



**Commission for Human Rights & Justice v Mwakubo & 5 others (Environment & Land Petition E008 of 2021) [2023] KEELC 15710 (KLR) (21 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15710 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND PETITION E008 OF 2021  
NA MATHEKA, J  
FEBRUARY 21, 2023**

**BETWEEN**

**COMMISSION FOR HUMAN RIGHTS & JUSTICE ..... PETITIONER**

**AND**

**MWAKA MULONDONDA MWAKUBO ..... 1<sup>ST</sup> RESPONDENT**

**LAND PHYSICAL PLANNING AND HOUSING COUNTY GOVT OF  
MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**KENYA NATIONAL HIGHWAY AUTHORITY ..... 3<sup>RD</sup> RESPONDENT**

**KENYA NATIONAL CONSTRUCTION AUTHORITY ..... 4<sup>TH</sup> RESPONDENT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 5<sup>TH</sup>  
RESPONDENT**

**ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. The 6<sup>th</sup> Respondent raised a preliminary objection and applied for the Petition and Application both dated February 22, 2021 to be struck out on the grounds that;
  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 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 and Application as against the Respondents.



4. Pursuant to (1),(2) and (3) herein above, the Petition is misconceived, fatally defective, incurable and untenable in law and is an abuse of the process if the Court.
2. The 6<sup>th</sup> Respondent submitted that the Petitioner has described themselves as a registered nongovernmental organization having its registered offices in Mombasa. That registration of a parent trust deed does not create a legal entity that is capable of suing and being sued.
3. The Petitioner submitted that it is empowered by the Constitution Article 22 which provides for the enforcement of the bill of rights. That the Petitioner was registered around May 3, 2001 when the parent trust deed was endorsed by the Registrar of documents.
4. This court has considered the preliminary objection and the submissions therein. This Court will first have to determine whether the objection raised by the 6<sup>th</sup> Respondent qualifies to be a Preliminary Objection as described in the case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696, where Law J A stated that;

So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings and which objection point may dispose the suit”.

Further the Court stated;

A preliminary objection raises a pure point to law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

5. The 6<sup>th</sup> Respondents have submitted that the Plaintiff has no *Locus Standi* or capacity to institute this suit. That due to the lack of the said capacity, the suit is incompetent and should be struck out. In the case of Law Society of Kenya vs Commissioner of Lands & Others, Nakuru High Court Civil Case No 464 of 2000, the Court held 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”. Further in the case of Alfred Njau and Others ..v.. City Council of Nairobi ( 1982) KAR 229, the Court also held that;-

“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”.

6. It is therefore evident that locus standi is the right to appear and be heard in Court or other proceedings and literally, it means ‘a place of standing’. Therefore if a party is found to have no locus standi, then it means they cannot be heard even on whether or not he has a case worth listening to. In the case of *Quick Enterprises Ltd v Kenya Railways Corporation*, Kisumu High Court Civil Case No 22 of 1999, the Court held that;

When preliminary points are raised, they should be capable of disposing the matter preliminarily without the court having to resort to ascertaining the facts from elsewhere apart from looking at the pleadings alone”.

7. I find that lack of locus standi can dispose of the matter preliminarily without having to resort to ascertaining of facts. The Preliminary Objection raised by the 6<sup>th</sup> Respondent fits the description of Preliminary Objection as stated in the *Mukisa Biscuit case* ( Supra).



8. Having gone over the Notice of preliminary objection dated November 2, 2022 by the Respondent, replying affidavit dated December 13, 2022, Respondents submissions dated January 9, 2023 and Petitioners submission dated January 18, 2023. I find the issue is whether the Petitioner has locus standi to file the suit herein.
9. It is the Respondent's assertion that the Petitioner has no legal capacity to institute the proceedings herein and the Petitioner are not persons in law and cannot be litigants in proceeding as their own. Article 22 of the 2010 Constitution provides thus; -
- 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.
- In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
- a person acting on behalf of another person who cannot act in their own name;
- a person acting as a member of, or in the interest of, a group or class of persons;
- a person acting in the public interest; or
- an association acting in the interest of one or more of its members.
10. Article 258 further provides for enforcement of the constitution by the following persons;
- Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
- In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
- a person acting on behalf of another person who cannot act in their own name;
- a person acting as a member of, or in the interest of, a group or class of persons;
- a person acting in the public interest; or
- an association acting in the interest of one or more of its members.
11. Thus a person who wishes to enforce the Constitution must fit into one of the categories set out in the two Articles and must specify the capacity in which they have come to court under either of the two constitutional provisions.
12. Article 260 of the Constitution provides that;
- a 'person' includes a company, association or other body of persons whether incorporated or unincorporated.
13. The Respondent/ Petitioner in their affidavit annexed a copy of their registered trust deed dated May 3, 2003. Under clause 3 the deed established a charity called Commission for Human Rights. It was registered under the Public Trustee (Perpetual Succession) Act Cap 164. The Applicant in their submission averred that the Respondent/ Petitioner fell within the meaning of person under Article 22 of the Constitution but the charity organization was never registered under the Trustee (Perpetual Succession Act cap 164 and lacked capacity to sue or be sued in the name provided. However, no evidence was provided to support this allegation. It is trite law that he who alleges must prove.



14. The Petitioner/ Respondent described itself as a Non-governmental organization in its petition. Section 2 of *Non- Governmental organization coordination Act 1990* describe such organization as groupings or associations and this falls under the description of ‘persons’ as envisioned under Article 258 and 260 of the *Constitution*. I find that the preliminary objection is unmerited and therefore dismissed with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 21<sup>ST</sup> DAY OF FEBRUARY 2023.**

**N.A. MATHEKA**

**JUDGE**

