Awino & another v Mburu & 11 others (Environment & Land Petition 004 of 2023) [2023] KEELC 16730 (KLR) (29 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16730 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND PETITION 004 OF 2023

JO MBOYA, J

MARCH 29, 2023

BETWEEN

FRANCIS AWINO ..... 1ST PETITIONER

NGUGI MBUGUA ..... 2ND PETITIONER

AND

JOHN MAINA MBURU ..... 1ST RESPONDENT

JOHN GITHINJI MWANGI ..... 2ND RESPONDENT

CRAC'E WACHINGA MUCHAI ..... 3RD RESPONDENT

PETER MWANGI MUTURI ..... 4TH RESPONDENT

PIHILLIP KARIUKI GATHENGE ..... 5TH RESPONDENT

CHARLES NGUGI NJENGA ..... 6TH RESPONDENT

GITHUNGURI CONSTITUENCY RANCHING COMPANYLIMITED .... 7TH RESPONDENT

THE DISTRICT LAND REGISTRAR THIKA ..... 8TH RESPONDENT

THE DISTRICT SURVEYOR THIKA ..... 9TH RESPONDENT

CHIEF LANDS REGISTRAR ..... 10TH RESPONDENT

DIRECTOR OF SURVEYS ..... 11TH RESPONDENT

ATTORNEY GENERAL ..... 12TH RESPONDENT

RULING

1. The subject matter has been commenced and or originated by the Petitioners herein, who indicated that same are (sic) Public spirited citizens, albeit acting on behalf of one, Mungai Muoto Kuria, who is stated to be a Member and Shareholder of the 7th Respondent herein.

2. Furthermore, the Petitioners herein have contended that even though Mungai Muoto Kuria, is a member and shareholder of the 7th Respondent, the 7th Respondent through her Directors have mismanaged the sub-division and alienation of L.R No. Ruiru/Kiu Block 2/Githunguri/2297 and thereby affected the rights and interests of the said Mungai Muoto Kuria.

3. Premised on the foregoing contention, the Petitioners herein have filed and mounted the instant Petition and in respect of which same have sought for a plethora of reliefs, allegedly on behalf of the named Member/ Shareholder of the 7TH Respondent.

4. Contemporaneously, the Petitioners also took out and file a Notice of Motion Application dated the 3rd February 2023, wherein the Petitioners have similarly, sought for various albeit numerous reliefs.

5. Given the nature of the reliefs sought, it is imperative that same be reproduced. Consequently and for ease of reference, the reliefs are reproduced as hereunder;

   i. .....Spent

   ii. The 1st, 2nd, 3rd, 4th, 5th and 6th Respondent acting on behalf of Githunguri Constituency Ranching Ltd do immediately stay all transactions and dispositions from L.R No. Ruiru/Kiu Block 2/Githunguri/2297 of 101.47 Ha.

   iii. The 11th Respondent do declare to the Honourable court the true acreage of L.R No. Ruiru/ Kiu Block 2/Githunguri/2297.

   iv. The 10th Respondent immediately rectifies the acreage of L.R No. Ruiru/Kiu Block 2/ Githunguri/2297 on the findings of the 11th Respondent.

   v. Consequent to the grant of prayers above, the Honourable court be pleased to make further directions and orders as may be necessary to give effect to the foregoing orders and/or favor the cause of justice.

   vi. The Honourable court be pleased to join Parties necessary for the determination of the instant Petition on its own merits.

   vii. This Honourable court be pleased to award the Petitioners costs of and incidental to this proceedings on a full indemnity basis.

6. It is imperative to state and underscore that the instant application is premised and anchored on various grounds, which have been alluded to and captured at the foot thereof.

7. On the other hand, the instant application is supported by the affidavits of the Petitioners herein. For clarity, the application is supported vide two supporting affidavits, sworn by each of the Petitioners.

8. Upon being served with the Petition and the instant application, the 8th to 12th Respondents duly entered appearance and thereafter filed Grounds of opposition in respect of both the Petition, as well as the instant application.

9. In addition, it is appropriate to state that the application herein came up for hearing on the 21st February 2023, whereupon the Parties agreed to canvass and dispose of the application by way of written submissions. In this regard, the Honourable court thereafter set and circumscribed the timelines for the filing and exchange of the written submissions.

