Savala & another v Ndanyi (Environment & Land Case 248 of 2021)
[2023] KEELC 20204 (KLR) (25 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20204 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT & LAND CASE 248 OF 2021

LL NAIKUNI, J

SEPTEMBER 25, 2023

BETWEEN

SONY SAVALA ..... 1ST PLAINTIFF

AMLELE NDANYI ..... 2ND PLAINTIFF

AND

BRYAN AGINDA NDANYI ..... DEFENDANT

RULING

I. Introduction

1. The applications before this Honorable Court for hearing and determination is the Notice of Motion application dated 27th October, 2022 brought under a certificate of urgency. It is brought by Bryan Aginda Ndanyi, the Defendant/Applicant herein under the provisions of Section 2 of the *Law Reform Act*, Cap. 26, Order 2 Rule 15(1)(d) and Order 51 Rule 1 of the *Civil Procedure Rules*, 2010, Sections 1A,1B and 3A of the *Civil Procedure Act*, Cap. 21 Laws of Kenya.

2. Upon service, the 2nd Plaintiff/Respondents filed their replies in form of Replying Affidavit dated 22nd February, 2023 herein.

II. The Defendant/Applicant's case

3. The Defendant/Applicant herein sought for the following orders:-

    a. That this Honourable Court be pleased to strike out the 2nd Plaintiff's suit for want of locus standi to institute this suit on his own behalf and/or on behalf of the estate of Hezron Ndanyi Lidede-deceased.

    b. That cost of this application be borne by the 2nd Plaintiff/Respondent.

4. The application by the Defendant/Applicant was premised on the grounds, testimonial facts and averments founded under the 9 Paragraphed Supporting Affidavit of Esther Musolitsa Ndany sworn and dated 27th October, 2022 together with 1 annexure marked as "A" annexed thereto. The Defendant/Applicant averred that:

    a. The suit property belongs to the Estate of the late Hezron Ndanyi Lidede

    b. The 2nd Plaintiff does not have the requisite "locus standi" to bring this suit as the 2nd Plaintiff had not obtained Grant Letters of Administration ad litem in respect of estate of Hezron Ndanyi Lidede-deceased who died on 20th August 1993.

    c. The 2nd Plaintiff never obtained the requisite consent from Esther Musolitsa Ndanyi and Sonny Savala Lidede who were the duly appointed Legal Administrators of the estate of Hezron Ndanyi Lidede-deceased to institute this suit.

    d. The suit herein was a non-starter, incompetent, and void ab initio.

    e. The suit herein was an abuse of court process.

    f. No prejudice stands to be suffered by the Plaintiffs/ Respondents if the orders sought herein are granted.

III. The Plaintiffs/ Respondents' case

5. On 22nd February, 2023, the Plaintiffs/Respondents filed a 9 Paragraphed Replying Affidavit sworn by Edwin Amulele Ndanyi, the 2nd Plaintiff/Respondent herein and dated the same day where he averred that:

    a. Vide a plaint dated 17th December, 2021 he filed this suit against the Defendant/Applicant herein on the grounds of trespass. Annexed hereto and marked 'A-1' is a copy of the Plaint.

    b. As at the time of filing the said suit he was in possession, Occupation and management of the suit property known as Mombasa/Block X/259 with authority of the 1st Plaintiff/Respondent herein who is the co - owner of the said property vide Certificate of Lease dated 8th May, 1975 and minutes dated 26th February, 2005, Annexed hereto and marked 'A - 2' were copies of the said certificate of lease and minutes.

    c. Despite the fact that he was also a beneficiary/ dependant in the estate of Hezron Ndanyi Lidede who is also the co-owner of the suit property and with a pending High Court Nairobi Succession Cause No.154 of 1999 vide court order dated 19th June, 2003 item 3 stated:

    'Any survivors of the deceased in occupation of any land belonging to the estate shall remain in such occupation until the property is otherwise distributed.'

    d. The Grant Letters of Administration was yet to be confirmed and The Estate distributed. Annexed hereto and marked 'A - 3' was a copy of the court order.

    e. Thus, he had has "locus standi' under the *Trespass Act* as the authorized occupier/manager of the suit property vide the said minutes and the court order as against the Defendant who forcefully entered into the suit property without notice, consent and or authority.

    f. The suit was therefore competently and justifiably filed seeking remedies under the *Trespass Act*.

g. The application is sworn in opposition of the Defendant's application filed herein and prayed for the same to be dismissed with costs.

