



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sakwa (Suing as an Administrator of the Estate of Hosea Sakwa  
Silunya) v Ndege & another (Environment & Land Case 607 of 2007)  
[2023] KEELC 20156 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20156 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 607 OF 2007  
AA OMOLLO, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**PATRICK NDOLO SAKWA (SUING AS AN ADMINISTRATOR OF THE  
ESTATE OF HOSEA SAKWA SILUNYA) ..... PLAINTIFF**

**AND**

**EDWARD NDEGE ..... 1<sup>ST</sup> DEFENDANT**

**FRANCIS NYAGA NJERU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Defendants filed a Notice of Motion dated November 14, 2022 seeking for the following orders;
  - a. That the Plaint dated June 7, 2016 together with the List of witnesses, Witness Statement and the List of Documents be struck out.
  - b. That the suit herein is an abuse of the process of the court.
  - c. That the costs of this application be provided for.
2. The grounds of the application were outlined in the supporting affidavit and supplementary affidavit sworn by Francis Nyaga Njeru on November 14, 2022 and February 12, 2023 respectively stated that the Plaintiff brought this suit against the Defendants in 2016 for permanent injunctive orders to restrain them from trespassing on, wasting, damaging, alienating, developing and/or adversely interfering with the property known as L R No 36/VII/157 situate in Eastleigh within Nairobi herein referred to as “the suit property” and the same was consolidated with ELC No 251 of 2018 by consent of both parties.
3. The 2<sup>nd</sup> Defendant/Applicant deposed that there is a consent on record dated September 3, 2021 in ELC No 251 of 2018 whereby the Plaintiff withdrew their claim in its entirety against the Defendants



in consideration for the sum of Kshs 80,000,000 vide sale agreement dated August 18, 2021 between the Plaintiff and Igbaro Realtors Limited. Further, after confirming receipt of the sum the Plaintiff and the Estate of Hosea Sakwa acknowledged that they had no further claim, whether present or future, in respect of the suit property as against the Defendants in ELC No 251 of 2018.

4. The Defendants/Applicants contended that the Plaintiff's claim is based on the reason that the late Hosea Sakwa Silunya was the registered owner of the suit property but in the circumstances, the suit has been overtaken by events as the suit property was already sold off by the Plaintiff who therefore cease to have any proprietary rights over the suit property. He also noted the Plaintiff (Patrick Ndoli Sakwa) does not have the locus standi to prosecute this matter as he is not an administrator to the estate of Hosea Sakwa Silunya.
5. It is deposed that the subject matter in ELC No 607 of 2016 no longer exists and the court is *functus officio* and that unless this suit is struck out in its entirety, the parties will be embroiled in a baseless improper suit. The Applicants urged that the motion should be allowed as prayed and allowing it will not prejudice the Plaintiff.
6. The Plaintiff filed a replying affidavit sworn by Patrick Ndoli Sakwa on December 15, 2022 contending that the consent was only in respect of ELC No 251 of 2018. That in this suit he is claiming only damages and cost. He added that the Defendants were not parties to the consent and that the Defendants herein illegally sold the suit property to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the case No 251 of 2018 knowing that the same did not belong to them which should cause their application to be dismissed with costs.

#### **Submissions by the Parties:**

7. The respective submissions filed are dated February 22, 2023 and April 17, 2023 respectively. The Defendants/Applicants submitted that the parties in ELC No 251 of 2018 and ELC No 607 of 2016 agreed to consolidate the two files and that they be heard together ELC No 607 of 2016 being the lead file. The Applicants stated that in light of the consent dated September 3, 2021 that was signed by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants Advocates, 1<sup>st</sup> and 2<sup>nd</sup> Administrators Advocates, Advocates for the 3<sup>rd</sup> Administrator (Ruth Amimo Muhakas) and advocates for the 4<sup>th</sup> Administrator (Anne Sakwa), the 3<sup>rd</sup> Plaintiff (Patrick Ndoli Sakwa) is not a party to the consent.
8. Further, the Defendants/Applicants submitted that in HC succession cause No.4 of 2007, the High Court on May 8, 2019 rectified the grant of letters of administration intestate of all the estate of Hosea Sakwa Silunya and expunged the 3<sup>rd</sup> Plaintiffs (Patrick Ndoli Sakwa) name as an Administrator. That the Plaintiff herein therefore lacks locus standi to continue prosecuting this suit. In support, they cited the case of *Sisilia Nyakoe & Another v Attorney General & 4 others* [2021] eKLR and *Christopher Mutiambu Machimbo & 3 Others vs County Surveyor, Trans-Nzoia & 4 others* [2022] eKLR.
9. The Plaintiff submitted that the actions that were done by the Defendants/Applicants can only be compensated by damages as the subject matter was only disposed of in terms of value/ownership but not in respect of damages arising from the illegal and fraudulent claim of the suit property by the Defendants. The Plaintiff added that the Applicants herein never participated in the consolidated suit thus they cannot say a determination with regard to one suit means the other noting that consolidation should only be to the extent of full hearing, determination and involvement of all parties concerned.
10. The Plaintiffs submitted that the Defendants carried illegal and unlawful demolitions to the developments thereon depriving him of mense profit of Kshs.100,000 per month from the date of destruction of the developments.