10. For completeness, it is appropriate to state that the Petitioners indeed proceeded to and filed their written submissions. Suffice it to point out that the submissions by the Petitioners are dated the 6th March 2023.

11. On the other hand, the Honourable Attorney General filed written submissions dated the 8th March 2023, for and on behalf of the 8th to the 12th Respondents.

12. Notwithstanding the foregoing, I beg to point out that the 1st to the 7th Respondents herein, neither entered appearance nor filed any response to the instant application. Similarly, the named Respondents, also did not file any Written submissions or otherwise.

Submissions By The Parties

Applicants' Submissions:

13. The Applicants herein have raised, highlighted and amplified four pertinent issues for consideration and determination by the Honourable court.

14. Firstly, the Applicants have submitted that one, Mungai Muoto Kuria is a bona fide Member and Shareholder of the 7th Respondent. In this regard, the Applicants have added that by virtue of being a member and shareholder of the 7th Respondent, Mungai Muoto Kuria has a defined Interest in respect of L.R No. Ruiru/Kiu Block 2/Githunguri/2297.

15. Furthermore, the Applicants have submitted that even though Mungai Muoto Kuria has a defined Interests and rights over and in respect of the suit property, the 7th Respondent has not been able to protect and vindicate the rights of the named shareholder.

16. On the contrary, the Applicants have contended that the 7th Respondent herein has denied and deprived the named shareholder of his entitlement to and Rights over and in respect of his share/ entitlement to the suit property.

17. Secondly, the Applicants have submitted that Mungai Muoto Kuria, who is the named shareholder, is an Elderly person and thus a senior citizen, who is not capable of acting on his own behalf.

18. Owing to the fact that the named shareholder is stated to be Elderly and thus incapable of acting on his own behalf, the Applicants herein have submitted that same (read Applicants) have therefore taken it up upon themselves to filecommence the instant proceedings albeit on behalf of the named shareholder.

19. In addition, the Applicants have submitted that the instant suit/proceedings has been filed on behalf of the named shareholder pursuant to and in line with the provisions of Articles 22 and 258 of the *Constitution* 2010.

20. Thirdly, the Applicants herein have submitted that same are seized and possessed of the requisite Locus standi to commence, originate and maintain the instant proceedings for and on behalf of the named shareholder. In any event, the Applicants have contended that under the provisions of Articles 22 and

258 of the *Constitution*, 2010, same have the requisite capacity to file the suit on behalf of the named shareholder, who cannot act on his own behalf.

21. Fourthly, the Applicants have submitted that the issues raised at the foot of the Petition and the current application do not fall within the ambit and/ or purview of the Doctrine of Exhaustion or at all.

22. In any event, the Applicants have further contended that the Doctrine of Exhaustion has known statutory limitations/ exceptions, and that if the Honourable court were to find that the Doctrine of Exhaustion is applicable, then the Honourable court ought to invoke and apply the statutory exemptions.

23. Nevertheless, the Applicants have contended that the facts and the issues raised at the foot of the current Petition and the application thereunder, raise pertinent and grave issues touching on the *Constitution*, 2010; and hence, the Honourable court ought to grant the reliefs sought.

24. In support of the foregoing submissions, the Applicants have cited and quoted various decisions inter-alia, Mumo Matemu versus Trusted Society of Human Rights Alliance & 5 Others (2013)eKLR, Imaran Ltd & 5 Others versus Central Bank of Kenya Ltd & 5 Others (2016)eKLR, Republic versus IEBC Ex-parte National Super Alliance & 6 Others (2017)eKLR and William Odhiambo Ramogi & 3 Others versus Attorney General & 4 Others; Muslims For Human Rights & 2 Others (Interested Party) (2020)eKLR, respectively.

25. Premised on the foregoing, the Applicants herein have thus implored the Honourable court to find and hold that same have established a prima facie case to warrant the grant the reliefs/orders sought at the foot of the instant Application.

Submissions By The 8th To 12th Respondents

26. Learned counsel for the 8th to the 12th Respondents filed Written Submissions dated the 8TH of March 2023 and in respect of which the same has raised, highlighted and amplified two issues for due consideration and determination by the Honourable court.

27. First and foremost, learned counsel for the named Respondents has submitted that the Applicants herein have no Locus standi to commence, originate and maintain the entire Petition, as well as the current application before the Honourable court.

28. Additionally, learned counsel for the named Respondents has submitted that the issues raised at the foot of the Petition and the application herein do not touch on any Public or Constitutional Dispute, to warrant the invocation and application of the *Constitution*.

