Glory Outreach Ministries (Suing through its Trustee) Benson Ekeno Ekuwan v Lojuk & 4 others (Environment and Land Appeal 4 of 2023) [2023] KEELC 22281 (KLR) (11 December 2023) (Judgment)

Neutral citation: [2023] KEELC 22281 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT AND LAND APPEAL 4 OF 2023

FO NYAGAKA, J

DECEMBER 11, 2023

BETWEEN

GLORY OUTREACH MINISTRIES (SUING THROUGH ITS TRUSTEE) BENSON EKENO EKUWAN ..... APPELLANT

AND

ROBERT EKOMWA LOJUK ..... 1ST RESPONDENT

EKAI IMANA ..... 2ND RESPONDENT

PATRICK EKAL ..... 3RD RESPONDENT

FRED MUYA ..... 4TH RESPONDENT

EBULONI LOMANAKWEE ..... 5TH RESPONDENT

JUDGMENT

Background

1. The Appeal, subject of this Judgment, arises from the decision of the Senior Principal Magistrates Court at Lodwar (hereinafter 'The Lower Court Case').

2. Before the Lower Court, Glory Outreach Ministries, the Appellant herein, sought to restrain Robert Ekomwa Lojuk, Ekai Imana, Patrick Ekal, Fred Muya, Ebuloni Lomanakwee Robert Ekomwa Lojuk, Ekai Imana, Patrick Ekalfred Muya and Ebuloni Lomanakwee, the Respondents herein from trespassing onto plot No. 626, (hereinafter 'the suit land') and a declaration that it was the rightful owner.

3. In his judgment delivered on 24th May, 2022, the learned trial magistrate dismissed the Appellant's case on the basis that it was devoid of merit. Dissatisfied with the decision, the Appellant instituted

the instant Appeal through the Memorandum of Appeal dated 26th July, 2022. It cited the following grounds of appeal:

1. That the learned trial magistrate erred in law and in fact in arriving at the decision of the Judgment dated 24th May 2022.

2. That learned Magistrate erred in law and fact and misdirected herself to arrive at a wrong decision.

3. That the learned Magistrate misdirected herself in law and fact in failing to exercise her discretion judiciously determining the issues before her for the interests of justice.

4. That the learned magistrate erred in la (*sic*) in failing to determine that the Respondent were trespassers

The Submissions

4. The Appeal was canvassed by way of written submission. In its written submissions dated 9th June, 2023, the Appellant faulted the trial magistrate for addressing the issue of *locus standi* of the Appellant which the Appellant contended was not among the issues the Court had isolated for determination.

5. It was the Appellants case that the trial magistrate misdirected herself in failing to admit as evidence the Allotment letter which was produced as an exhibit whereas it had been marked as an exhibit and produced by consent of both parties.

6. The Appellant faulted the Trial Court further for finding that there was no sufficient evidence that the Appellant was evicted from the premises despite a report made at the Police Station vide OB/No/27/11/09/202 which was admitted by the Respondents.

7. It was the Appellant's case that the Trial Court erred for finding that the Appellant had no authority from the Church yet it admitted the evidence of the Respondents without any authority of the family of Epurenge that they had given the 5th Respondent authority to testify on their behalf that they had given the subject matter to the community nether did any other member of the said family went to court to testify.

8. The Appellant further submitted that the Trial Court erred in admitting into evidence the letter dated 13th October, 2020 authored by Peter Ewoi James when the same was produced by a different person. The Appellant further claimed that the Chief who was had confirmed the Minutes of the Meeting of 19th March, 2019 was not called as a witness to produce and confirm that he is the one who signed them.

9. Further to the foregoing, the Appellant asserted that the Respondents' documents were produced by the 2nd Respondent but never produced any document to confirm his election to the post of Secretary General.

10. It was his case that among the documents the 2nd Respondent produced were the Allotment Letter No. 0663 of plot No. 659 belonging to Asikilele Farm Self Help Group issue on 27th July, 2011 while there is Allotment letter No. 0412 of Plot No. 626 issued on 20th December, 2010.