IV. Submissions

6. On 9th February, 2023 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 27th October, 2022 be disposed of by way of written submissions. Pursuant to that all the parties obliged and a ruling date was reserved on notice by Honourable Court accordingly. From the records, by the time of penning down this Ruling, it appears only the Defendant/Applicant had filed his written submissions. Thus, the ruling will be delivered on its merit.

A. The Defendant/Applicant's written submissions

7. On 25th January, 2023, the Learned Counsel for the Defendant/Applicant through the Law firm of Messrs. Kiarie Kariuki & Company Advocates filed their written submissions dated the same day. M/s Layoo Advocate commenced the submissions by stating that the Defendant/Applicant filed a Notice of Motion application dated 27th October 2022 under Section 2 of the *Law Reform Act*, Cap. 26 and Order 2 Rule 15(1) (d) of the *Civil Procedure Rules*, 2010 seeking for the following Orders:

   a. That this Honourable court be pleased to strike out the 2nd Plaintiff's suit for want of locus standi to institute this suit on his own behalf and/or on behalf of the estate of Hezron Ndanyi Lidede-deceased.

   b. That cost of this application be borne by the 2nd Plaintiff/Respondent.

8. The Defendant/Applicant relied on the grounds as they appear on the face of the Application and Supporting Affidavits sworn the Defendant herein and Esther Musolitsa Ndanyi respectively together with the annexures thereto.

9. On 10th November 2022, the 2nd Plaintiff/Respondent herein was granted 7 days leave to file and serve a response to the said application. However, the 2nd Plaintiff/Respondent was yet to comply and as such, the Application herein was not opposed.The 2nd Plaintiff/Respondent instituted this suit vide a Plaint dated 17th December 2021 in which the 2nd Plaintiff/Respondent prayed for judgment against the Defendant/Respondent inter alia for a declaration that the Defendant's actions amount to trespass to land and a violation of right to property, a permanent prohibitory injunction preventing the Defendant by himself, his servants and/or agents from entering the suit property and in any other way further interfering with the Plaintiff's quiet enjoyment of the suit property.

10. The 2nd Plaintiff/Respondent stated in the Plaint that he held possession and/or manages half share of Mombasa/Block X/259 situated in Tudor area within Mombasa (herein referred to as the "suit property"), being the property manager and also beneficiary of the Estate of Hezron Ndanyi Lidede (deceased) who was the co-registered owner of the half share.

11. The 2nd Plaintiff/Respondent alleged that the Defendant/Applicant forcefully enter into the deceased's apartment and broke a padlock on the main door where the 2nd Plaintiff/Respondent is in possession. The 2nd Plaintiff/Respondent further alleged that the Defendant/Applicant herein put his own padlock on the said door against "a court order and agreement" between the 1st and 2nd Plaintiffs/ Respondents herein.

12. The Learned Counsel submitted that on the on the issues of determination by this Honourable court are as follows:

i. Whether the 2nd Plaintiff/Respondent had locus standi to institute this suit.

ii. Who shall bear the costs of this suit?

13. On the issue of whether the 2nd Plaintiff/Respondent had "locus standi" to institute this suit, the Learned Counsel submitted that the 2nd Plaintiff/Respondent had not placed any document before this court to illustrate the capacity in which the 2nd Plaintiff/Respondent brought this suit. As rightly put, the suit property and the apartment herein are registered and owned by the 1st Plaintiff/Respondent and the deceased (see item 2 of the Plaintiffs/Respondents list of documents). Furthermore, the 1st Plaintiff together with Esther Musolitsa Ndanyi were the duly appointed Legal Administrators of the estate of Hezron Ndanyi Lidede as evidenced annexure "A" to the Supporting Affidavit sworn by Esther Musolitsa Ndanyi. Thus only the 1st Plaintiff/Respondent and Esther Musolitsa Ndanyi were clothed with the requisite locus standi to file this suit on behalf of the late Hezron Ndanyi Lidede. The Plaintiff/Respondent was not mandated to file any such suit for want of letters of administration.