29. In any event, learned counsel for the named Respondents has submitted that the issues beforehand touch on and concern the Private Interests and or affairs of Mungai Muoto Kuria, who is said to be a Member/Shareholder of the 7th Respondent.

30. On the other hand, learned counsel for the named Respondents has submitted that to the extent that the dispute beforehand touches on and concerns the private affairs of the named shareholder, the dispute herein does not belong to the purview/ province of public law. In this regard, it has been pointed out that the reliefs and remedies, if any, lie in the realm of Private law and not otherwise.

31. Other than the foregoing, learned counsel for the named Respondents have also pointed out that the Applicants herein have neither shown nor demonstrated that same have the requisite mandate and or authority to act for and on behalf of the named shareholder, either in the manner alleged or at all.

32. In view of the foregoing, learned counsel for the named Respondents has therefore contended and submitted that the Applicants herein do not have the requisite standing/ capacity to commence and maintain the instant suit, whatsoever.

33. Secondly, learned counsel for the named Respondents has also submitted that the issues raised at the foot of the Petition and the current application are issues that can adequately and conveniently be dealt with vide the established fora, captured and contained in various statutes. For clarity, learned counsel has submitted that the issues pertaining to confirmation, authentication and rectification of the acreage of land, (the suit property not excepted), are well provided for under the provisions of the *Land Registration Act*, 2012.

34. Additionally, learned counsel for the named Respondents has further submitted that where there exists established Dispute Resolution Mechanism, for purposes of determining the dispute beforehand, then it behooves the claimant/applicants, to first approach the established forum before ultimately approaching the Honourable court for determination of the impugned dispute.

35. In view of the foregoing, learned counsel for the named Respondents has therefore contended that the Applicants herein have approached the Honourable court pre-maturely and before exhausting the established dispute resolution mechanism, provided for and established under the law.

36. In a nutshell, learned counsel for the named Respondents has therefore invited the Honourable court to find and hold that the Honourable court is divested of the requisite Jurisdiction to entertain and adjudicate upon the subject dispute, prior to and before compliance with the various Provisions of the *Land Registration Act*, 2012.

37. In support of the foregoing submissions, learned counsel for the named Respondents has cited and quoted various decisions inter-alia, Owners of Motor Vessels Lilian S versus Caltex Oil (K) Ltd (1989)eKLR, Chrispinus Munyane Papa & Another versus National Environment Management Authority & Another (2018)eKLR and Kalpana H Rawal versus Judicial Service Commission & Another (2016)eKLR, respectively.

ISSUES FOR DETERMINATION

38. Having reviewed and evaluated the entire Petition, as well as the instant Application and upon taking into account the Grounds of opposition and on considering the written submissions filed on behalf of the respective Parties, the following issues do arise and are thus germane for determination;

    i. Whether the Applicants' herein are seized and possessed of the requisite Locus Standi to commence, originate and maintain the subject suit (sic) on behalf of Mungai Muoto Kuria.

    ii. Whether the Honourable Court is seized of the requisite Jurisdiction to entertain and adjudicate upon the subject dispute.

ANALYSIS AND DETERMINATION

ISSUE NUMBER 1

Whether the Applicants herein are seized and possessed of the requisite Locus tandi to commence, originate and maintain the subject suit (sic) on behalf of Mungai Muoto Kuria.

39. From the body of the Petition, the supporting affidavits as read together with the instant application, it is evident and apparent that the Applicants herein have filed and commenced the instant proceedings for and on behalf of Mungai Muoto Kuria.

40. Additionally, it has been contended that the said Mungai Muoto Kuria, on whose behalf the subject proceedings have been commenced, is an Elderly person and thus incapable of acting on his own behalf.

41. Other than the foregoing, it has also been pointed out that the Dispute beforehand touches on and concerns the Interests and Rights of Mungai Muoto Kuria, over and in respect of the suit property, by virtue of being a member and shareholder of the 7th Respondent.

42. Consequently and in my humble view, the Applicants herein are contending that the issues beforehand touch on and concern breach, violation and/or infringement of the Constitutional rights of Mungai Muoto Kuria and hence the necessity to file and mount the instant Petition.

