleadings to show that it brought the suit as the duly constituted attorney of Zhejian. The Applicant's argument in this regard has thus run into headwinds and must fail.
21. To the extent that the Applicant has not demonstrated ownership of the marine vessels, it lacked the locus standi to institute the proceedings herein. In this regard I associate with the holding in *Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased)* [2016] eKLR where Mrima, J. stated:

Further 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/or 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.
22. In conclusion I wish to state that it is trite that any suit or application filed by a person without locus standi, is incompetent and a nullity, ab initio. The Application herein having been filed by a person with no locus standi, is incompetent and incurably so. Accordingly, this Court has no jurisdiction to entertain an incurably incompetent application.
23. The locus classicus on jurisdiction is the celebrated Court of Appeal case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1 where Nyarangi, JA. eloquently stated that:

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 pending other evidence and a court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."
24. Duly guided by the Court of Appeal in the cited case, it follows that without jurisdiction, there would be no basis for a continuation of the proceedings herein to consider the remaining issues and I down my tools. The Application herein is hereby struck out for want of jurisdiction. The 1st Respondent shall have costs.

DATED SIGNED AND DELIVERED IN MALINDI THIS 28TH DAY OF FEBRUARY 2025

M. THANDE

JUDGE

