



**East Africa Chains Limited v PC World Limited & another (Civil Appeal
296 of 2013) [2023] KEHC 21746 (KLR) (Civ) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21746 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 296 OF 2013

CW MEOLI, J

AUGUST 3, 2023

BETWEEN

EAST AFRICA CHAINS LIMITED APPELLANT

AND

PC WORLD LIMITED 1ST RESPONDENT

AGGREY ADEMAH 2ND RESPONDENT

RULING

1. The motion dated October 17, 2022 by PC World Limited (hereafter the 1st Respondent/Applicant) is seeking that the sum of Kshs 500,000/- deposited in court as security on July 18, 2013 and October 17, 2013 by East Africa Chains Limited (hereafter the Appellant/Respondent) be released to 1st Respondent/Applicant through the firm of Messrs. Mang'erere Bosire and Associates Advocates. The motion is expressed to be brought under Section 1A, 1B, 3A & 63(e) of the *Civil Procedure Act* (CPA) and Order 51 of the *Civil Procedure Rules* (CPR) *inter alia* and is premised on the grounds on the face thereof, as amplified in the affidavit of Bosire Kennedy Mark, counsel having conduct of the matter on behalf of the 1st Respondent.
2. The gist of his affidavit is that judgment in the instant matter was delivered on December 20, 2019 and the appeal was dismissed with costs to the 1st Respondent. That thereafter the Appellant filed a review application which was equally dismissed on October 6, 2022 with costs. That the instant matter having been finalized and there being no further appeal, the amount of Kshs 500,000/- deposited as security pending hearing and determination of the appeal ought to be released to the 1st Respondent/Applicant.
3. The Appellant opposes the motion by way of grounds of opposition dated December 5, 2022 and a replying affidavit sworn by Mark Tilbury of even date. The Appellant takes issue with the motion on



grounds that the application is a nullity as the 1st Respondent is non-existent and thus cannot institute proceedings; that the 1st Respondent's registration ceased to exist and therefore the said Respondent ceased to be a juristic person; that the firm of Messrs. Mang'erere, Bosire & Associates Advocates can therefore not purport to act under the instructions of a non-existent company; and that the motion is therefore a non-starter and void ab-initio.

4. The deponent of the replying affidavit attacks the motion by deposing that the same is void ab initio as the 1st Respondent/Applicant is no longer in existence and thus is not a legal entity with the locus standi to file the instant frivolous application. He goes on to depose that upon a search conducted by his counsel on the Business Registration Services on the E-citizen Portal, the it was found that the 1st Respondent was non-existent, and further to a letter to the Registrar of Companies on October 31, 2022 seeking to obtain a copy of the CR12 in respect of the 1st Respondent, no such records were supplied. He further deposes that an action brought by or in the name of a non-existent person void ab initio and that counsel who has filed the instant motion was not duly instructed as his purported client no longer exists. Hence, the instant proceedings are a nullity and cannot stand therefore the motion ought to be dismissed with costs.
5. In a rejoinder, counsel for the 1st Respondent asserted that the winding up of a company is a legal process and the Appellant has not produced any evidence to prove the non-existence of the 1st Respondent. He goes on to assert that the Appellant's response is brought in bad faith and is tainted with malice as it raises extraneous issues which are irrelevant in the circumstances. That the Appellant has not produced any documentary evidence or otherwise to prove its allegations. That his firm has been on record for the 1st Respondent since inception of the suit in the lower court and the Appellant had never raised the instant.
6. He further deposes that the purpose of the deposited security having been extinguished, the Appellant cannot raises new issues that were not a subject of the appeal and that if the Appellant is in anyway aggrieved, it is at liberty to file a substantive motion. The court was thus urged to disregard the Appellant's response as the same is speculative urging that this be substantively concluded.
7. In a further affidavit the Appellant reiterated that the 1st Respondent is no longer in existence which position has been confirmed by the Business Registration Services through their letter dated April 17, 2023, hence counsel has misled the court by purporting to act for a non-existent party.
8. The parties opted to rely on their respective affidavit material rather than file written submissions in respect of the motion. The court has considered the respective material canvassed. It is not in dispute that the Appellant filed an appeal in respect of which judgment was delivered on or about the December 20, 2019. Prior to the latter judgment, in compliance with the condition of stay of execution pending hearing and determination of the appeal, the Appellant deposited into court a total of Kshs 500,000/- as security. Aggrieved with the foregoing judgment, the Appellant had filed an application for review which was dismissed by way of ruling of this court on October 6, 2022 leading to the motion now before the court.
9. The principle that a successful litigant is entitled to the fruits of litigation is settled. See *Samvir Trustee Limited vs Guardian Bank Limited* Nairobi (Milimani) HCCC 795 of 1997 and *Machira T/A Machira & Co Advocates vs East African Standard (No 2)* [2002] KLR 63. The purpose of the deposit has been extinguished, but the issue arising is whether the monies deposited ought to be released "through the firm of Messrs. Mang'erere Bosire and Associates Advocates" as sought in the motion.
10. The gist of the Appellant's contestation is that motion is void ab initio as the 1st Respondent is no longer in existence and thus is not a legal entity with the locus standi to file the instant frivolous



application. In support of the foregoing argument, the Appellant relied on “Exhibit-1” exhibited in its reply affidavit and “Exhibit-1” exhibited in its further affidavit. The latter being a search result and a letter from Business Registration Service (BRS) in respect of the 1st Respondent respectively. *Black’s Law Dictionary*, Tenth Edition defines locus standi as: “...the right to bring an action or to be heard in a given forum.”

11. The Court of Appeal in *James Teko Lopoyetum v Rose Kasuku Watia & 4 Others* [2021] eKLR reiterated its decision in *Alfred Njau & 5 others vs City Council of Nairobi* [1983] eKLR where it held:

“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.”

See also;- Sheila Nkatha Muthee v Alphonse Mwangemi Munga & Another [2016] eKLR where it was held that:

“Locus standi is a primary point of law almost similar to that of jurisdiction since the lack of capacity to sue renders the suit incompetent.”

12. Want of locus standi therefore ordinarily raises a question of jurisdiction on the part of the court. See the locus classicus on jurisdiction in the case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1 where Nyarangi. JA (as he then was) famously stated:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

13. From the 1st Respondent’s assertions, the Appellant did not earlier challenge the legal existence of the 1st Respondent. As a matter of fact, it seems that the parties herein were business partners before the dispute necessitating the suit before the lower court arose, and later the instant appeal. While the court is not assured that this is a proper matter in which to decline jurisdiction, equally, as a court of law, it cannot shut its eyes to the uncontroverted material putting to doubt the current legal existence of the 1st Respondent as a juristic person. Moreso, as the application involves a not insubstantial amount of money.
14. Ultimately, the 1st Respondent’s motion will be allowed. However, out of an abundance of caution, informed by the copies of official records tendered by the Appellant, the court directs that the sums held as security herein be released directly to the depositor, namely, PC World Limited. Parties will bear their own costs.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 3RD DAY OF AUGUST 2023.

C.MEOLI

JUDGE

In the presence of

For the 1st Respondent/ Applicant: Mr. Bosire

For the Respondent: N/A - (Ms. Mbirwa later appeared h/b for Ms. Kathungu).



C/A: Carol