43. Before venturing to address and consider whether or not the dispute beforehand touches on and concerns breach, violation and/or infringement of the Fundamental rights of Mungai Muoto Kuria, it is imperative, nay appropriate to state and underscore that where a dispute/matter touches on and concerns Infringement or threatened Infringement of a Fundamental right, then any person or Group of persons are at liberty to originate, commence and maintain a Constitutional Petition on behalf of the affected citizen/person.

44. To this end and for good measure, I can do no better that to restate and reiterate the holding of the Supreme Court of Kenya in the case of Mumo Matemu versus Trusted Society of Human Rights Alliance & 5 Others (2013)eKLR, where the Court stated and observed as hereunder;

> (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 28th June 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*.
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> (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*.
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> (30) It is our consideration that in filing the petition the 1st respondent was acting not only on behalf of its members and in accordance with its stated mandate, but also in the public interest, in view of the nature of the matter at hand. The 1st respondent, its members and the general public were entitled to participate in the proceedings relating to the decision-making process culminating in the impugned decision.

45. Nevertheless, it must not be lost on this Honourable court that the relaxation of the law as pertains to locus standi only applies to and concerns Constitutional disputes or better still, where the matter in dispute touches on and concerns enforcement of a Public right and Fundamental Freedom, but not otherwise.

46. Consequently and in view of the foregoing, where a particular Applicant approaches Honourable court under the guise that same is enforcing a Public right or Fundamental freedom, either on his own behalf or on behalf of another, it behooves the Honourable court to interrogate whether indeed the dispute beforehand relates to the enforcement of a Public right or Fundamental Freedom or otherwise.

47. Suffice it to point out that where the Honourable court finds and hold that the Dispute beforehand does not touch on and or concern enforcement of a Public Right or Fundamental freedom, then the Honourable court must revert to the private law principles and to ascertain whether the Applicants have shown sufficiency of Interests or stakeholde in the Dispute beforehand.

48. In this regard, I must still return to the Supreme Court decision in the case of Mumo Matemu versus Trusted Society of Human Rights Alliance & 5 Others (2013)eKLR, where the court stated and observed as hereunder;

> (31) However, we must hasten to make it clear that the person who moves the court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice. Where a person acts for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be seized at the instance of such person and must reject their application at the threshold. The time is now propitious at this stage of our constitutional development where we can state as was stated by the Supreme Court of India in the case of S.P. Gupta v President of India & Others AIR [1982] SC 149 that:
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> "The view has therefore been taken by the courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the *Constitution* or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy-body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no

doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and can thereby improve the administration of justice. Lord Diplock rightly said in Rex v Inland Revenue Commrs. [1981] 2 WLR 722 at p. 740.

'It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by a outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped... It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a Court of Justice for the lawfulness of what they do, and of that the Court is the only judge.'

This broadening of the rule of locus standi has been largely responsible for the development of public law, because it is only the availability of judicial remedy for enforcement which invests law with meaning and purpose or else the law would remain merely a paper parchment, a teasing illusion and a promise of unreality. It is only by liberalizing the rule of locus standi that it is possible to effectively police the corridors of powers and prevent violations of law."

49. Having taken into account the foregoing observations and succinct exposition of the law by the Supreme Court of Kenya, it is now appropriate to venture forward and to discern whether the issues beforehand touch on or relate to and enforcement of a Public Right or Fundamental Freedoms as envisaged under the Bill of Rights.

50. However and to my mind, the issues beforehand touched on and concerned the Private Rights and Interests of Mungai Muoto Kuria, over and in the suit property, by virtue of (sic) being a member or shareholder of the 7th Respondent.

51. Additionally, there is also the issue/aspect which touches on the stay of further transactions and operations of the 7th Respondent as pertains to the alienation and dispositions of Interests over the suit property.

52. From the foregoing elaboration, what becomes evident and apparent is that the issues being raised and ventilated, at the foot of the current Petition and incidental Application, are certainly issues in Personam and which belong to and concern the named member/shareholder.

53. In the circumstances, the issues which have been raised and captured at the foot of the Petition and by extension the subject application are issues that can only be raised and deliberated upon at the instance of the concerned shareholder or his duly authorized agent, whether by virtue of appointment as a Guardian ad Litem or Power of attorney.

54. Having found and held that the issues raised at the foot of the subject Petition do not concern enforcement of a Public Right or Fundamental freedoms; and having similarly found and held that same can only be ventilated by the named shareholder or through a duly authorized agent, the question that now arises and which must be determined is whether the Applicants herein are duly authorized by Mungai Muoto Kuria, to act on his behalf and (sic) commence the instant suit.