14. Legally, only authorized persons could institute a suit on behalf of a deceased person as envisaged under Order 4 Rule 4 of the *Civil Procedure Rules*,2010. Order 4 Rule 4 of the *Civil Procedure Rules*, 2010 provides that:

> " Where the plaintiff sues in a representative capacity the plaint shall state the capacity in which he sues and where the defendant is sued in a representative capacity the plaint shall state the capacity in which he is sued, and in both cases it shall be stated how that capacity arises."

15. To buttress her point, the Learned Counsel relied in the case of: "*Julian Adoyo Onguna v Francis Kiberenge Abano (suing as the administrator of the estate of Fanuel Evans Amudavi (Deceased)*[2016] eKLR", while addressing the issue of locus standi, the court observed that:

> " Further the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is also worth-noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties." [Emphasis added]

16. The Learned Counsel argued that the rational for obtaining a limited grant prior to instituting a suit was expounded in the case of "*Hawo Shanko v Mohamed Uta Shanko* [2018] eKLR", where it was stated that:

> " The issue as to whether a party can file a suit involving a deceased's estate before obtaining a limited grant has been the subject of several Court cases. The general consensus is that a party lacks the locus standi to file a suit before obtaining a grant limited for that purpose. This legal position is quite reasonable in that if the Plaintiff or applicant has not been formally authorized by the Court by way of a grant limited for that purpose, then it will be difficult to control the flow of Court cases by those entitled to benefit from the estate. If each beneficiary is allowed to file a suit touching on a deceased's estate without first obtaining a limited grant, then several suits will be filed by the beneficiaries. It is the Limited grant which

gives the plaintiff the locus to stand before the Court and argue the case. It does not matter whether the suit involves a claim of intermeddling of the estate or the preservation of the same. One has to first obtain a limited grant that will give him/her the authority to file the suit. The leave of the Court is not required before one seeks a grant limited to the filing of the suit. The orders granted to the plaintiff herein authorizing her to seek a grant of letters of administration are superfluous and cannot assist her. She ought to have sought a limited grant first before filing this suit."

17. Further to this, the Learned Counsel submitted that in the absence of a grant of letters of administration in favour of the 2nd Plaintiff/Respondent, the 2nd Plaintiff herein never had the legal capacity to institute this suit. They urged the court to strike out the 2nd Plaintiff's suit with costs to the Defendant/Applicant.

V. Analysis and Determination

18. I have carefully read and considered the pleadings herein – being the Notice of Motion application dated 27th October, 2022 by the Defendant/Applicant herein, the written submissions, cited authorities and the relevant provisions of the *Constitution* of Kenya, 2010 and the statures. In order to arrive at an informed decision, the Honorable Court has crafted four (3) framed issues for its determination. These are:

    a. Whether the 2nd Plaintiff/Respondent herein lacked requisite locus to file this suit on his own behalf and/or on behalf of the estate of Hezron Ndanyi Lidede-deceased.

    b. Whether the 2nd Plaintiff's claim against the Defendant should be struck out for being incompetent

    c. Who will bear the Costs of Notice of Motion application 27th October, 2022.

IssueNo. a).Whether the 2nd Plaintiff's claim against the Defendant should be struck out for being incompetent.

19. For good order and ease of flow, I have decided to invert the issues by starting with the one under the second Sub - heading. Mainly, the main substratum of this application by the Defendant/Applicant is on striking out of the filed pleadings instituted by the 1st and 2nd Plaintiffs/Applicants herein. Legally speaking, the power to strike out suits is vested in the Court by Order 2 Rule 15 of the *Civil Procedure Rules*, 2010. The provision states as follows:-

> "(1) At any stage of the proceedings the Court may order to be struck out or amended any pleading on the ground that—
>
> (a) it discloses no reasonable cause of action or defence in law; or
>
> (b) it is scandalous, frivolous or vexatious; or
>
> (c) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (d) it is otherwise an abuse of the process of the Court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
>
> (2) No evidence shall be admissible on an application under sub rule (1) (a) but the application shall state concisely the grounds on which it is made.

