



Marima & 2 others v Purko Development Trust & 4 others (Civil Case E005 of 2024) [2025] KEHC 7495 (KLR) (27 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL CASE E005 OF 2024
CM KARIUKI, J
MAY 27, 2025**

BETWEEN

**EUNICE SAOINA MARIMA 1ST PLAINTIFF
PIARO OLE NORPOOR 2ND PLAINTIFF
MIKE OLE MARIMA 3RD PLAINTIFF**

AND

**PURKO DEVELOPMENT TRUST 1ST DEFENDANT
CHAIRMAN, PURKO DEVELOPMENT TRUST 2ND DEFENDANT
SELEILA OLE MWANIK 3RD DEFENDANT
THE GOVERNOR, NAROK COUNTY 4TH DEFENDANT
NAROK NORTH MEMBER OF PARLIAME 5TH DEFENDANT**

RULING

1. Before this Court for determination are two applications, dated 22 July 2024 and 23 August 2024, and a notice of preliminary objection, dated 31 July 2024.
2. This Court will begin with the notice of preliminary objection.
3. The ^{fourth} defendant filed a notice of preliminary objection dated 31/07/2024, raising the following preliminary objections: -
 1. That the entire suit is bad in law, incompetent, non-starter, inept, and an abuse of the Court process, and the same ought to be struck out.
 2. That the entire suit does not disclose a reasonable cause of action and triable issues, and the same ought to be struck out.



3. That the Application and suit herein is otherwise frivolous, vexatious, and fatally defective as it offends the provisions of Article 162 of the [Constitution of Kenya, 2010](#), and Rules 4(1) and 10 of the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#).
 4. That the entire Application and suit herein is incompetent for lack of authority to plead.
 5. That to the extent of the prayers of the declaration sought in the Plaint, the same are untenable and ought to be struck out.
4. The preliminary objection was addressed through written submissions.

The Plaintiff's Submissions

5. The plaintiffs submitted that the preliminary objection does not raise any competent or pure points of law. The Defendant/ Respondent, in support of the Objection, has annexed a list of bundles of documents, which he seeks the Court to consider. For the Court to be able to ascertain whether the matter borders issues of jurisdiction, it will have to ascertain the facts as pleaded by the Defendant/ Objector and those as raised by the Plaintiff/ Respondent by also probing the bundle of documents. In doing so, the Court will be probing evidence. The plaintiffs relied on *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696, [Oraro v Mbaja](#) (2005) 1KLR 141.
6. The plaintiffs submitted that approaching the Court through a plaint and not by way of petition, as alluded to by the fourth respondent, is just but a procedural technicality that shall not be used to hinder the administration of justice to the plaintiffs/respondents.

The 4th Defendant's Submissions

7. The fourth defendant submitted that. The fourth defendant relied on *Mukhisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696, where Sir Charles Newbold, *Quick Enterprises Ltd v Kenya Railways Corporation*, Kisumu High Court Civil Case No. 22 of 1999.
8. The fourth defendant submitted that the parties are bound by their pleadings and the Court. The fourth defendant relied on Order 2, Rule 15 of the [Civil Procedure Code](#), *Jevaj Shariff & Co. v Chotail Pharmacy Stores* [1960] EA 374, [Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others](#) [2014] eKLR, and the Malawi Supreme Court of Appeal in *Malawi Railways Ltd v Nyasulu* [1998] MWSC 3, [Joseph Mbuta Nziu v Kenya Orient Insurance Company Ltd](#) [2015] eKLR.
9. The fourth defendant submitted that this case ought to be dismissed as it is hopeless. Not even an amendment of the Pleadings can cure the suit. Allowing the suit to proceed to full trial will be a waste of the Court's precious time. The ^{fourth} defendant relied on [D.T. Dobie & Company \(k\) Limited v Muchina](#) (1982) KLR, *Wenlock v Moloney* (1965) I WLR 1238.
10. The ^{fourth} defendant submitted that the Trust is a voluntary organization with organs of decision-making and dispute resolution. Although it is acknowledged that the Court has general supervisory power over anyone, it intervenes only after all internal mechanisms have been exhausted. The enjoyment of the right to a fair trial presupposes that a party is properly before the Court, which the Plaintiffs in the instant case are not. The fourth defendant relied on Black's Law Dictionary 10th Edition, [Geoffrey Mutbinja & Another v Samuel Muguna Henry & 1756 others](#) Civil Appeal No. 10 of 2015
11. The ^{fourth} defendant submitted that the 2nd and 3rd Plaintiffs herein did not execute and/or sign any authority to mandate the 1st Plaintiff to swear the Verifying Affidavit and/or otherwise act on their behalf. The ^{fourth} defendant contends that the failure to generate, execute, and/or sign any such



authority, either as required under the law or at all, renders the suit filed by and/or on behalf of the 2nd and 3rd Plaintiffs herein fatally incompetent and is thus ripe for striking out. ^{The fourth} defendant relied on Order 1 Rule 13 (1) & (2), Order 4 Rule 1(2) & (3), Order 1 Rule 13 (2) of the *Civil Procedure Rules 2010*, *Andrew Ileri Njeru - Embu Nyangi Ndiiri Proposed Society Chairman & others v Daniel Nganga Kangi & another* [2015] eKLR, “*Research International East Africa Limited v Julius Arisi & 213 Others* [2007] eKLR, *Mohamed Bwana Obo Athman & 24 others v Kenya Airport Authority* [2014] eKLR, *Kabindi Katana Mwambo & Another v Canon Assurance (K) Ltd.*

12. The 1st, 2nd and 3rd defendants, in their submissions, stated that they were not opposed to the notice of preliminary objection.

Analysis and Determination.

13. This Court has considered the notice of preliminary objection and the respective submissions.
14. According to paragraph 1 of the Plaintiff, the Plaintiff is described as a male adult. However, according to the Plaintiff, there are three plaintiffs.
15. The verifying affidavit is signed by the 1st Plaintiff, who has no authority to plead, as filed by the second and third Plaintiffs.
16. Order 1 Rule 13 (1) and (2) of the *Civil Procedure Rules* provides that where there are more Plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any proceedings. The authority shall be in writing and signed by the party giving it.
17. The 1st Plaintiff did not state on whose authority he signed the Verifying Affidavit and the Supporting Affidavits in support of the current Applications.
18. In the case of *Abdulla Abshir & 38 Others versus Yasmin Farah Mohamed* [2015] eKLR, which I agree with, where the Court held that:

“ 12. From the foregoing, it is quite clear that a party in a proceeding cannot purport to appear, plead, and act on behalf of others until and unless he is so authorized to do so in writing and the authority is filed in such a proceeding. To my mind, a statement in an affidavit that one has the authority of the co-plaintiffs or co-defendants is not enough. Such an authority, properly signed by the party giving authority, must be filed in the proceeding.”

19. Because the suit was a representative suit, in the absence of the written authority by the ^{second and third} plaintiffs, the suit, as currently filed, is a non-starter. Thus, the Court makes the orders that.
- i. The instant suit is hereby struck out with half costs to the Defendants
 - ii. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH THE TEAM APPLICATION,
THIS 27TH DAY OF MAY, 2025**

CHARLES KARIUKI

JUDGE