55. On this issue, I beg to state and point out that the Applicants before the Honourable court have neither exhibited nor attached any legal instrument/ Document to denote their source of authority (sic) to act for an on behalf of the named shareholder.

56. In this respect, one would have expected the Applicants herein to either attach an order of the High Court constituting same as Guardians ad Litem or better still, a Power of Attorney, where appropriate or necessary. However, none has been attached or exhibited.

57. In view of the foregoing, I beg to state and underscore that the Applicants herein do not have any stake and/or interests in respect of the issue/dispute beforehand. Consequently, I find and hold that the Applicants herein are devoid and divested of the requisite Locus Standi to mount and/or maintain the subject suit.

58. As concerns the significance of Locus standi, it is appropriate to recall and reiterate the holding of the Court in the case of Law Society of Kenya ...Versuss... 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 ..Vs.. City Council of Nairobi (1982) KAR 229, the Court also held that;-
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> "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".

59. In a nutshell, I come to the conclusion that the Applicants herein are divested of the requisite Locus standi to commence and maintain the instant proceedings on behalf of Mungai Muoto Kuria, in the manner alluded to or at all.

60. In the premises, my short answer to Issue Number One herein, is to the effect that the Applicants herein are devoid of the requisite Locus Standi and on this account only, the entire suit/ Proceedings are amenable to be struck out and/ or terminated.

ISSUE NUMBER 2

Whether the Honourable court is seized of the requisite Jurisdiction to entertain and adjudicate upon the subject Dispute.

61. Other than the question of Locus standi, which has been discussed and addressed herein before, there is also the question pertaining to and concerning the Jurisdiction of this Honourable Court to entertain and adjudicate upon the issues in dispute.

62. It is imperative to state and underscore that what has been placed before the honorable court touches on and concerns authentication of the acreage of the suit property and where appropriate, rectification of the acreage of the suit property by the Chief Land Registrar or his designate.

63. In my humble view, where the dispute pertains to and/ or concerns ascertainment of the acreage over and in respect of a parcel of land that is registered under the *Land Registration Act*, 2012, such a dispute falls within the mandate and Jurisdiction of the Chief Land Registrar or such other Land Registrar, in charge of the concerned Land Registry.

64. Similarly, if there arises a question or an Error either in the Registry Index Map or in the acreage of the suit property, (sic) which requires correction/ rectification, such a dispute falls within the mandate of the Chief Land Registrar or the designated Land Registrar in charge of the concerned Land Registry.

65. In this regard, it is worthy to take cognizance of the provisions of Section 14 of the *Land Registration Act*, 2012, which delineates the mandate and general powers of the Chief Land Registrar and by extension, the Land Registrars, working under the office of the Chief Land Registrar.

66. For ease of reference, the provisions of Section 14 (Supra) are reproduced as hereunder;

General powers of Land Registrars.

14. The Chief Land Registrar, County Land Registrars or any other land registrars may, in addition to the powers conferred on the office of the Registrar by this Act—

(a) require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same;

(b) summon any person to appear and give any information or explanation in respect to land, a lease, charge, instrument, certificate, document or plan relating to the land, lease or charge in question, and that person shall appear and give the information or explanation;

(c) refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed;

(d) cause oaths to be administered or declarations taken and may require that any proceedings, information or explanation affecting registration shall be verified on oath or by statutory declaration; and

(e) order that the costs, charges and expenses as prescribed under this Act, incurred by the office or by any person in connection with any investigation or hearing held by the Registrar for the purposes of this Act shall be borne and paid by such persons and in such proportions as the Registrar may think fit.

67. Other than the foregoing, the office of the Chief Land Registrar/Land Registrars is/ are also conferred with additional powers to carry out and undertake rectification of the Register of any instrument presented for registration, in the event that there is a discernible error or mistake apparent on the face of the register.

68. For coherence, the powers to undertake the rectification is Statutorily circumscribed, but nevertheless, same is exercisable by the Office of the Chief Land Registrar, or the concerned Land Registrar, subject to issuance and service of the requisite Notice(s), where appropriate.

69. To this end, the provisions of Section 79 of *Land Registration Act*, 2012, are pertinent and succinct.

70. For coherence, the provisions of Section 79 (supra) are reproduced as hereunder;

Rectification by Registrar.