20. Thus, it follows that the Court retains the discretion to strike out a Plaint if it discloses no cause of action and to strike out a Defence if it discloses no reasonable defence or to order their amendment. A cause of action is defined in *Black's Law Dictionary* 9th Edition as Page 251 as:-

> " a group of operative facts which giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in Court from another person".

21. Pearson J in the case:- "*Drummond Jackson v Britain Medical Association* [1970]2 WLR 688" at page 616 defined a cause of action as:

> " A cause of action is an act on the part of the Defendant, which gives the Plaintiff his cause of complaint. Therefore, what the Plaintiff needed to show was that he had a prima facie case against the Defendants....."

22. It is not disputed that the suit land was owned by the late Hezron Ndanyi Lidede before his demise. He co- owned the suit property with the 1st Plaintiff. It is also not in dispute that the order dated 19th June, 2003 gave the 2nd Plaintiff the rights to the suit property and the estate of the deceased.

IssueNo. b).Whether the 2nd Plaintiff lacks requisite locus to file this suit on his own behalf and/or on behalf of the estate of Hezron Ndanyi Lidede-deceased.

22. Under this Sub – heading the Court wishes to refer to the case of:- "*Law Society of Kenya v Commissioner of Lands & Others*, Nakuru High Court Civil Case No.464 of 2000", as follows:-

> " 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"

23. Therefore, locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.

24. Further, in the case of: "*Alfred Njau v City Council of Nairobi* [1983] KLR 625" the Court of Appeal, held "inter alia" that:-

> " ...Locus standi" literally means a place of standing and refers to the right to appear or be heard in Court or other proceedings and 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".

25. The Defendant/Applicant avers that the 2nd Plaintiff/Respondent lacks locus standi to institute the suit on his own behalf and/or on behalf of the estate of Hezron Ndanyi Lidede-deceased. The Defendant/Respondent contended that the 2nd Plaintiff/Respondent has not placed any document before this court to illustrate the capacity in which the 2nd Plaintiff/Respondent brought this suit. As rightly put, the suit property and the apartment herein are registered and owned by the 1st Plaintiff/Respondent and the deceased (see item 2 of the Plaintiffs/Respondents list of documents). Furthermore, the 1st Plaintiff together with Esther Musolitsa Ndanyi are the legal administrators of the estate of Hezron Ndanyi Lidede as evidenced annexure "A" to the Supporting Affidavit sworn by

Esther Musolitsa Ndanyi. Thus only the 1st Plaintiff/Respondent and Esther Musolitsa Ndanyi were clothed with the requisite locus standi to file this suit on behalf of the late Hezron Ndanyi Lidede. The Plaintiff/Respondent was not mandated to file any such suit for want of letters of administration.

26. Based on this strong contention, the Court had to peruse the pleadings filed to inform itself of whether it is true or false. As such, I looked at the Plaint. The 2nd Plaintiff stated in the Plaint that he holds possession and/or manages half share of Mombasa/Block X/259 situated in Tudor area within Mombasa (herein referred to as the "suit property"), being the property manager and also beneficiary of the Estate of Hezron Ndanyi Lidede (deceased) who was the co-registered owner of the half share. The 2nd Plaintiff/Respondent further alleges that the Defendant/Applicant forcefully enter into the deceased's apartment and broke a padlock on the main door where the 2nd Plaintiff/Respondent is in possession. The 2nd Plaintiff/Respondent further alleges that the Defendant/Applicant herein put his own padlock on the said door against "a court order and agreement" between the 1st and 2nd Plaintiffs/ Respondents herein.

27. It is trite law that for one to institute a suit in relation to a deceased estate they must obtain grant of letters of administration which will give them the requisite locus standi.

28. This was elaborated in the case of "*Hawo Shanko v Mohamed Uta Shanko* (*Supra*)" where the court held that:

> " The general consensus is that a party lacks the locus standi to file a suit before obtaining a grant limited for that purpose. This legal position is quite reasonable in that if the Plaintiff or applicant has not been formally authorized by the Court by way of a grant limited for that purpose, then it will be difficult to control the flow of Court cases by those entitled to benefit from the estate... It does not matter whether the suit involves a claim of intermeddling of the estate or the preservation of the same. One has to first obtain a limited grant that will give him/her the authority to file the suit."

