



**Sikalieh (Chairman Suing on Behalf of Karen District Association) v
National Environment Management Authority & another (Appeal 4 of 2023)
[2023] KENET 477 (KLR) (Environment and Land) (1 September 2023) (Ruling)**

Neutral citation: [2023] KENET 477 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
ENVIRONMENT AND LAND**

APPEAL 4 OF 2023

**EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI
MUIGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS**

SEPTEMBER 1, 2023

BETWEEN

**SAMORA SIKALIEH APPELLANT
CHAIRMAN SUING ON BEHALF OF KAREN DISTRICT ASSOCIATION**

AND

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST
RESPONDENT**

NAIROBI WALDORF SCHOOL TRUST 2ND RESPONDENT

RULING

1. The Appellant moved this Tribunal by way of a Notice of Appeal dated January 26, 2023 and filed on even date under Rules 3, 4(1), (2) and (3) of the [National Environment Tribunal Procedure Rules, 2003](#).
2. The appeal challenges the 1st Respondent's decision to issue the 2nd Respondent with Environment Impact Assessment (EIA) License Number Nema/eia/psl/22968 (Application Reference Number Nema/eia/psr/33503).
3. Upon service, the 2nd Respondent entered appearance and filed a Notice of Preliminary Objection dated February 21, 2023 premised on the following ground:

“The Appellant lack the Locus Standi to institute the Proceedings”



4. When parties appeared before us on August 25, 2023, we directed that the 2nd Respondent's Notice of Preliminary Objection be disposed of before the Appeal, and the applications forming part of the record can be determined.
5. We have considered the rival submissions filed by parties and find that the only issue presenting itself for determination is whether the Appellant has locus standi to institute the instant appeal.

Whether the Appellant had Locus Standi to Institute the Instant Appeal.

6. *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696 is a locus classicus on preliminary objections. For a preliminary objection to succeed, it must raise a pure point of law. In [*Joseph Muriuki Kithinji v Peterson Ileri Mwaniki & 3 others*](#) [2021] eKLR, Justice Kaniaru observed that 'a claim that a party lacks locus standi, therefore, is a pure point of law and one that needs to be raised and determined at the earliest.'
7. The question of locus standi goes to the heart of the Tribunal's jurisdiction. In [*Apex Finance International Limited and Another v Kenya Anti-Corruption Commission*](#) [2012]eKLR, Justice Emukule cited with approval [*Goodwill and Trust Investment Ltd and another v Witt and Bush Ltd*](#) Nigerian SC 266/2005 where the Nigerian Supreme Court observed as follows:

"It is trite law that to be competent and have jurisdiction over a matter; proper parties must be identified before the action can succeed, the parties to it must be shown to be proper parties whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the suit in limine. When proper parties are not before the court the court lacks jurisdiction to hear the suit, and, "where the court purports to exercise jurisdiction which it does not have, the proceedings before it, and its judgment will amount to a nullity no matter how well reasoned."

8. The 2nd Respondent contends that it is a member of the Karen Lang'ata District Association on whose behalf the Appellant has instituted the instant appeal. The 2nd Respondent further contends that the Appellant was not granted authority to institute the instant appeal, and his failure to file instruments of authorization to act is supportive of this position.
9. The Appellant, on the other hand, contends that a failure to file a resolution and/or written authority is not fatal and should not lead to the appeal being struck out. The Appellant contends that the resolution and/or written authority can be filed at any time before the hearing of the main appeal. In support of this position, he cites the following authorities: [*Republic v Registrar General & 13 others*](#) [2005] eKLR; [*Leo Investments Ltd v Trident Insurance Company Limited*](#) [2014] eKLR; and [*Raymark Limited v John Lokorio*](#) [2021] eKLR.
10. The proper parties to institute a claim on behalf of a society are its officials. This is discernable from [*Trustees Kenya Redeemed Church & another v Samuel M'Obiya & 5 Others*](#) [2011] eKLR, the Court held as follows:

"It is trite law that a society under the Societies Act is not a legal person with capacity to sue or be sued. A society can only sue or be sued through its officers. It has not been pleaded that the 2nd defendant has been sued in the capacity of an official of Kenya Redeemed Church nor has it been pleaded that he has been sued in his personal capacity."



11. This position is further amplified in *Kipsiwo Community Self Help Group v Attorney General & 6 others* (2013) in which the Court held as follows:

“I think the issue is not really whether unincorporated entities may commence action but the manner in which unincorporated entities may commence proceedings. A number of individuals may come together and form an identifiable group. They can bring an action as the group, but it does not mean, that the group is now vested with legal capacity to sue and to be sued. In such instances, the members of the group have to bring action in their own names, as members of the Group, or a few can bring action on behalf of the other members of the group, in the nature of a representative action. Unincorporated entities have no legal capacity and cannot therefore sue in their own names. They can, however, sue through an entity with legal capacity. Just because the Constitution allows unincorporated bodies to sue, does not vest such bodies with legal capacity, and such bodies do not become persons in law, and cannot be the litigants or sue in their own standing. They still have to use the agency of a person recognized in law as having capacity to sue and to be sued.”

12. It is not disputed that the Appellant is the chairman of the Karen Lang'ata District Association. What is disputed is his authority to act in the name of the Association. As a consequence thereof, the 2nd Respondent invites us to strike out the Notice of Appeal. We are inclined to turn down the invitation; in doing so, we are guided by Hon Justice Odunga's (as he then was) holding in *Leo Investments Ltd v Trident Insurance Company Ltd*(2014) eKLR where he cited *Assia Pharmaceuticals vs Nairobi Veterinary Centre Ltd* Nairobi (Milimani) HCCC No 391 of 2000 with approval as follows:

“It is settled law that where a suit is to be instituted for and on behalf of a company, there should be a company resolution to that effect.....As regards litigation by an incorporated company, the directors are, as a rule, the persons who have the authority to act for the company; but in the absence of any contract to the contrary in the articles of association, the majority of the members of the company are entitled to decide even to the extent of overruling the directors, whether an action in the name of the company should be commenced or allowed to proceed. The secretary of the company cannot institute proceedings in the name of the company in the absence of express authority to do so; but proceedings started without proper authority may subsequently be ratified.”

13. We are persuaded that the failure by the Appellant to file instruments authorizing him to sue on behalf of Karen Lang'ata District Association is a curable omission that can be ratified by the Appellant prior to the hearing of the main Appeal. We therefore decline to drive him away from the seat of justice.

Orders

14. The notice of preliminary objection dated February 21, 2023 is therefore devoid of merit and is hereby dismissed. Costs shall abide the outcome of the appeal.

DATED AT NAIROBI THIS 1ST DAY OF SEPTEMBER 2023

EMMANUEL MUMIA.....CHAIRMAN

WINNIE TSUMA.....VICE-CHAIR

KARIUKI MUIGUA.....MEMBER

DUNCAN KURIA.....MEMBER

RONALD ALLAMANO.....MEMBER