79. (1) The Registrar may rectify the register or any instrument presented for registration in the following cases—

(a) in formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;

(b) in any case and at any time with the consent of all affected parties; or

(c) if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel.

(2) Notwithstanding subsection
(1), the Registrar may rectify or direct the rectification of a register or document where the document in question has been obtained by fraud.

(3)) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor, make an entry in the register to record the change.

(4) The Commission may by regulations prescribe the guidelines that the Registrar shall follow before rectifying or directing rectification under subsection (2) and without prejudice to the generality of the foregoing, the regulations may provide for—

(a) the process of investigation including notification of affected parties;

(b) hearing of the matters raised; and (c) the criteria to be followed in coming up with the decision.

71. From the foregoing provisions of the law, it is obvious and evident that any person, the Applicants not excepted, seeking to correct any error and/or mistake apparent on the face of the register, is obligated to approach the Chief Land Registrar/Land Registrar at the first instance.

72. In any event, it is worthy to recall that what the Applicants herein are (sic) complaining against, relates to an Error, if any, affecting the Register of the suit Property and in particular, the correct acreage thereof.

73. Clearly and to my mind, such an error can easily be addressed and remedied by the concerned Land Registrar by dint of the provision of Section 79 (1) (c) of the *Land Registration Act*, 2012.

74. Without belaboring the point, it is my humble view and considered position that there exists clear and established dispute resolution mechanism, which the Applicants herein ought and should have invoked for purposes of addressing (sic) their Complaints.

75. Furthermore, it is now trite and established that where there exists a statutory dispute resolution mechanism outside Honourable court, then it behooves the Applicant to first and foremost exhaust the established mechanism before invoking/approaching the Jurisdiction of the court.

76. To this end, case law abounds. Nevertheless, it suffices to sample a few of the foregoing decisions, which have fortified, vindicated and underscored the importance of the Doctrine of Exhaustion.

77. To this end, it is appropriate to reiterate the decision of the Court of Appeal in the case of Geoffrey Muthinja Kabiro versus Samuel Muguna Henry (2015) eKLR, where the Honourable court held as hereunder;

> "It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the *Constitution* which commands Courts to encourage alternative means of dispute resolution".

78. Next in line, is the decision in the case of Bethwel Allan Omondi Okal versus Telkom Founders Ltd (2017)eKLR, where the court stated as hereunder;

> The Appellant might want to argue that he has a constitutional right of access to justice, and we agree that he does, but the High Court and this Court have pronounced themselves many times to the effect that a party must first exhaust the other processes availed by other statutory dispute resolution organs, which are by law established, before moving to the High court by way of constitutional petitions. See International Centre for Policy and Conflict & 4 others vs The Hon. Uhuru Kenyatta and others, Petition No. 552 of 2012, and Speaker of National Assembly vs Njenga Karume [2008] 1KLR 425.
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> We hold that if indeed the appellant had any dispute with the RBA, he ought to have followed the route prescribed by the RBA, before proceeding to the High Court. We hold like the court below, and for the reasons we have given, that the appellant's petition lacked merit and was for dismissal. Accordingly, we dismiss this appeal, and given the appellant's social and pecuniary status, we shall, albeit most reluctantly, order that each party bears its own costs."

79. Without seeking to exhaust all the decisions that have underscored and vindicated the Doctrine of Exhaustion, it is also appropriate to cite the decision of the Supreme Court Of Kenya, in the case of Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) versus Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) [2019] eKLR, where the court held as hereunder;

> (116) The foregoing verdict also finds support in an adage principle in administrative law of "Exhaustion of Administrative Remedies" and from the jurisprudence emanating from this Court and the lower Courts, which has been restated with notoriety to the effect that, where there exists an alternative method of dispute resolution established by legislation, the Courts must exercise restraint in exercising their Jurisdiction conferred by the *Constitution* and must give deference to the dispute resolution bodies established by statutes with the mandate to deal with such specific disputes in the first instance. see Alphonse Mwangemi Munga & 10 Others v African Safari Club Ltd [2008] eKLR

Narok County Council case v Trans Mara County Council [2000] 1 EA 161 Kones vs Republic & Another ex parte Kimani wa Nyoike & 4 Others (2008)3 KLR (EP); Speaker of the National Assembly vs Njenga Karume (2008)1 KLR (EP) 425, Francis Mutuku vs Wiper Democratic Movement - Kenya & Others [2015] eKLR David Ochieng Babu v Lorna Achieng Ochieng & 2 others [2017] eKLR among other cases not referred to. The Court of Appeal in Geoffrey Muthinja & Another Vs Emanuel Muguna Henry & 1756 Others [2015] eKLR held that:

"We see this as the crux of the matter in this and similar cases. It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanism in place for resolution outside of courts. This accords with Article 159 of the *Constitution* which commands Courts to encourage alternative means of dispute resolution."