29. Under the provision of Order 4 Rule 4 of the *Civil Procedure Rules*, 2010 the law provides that:-

> " Where the Plaintiff sues in a representative capacity, the Plaintiff shall state the capacity in which he sues and where the Defendant is sued in a representative capacity, the plaint shall state the capacity in which he is sued, and in both cases it shall be stated how the capacity arises."

30. It is evident that the 2nd Plaintiff at the time of filing the suit never brought to the court's attention any documentation or evidence that she was a legal representative of the estate of the deceased. Further the 2nd Plaintiff was not a registered owner of the land but had brought the application in the capacity of being an alleged purchaser to the land. Further in line with Order 4 Rule 4 of *Civil Procedure Rules*, 2010 the Defendant/Applicant did not disclose the capacity in which the brought the suit.

31. Additionally, I wish to refer the case of Kisii ELC NO. 8 of 2019 "*Pamella Kwamboka Nyarega & another v Edward Kaso Obwocha & another* [2020] eKLR" the court faced with similar circumstances had the following to say:

> " It is therefore my finding that although the Appellants did not state the capacity in which they sued, they had taken out Grant of letters of Administration and had the locus standi to institute the suit".

32. The 2nd Plaintiff contends that at the time of filing the said suit he was in possession, occupationand management of the suit property known as Mombasa/Block X/259 with authority of the 1st Plaintiff who is the co-owner of the said property vide certificate of lease dated 8th May, 1975 and minutes dated 26th February, 2005, annexed hereto and marked 'A-2' are copies of the said certificate of lease and minutes. He told the court that he was a beneficiary/Dependant in the estate of Hezron Ndanyi Lidede who is also a co-owner of the suit property with a pending High Court Nairobi Succession Cause No.154 of 1999 in which he had an order dated 19th June, 2003.

33. The Court finds 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 Respondents fits the description of Preliminary Objection as stated in the case of "Mukisa Biscuit case (*Supra*).

34. While the Court has already held and found that the issue of "locus standi" is a Preliminary Objection rightly raised, in this instant suit, the Plaintiffs/Respondents have averred that firstly, although the Applicant has filed this suit, it has failed to demonstrate having any proprietary interest whatsoever over the suit property. According to the Respondent, the Applicant has not produced any documentation that shows any interest it may be having over the suit property. Secondly, the Respondent argues that the Applicant has not illustrated or provided any reason why the owners of the suit property could not file the suit by themselves.

35. It is my finding that the 2nd Plaintiff having taken out letters of administration as evidenced by the order dated 19th June, 2003, the 2nd Plaintiff hasthe requisite locus standi to institute the present suit before the court on behalf of estate of Hezron Ndanyi Lidede.

36. Be that as it may, I have taken note that the suit by the 2nd Plaintiff against the Defendant is on trespass

37. From the face value, these are pure matters of facts requiring parties to produce empirical oral and documentary evidence. Ideally, the only conducive legal forum for doing so is during a full trial and determination on the legal and registered owner of the suit land made thereof. The Court would be required to interrogate evidence produced before it and ascertain the facts in order to come into that conclusion. In saying so, the Honorable Court is ably guided by the legal reasoning from the decision of: "*Presbyterian Foundation & Another v East Africa Partnership Ltd & Another* [2012] eKLR:-

> " The fourth issue is that the 2nd Plaintiff has no proprietary interests in the subject properties and is hence not entitled to the orders under Order 40 of the Civil Procedure Rules. That may be so. However, that determination can only be made at the hearing of the application as it goes to the merit of the application itself. Since I cannot make any conclusive findings with respect to the 2nd Plaintiff's position vis-à-vis the 1st Plaintiff, I cannot say that the 1st Plaintiff's suit is non-existent. It is further submitted that since the Church has registered officials and the 1st Defendant has directors, a suit on their behalf can only be brought by the said agents. That submission is largely correct since a suit which is brought without the blessing of the said entities is a non-starter. Whereas the Church is not a party to this suit and therefore the issue of its filing suit does not arise, with respect to the 1st Plaintiff, whether or not it sanctioned the filing of the suit is a matter of evidence. If the suit was filed without the 1st Plaintiff's authorization, that would be something else. However, that is not an issue that, properly speaking, can be the subject of a preliminary objection.
>
> Had this objection been raised by way of a formal application supported by an affidavit, that would have been a different story since the Plaintiff would have had an opportunity to explain the discrepancies raised whose failure would have possibly led to a finding in favour

of the Defendants. In the result it is my view and I so hold that the issues raised in the notice of preliminary objection dated 28th June 2012 do not meet the threshold for

Preliminary Objections. The same are accordingly dismissed with costs to the Plaintiffs."