## Analysis

11. The suit herein was instituted by the Plaintiffs against the Defendants vide a plaint dated June 7, 2016 whose issue was on ownership dispute of the suit property. The prayers sought;
  - i. An order of permanent injunction restraining the Defendants, their servants and or agents from trespassing on, wasting, damaging, alienating, developing and or adversely interfering with property L R No 36/VII/157 situate at eastleigh Nairobi
  - ii. Costs of this suit.
12. From the court record, on April 29, 2021, this suit was by consent consolidated with ELC No 251 of 2018 and the current file made the lead file. Another consent dated September 3, 2021 was recorded with regard to ELC No 251 of 2018 on terms *inter alia*;
  - a. The Plaintiff withdrew their claim in its entirety for consideration of payment of the sum of Kshs 80,000,000 and confirmed that they had no further claim, whether present or future, in respect of the suit property against the Defendants in that suit.
  - b. That the subject matter in ELC 251 of 2018 is hereby dispensed with and the said suit was marked as settled.
13. The Defendants/Applicants argue that the remaining suit ELC 607 OF 2016 against them is an abuse of the process of the court and should be struck out because the subject matter of this suit was disposed off by the Plaintiff. The second limb of the argument is that the Plaintiff/Respondent does not have the locus standi in the suit as he is not an administrator of the deceased estate.
14. The issues for determination before this court are in twofold. First, the issue as to whether the Plaintiff has the locus standi in this claim. The Defendants have contended that the Plaintiff is not an Administrator of the estate of Hosea Sakwa Silunya and produced Grant of Letters of Administration intestate of all the Estate of Hosea Sakwa Silunya rectified on May 8, 2019 to show the personal representatives of the estate with the Plaintiff's name not listed.
15. Locus standi connotes 'a right to bring action'. The court in the matter of [\*Kbelef Khalifa El-Busaidy v Commissioner of Lands & 2 others\*](#) [2002] eKLR canvassed the issue of Locus Standi as follows:

“...for an individual to have a locus standi, he must have an interest either vested or contingent in the subject matter before the court, which interest must be a legal one.”
16. Locus standi is so important that in its absence, a party has no basis to claim anything before the Court. Without it, even when a party has a meritorious case, he cannot be heard because of that. A litigant is clothed with locus standi upon obtaining a limited grant or a full grant of Letters of Administration. The limited grant dated 11<sup>th</sup> April 2008 issued to the Plaintiff alongside four others appointing them as the legal representatives of Hosea Sakwa Silunya-deceased was amended excluding the Plaintiff as the administrator. That the Plaintiff has not tabled any evidence to show his interest in the estate of the deceased.
17. In *Otieno v Ougo* [1986-1989] EALR 468, the Court rendered itself thus:

“... An administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”



18. In this case the plaintiff's locus to sustain the suit ended after the rectification of the grant. The other issue for determination is whether the suit is an abuse of the court process. There is no objection that the two suits ELC No.251 of 2018 and ELC No.607 of 2016 were consolidated and that a consent was filed with regard to ELC No.251 of 2018 whereby the Plaintiffs withdrew their claim in its entirety against the Defendants in consideration for the sum of Kshs.80,000,000.
19. The term consolidation is defined in Black's Law Dictionary (8<sup>th</sup> Edition) as follows;  

“to combine, through court order, two or more actions involving the same parties or issues into a single action ending in a single judgment, or sometimes, separate judgments...”
20. I have read the consent recorded dated September 3, 2021 and agree with the Plaintiff/Respondent that the Applicants herein were not parties to the same and none of the clauses in the consent mentioned that the Plaintiffs had withdrawn the suit filed against them. However, the two suits having been consolidated, the Defendants/Applicants became bound by the orders made in ELC 251 of 2018 otherwise they would have equally challenged the payment made to the Plaintiff/Respondent as the owner of the suit property. In any event, there is no dispute that the suit property in ELC 251 of 2018 is the same as in this case and the issue of ownership arose in both. The order of permanent injunction sought in the present suit has been passed by events as a result of the consent it changed the ownership of the suit property and the Plaintiff/Respondent cannot be granted orders of a permanent injunction in respect to a property that is no longer owned by the deceased Hosea Silunya or his estate.
21. The Plaintiff argued that he suffered damage as a result of the actions of the Defendants/Applicants and the suit is claiming for compensation. There is no prayer for damages in the plaint dated June 7, 2016 neither has there been an application to amend to include the prayer for damages. Order .. provides that parties are bound by their pleadings so that the Respondent is deemed to claim only that which he pleaded. The issue of cost cannot make a matter to proceed to full hearing as it is a question that can be determined summarily through submissions
22. In conclusion, I am persuaded to find that there is no basis to continue the life of this suit. The application dated November 14, 2022 is allowed on the following terms;
  - a. That the Plaint dated June 7, 2016 together with the list of witnesses, witness statement and the list of documents be struck out with no order as to costs
  - b. The costs of this application is awarded to the Defendants/Applicants

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2023**

**A. OMOLLO**

**JUDGE**

In the Presence of:

Ms. Nyang for Plaintiff/Respondent

Ms. Odhiambo h/b for Ms. Opiyo for Defendant/Applicants

Court assistant: Valentine