(117) Of precise relevance to this case is Bethwell Allan Omondi Okal v Telkom (K) Ltd (Founder) & 9 others [2017] eKLR. In that case, the appellants who were former employees of Telkom (K) Ltd felt aggrieved and discriminated against following the implementation of what was referred to as "Trivial Pension Payout", by the Authority which they accused of fraud, corruption and mismanagement and for paying some categories of retirees less increments in their pension payments than others. The trial court made a finding that since the complaints were against the Authority, that there were other statutory inbuilt administrative dispute resolution mechanisms under the RBA Act that ought to have been followed before recourse to the High Court. He opined that any dispute should have been referred to arbitration in the first instance pursuant to Rule 36 of the Consolidated Deed of Trust and Rules, made under the RBA Act and that if the appellant was dissatisfied with the decision of the arbitrator, then he could appeal to the Retirement Benefits Appeals Tribunal established under the RBA Act. On Appeal, the Court of Appeal dismissed the appeal stating that:

"The Appellant might want to argue that he has a constitutional right of access to justice, and we agree that he does, but the High Court and this Court have pronounced themselves many times to the effect that a party must first exhaust the other processes availed by other statutory dispute resolution organs, which are by law established, before moving to the High court by way of constitutional petitions. See International Centre for Policy and Conflict & 4 others vs The Hon. Uhuru Kenyatta and others, Petition No. 552 of 2012, and Speaker of National Assembly vs Njenga Karume [2008] 1KLR 425.

We hold that if indeed the appellant had any dispute with the RBA, he ought to have followed the route prescribed by the RBA, before proceeding to the High Court. We hold like the court below, and for the reasons we have given, that the appellant's petition lacked merit and was for dismissal."

(118) In the pursuit of such sound legal principles, it is our disposition that disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of superior courts is not a substitute for known legal procedures.

Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute.

(119) Such a deferred jurisdiction and the postponement of judicial intervention and reliefs until the mandated statutory or constitutional bodies take action rests, not alone on the disinclination of the judiciary to interfere with the exercise of the statutory or any administrative powers, but on the fact of a legal presumption that no harm can result if the decision maker acts upon a claim or grievance. Such formulation underlies the analogous cases, frequently cited for the exhaustion doctrine, in which the court refuses to enjoin an administrative official from performing his statutory duties on the ground that until he has acted the complainant can show no more than an apprehension that he will perform his duty wrongly, a fear that courts will not allay. Such cases may be expressed in the formula that judicial intervention is premature in the absence of administrative action.

80. Arising from the succinct and elaborate exposition of the Law as pertains to the Doctrine of Exhaustion by the Supreme Court of Kenya, in terms of the decision (supra), there is no gainsaying that the entire Petition before the Honourable court is not only pre-mature, but misconceived.

FINAL DISPOSITION

81. Having calibrated upon and duly analyzed the issues that were itemized in the body of the Ruling, it must have become apparent, nay evident that the entire Petition plus the Application beforehand are not only Bad in Law, but also legally untenable.

82. Consequently and in the premises, I come to the conclusion that the entire Petition was prematurely mounted before the Honourable court, prior to and before exhausting the available Dispute Resolution Mechanism provided and established vide, inter-alia, The *Land Registration Act*, 2012.

83. In a nutshell, the Petition, as well as the Application dated the 3rd February 2023, be and are hereby struck out, albeit, with no orders as to Costs.

84. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS__29TH__ DAY OF MARCH 2023.

OGUTTU MBOYA

JUDGE

In the Presence of;

Benson - Court Assistant

Mr. Francis Awino – 1st Petitioner.

Mr. Ngugi Mbugua – 2nd Petitioner.

Mr. Allan Kamau h/b for Mr. Benson Njagi for the 8th to 12th Respondents.

N/A for 1st to 7th Respondents