38. Taking into account the above findings of the court, this Honorable Court finds that since the 2nd Plaintiff/Respondent's suit is based on beneficial interest over the suit property, making a determination as to whether or not they hold such interest over the suit property at this stage will be draconian as the 2nd Plaintiff's suit would have been determined via an application and it would mean that the Court would not have had an opportunity to ventilate on the issues that would have been raised by the Plaintiff. Further, it is the Court's holding that the instant issue while it goes to the sustainability of this suit, in the interest of natural Justice, Equity and Conscience, certain facts must be ascertained and therefore the issue at hand cannot be merely determined via an application. I reiterate, the Honorable Court will have to take evidence to determine the same. Likewise, this position was arrived at from the decisions of:- "*Wilmot Mwadilo, Edwin Mwakaya, Amos Nyatta & Patrick Mbinga v Eliud Timothy Mwamunga & Sagalla Ranchers Limited* [2017] eKLR, where the Court held that:-

> "Upholding the said Preliminary Objection at this stage would be draconian as there appeared to be substantive issues that had emerged that needed to be heard and determined at the time of the hearing of the said Notice of Motion application.
>
> Indeed, the question of whether they have a cause of action against the Defendant and if they can sustain the same against him ought to be considered during the hearing of their Notice of Motion application when this court will consider whether or not leave should be granted for them to continue with the derivative action against him. The said question cannot be considered at this stage as there is potential of the court inadvertently delving into the merits or otherwise of their said application".

39. For these very legal reasons adduced herein, it is my own view that the Notice of Motion application brought based on matters of law, but erroneous and draconian method to determine a suit of this magnitude touching on ownership of land. Thus, the prayers in the Application must fail outrightly.

IssueNo. d).Who will bear the Costs of Notice of Motion application 27th October, 2022.

40. It is trite law that the issue of costs is at the discretion of the Court. Costs mean the award that a party is granted after the conclusion of any legal action and/or proceedings of litigation. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. By event, it means the result or outcome of the legal action.

41. I have well stated in previous precedence and most especially in "*Sagalla Lodge Limited v Samwuel Mazera Mwamunga & another (Suing as the Executors of Eliud Timothy Mwamunga – Deceased)* [2022] eKLR", that:-

> " 58. The Black Law Dictionary defines "Cost" to means, "the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other".
>
> The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. From this provision of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in this case is that the

Notice of Motion application dated 7th December, 2021 by the Plaintiff has succeeded and hence they are entitled to costs of the application and that of the Defendants dated 21st December, 2021."

42. In this case, as Court finds that the Applicant has not fulfilled the conditions set to strike out a suit for lack of locus standi, this application shall be deemed to lack merit. Thus the Applicant is not entitled to costs of the Application and the objection herein.

VI. Conclusion & Disposition

43. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to balance of convenience. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following:-

    a. That the Notice of Motion application dated 27th October, 2022 is found to lack merit and hence be and is hereby dismissed in its entirety.

    b. That there be hearing on 10.4.2024

    c. That the Costs of this application is in the cause.

    It is so Ordered Accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 25TH DAY OF SEPTEMBER 2023.

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HON. JUSTICE L. L. NAIKUNI, (JUDGE)

ENVIRONMENT AND LAND COURT AT MOMBASA

Ruling delivered in the presence of:

a. M/s. Yumna, the Court Assistant.

b. Mr. Kiprop Cheruiyot Advocates for the 2nd Plaintiff/Respondent.

c. M/s. Kabole Advocate holding brief for M/s. Layoo Advocate for the Defendant/Applicant.