11. The Appellant contended that the foregoing allotment letters was as a result of plot allocation meeting held on 23rd September, 1992 and the allotment letter was produced as Exhibit 1 without opposition by the Respondent.

12. As such, the Appellant submitted that the trial Court could not have reached a decision that it did not produce the original Allotment letter nor that it failed to call the land administrator to shed light on

ownership. The Appellant submitted that it was erroneous for the Trial Magistrate to reach a decision that the suit property was a community land when it produced document of ownership.

13. The Respondent submitted further that there was an inconsistency in the documents relied upon by the Respondents to prove their case, a deviation from its pleadings.

The Respondents' Case

14. The Respondent challenged the Appeal through written submissions dated 24th July, 2023.

15. It was the Respondents case that the Appellant did not explain to the trial Court how he came into title/ownership of the suit land.

16. They submitted that the Appellant did not adduce any evidence or called any witness to support their allegation of eviction. On the contrary, it was their case that they adduced evidence to show ownership. They claimed that they have been farmers at the community farms and have operated community farms for their own community benefits without any interruption.

17. The Appellant further submitted that the Appeal was challenging judicial discretion an untenable invitation before this Court. Reference was made to the decision in *United India Insurance Co. Ltd. v East African Underwriters (Kenya) Ltd* [1985] EA where the Court of Appeal stated that it will not interfere with a discretionary decision of the Judge.

18. On the claim of discharge of burden of proof, the Respondent submitted that the Appellants did not discharge the burden of proof to show that the suit land belonged to them. The Respondents submitted that the Appellant had neither produced the valid copy of title, neither did they demonstrate the root or foundation of their title document.

19. In conclusion, it was their case that the Trial Court rightly addressed the legal and factual issues before it. They urged the Court to dismiss the Appeal and to award it costs of the proceedings before the Trial Court and before this Court.

Issues For Determination

20. The main issues for determination are as follows:

    i. Whether the Trial Court properly directed itself in addressing the issue of the Appellant's *Locus Standi*.

    ii. Depending on (i) above, whether the Trial Court property directed itself on the question of admissibility of the evidence before it.

    iii. The reliefs to be granted at this stage.

Analysis and Determination

21. Before delving into the substance of the Appeal, it is important to restate the role of this Court as a first Appellate Court.

22. In *Gitobu Imanyara & 2 Others v Attorney General* [2016] e KLR, the Court of Appeal made the following remarks;

> " An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though

it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect"

23. Similarly, in *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, the duty of the first appellate court was captured as follows;

> " This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way"

24. This Court now addressed the issues sequentially.

i.Whether The Trial Court Properly Directed Itself In Addressing The Issue Of The Appellant's Locus Standi

25. The first issue is in respect of the Appellant's contention that the Trial Court misdirected itself in questioning and considering the issue of the Appellant's locus standi when the same had not been identified as falling for determination.

26. The concern that immediately arises is the need to comprehend what locus standi is and why it is important for a court to satisfy itself as to its satisfaction.

27. The *Black's Law Dictionary*, 9th Edition defines locus standi at page 1026 as follows: -

> " The right to bring an action or to be heard in a given forum".

28. The Supreme Court has on numerous occasions discussed the meaning and implication of locus standi. In the case *Khelef Khalifa El-Busaidy v Commissioner of Lands & 2 Others* [2002] eKLR the Apex the Court Observed 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. Such interest must be above that of other members of the public in general."

29. The Court of Appeal has also weighed in on the topic. In Mombasa Civil Appeal No. 75 of 2016, *Juletabi African Adventure Limited & another v Christopher Michael Lockley* [2017] eKLR the Court referred to its earlier decision in *Alfred Njau & 5 others vCity Council of Nairobi* [1983] eKLR where *locus standi* was described as follows:

> ... 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.

30. The only scenario where the strict application of locus standi is waived is in Constitutional and Human Right Petitions. Article 21, 22, 23, 258 and 260 of the *Constitution* opens wide the scope of 'persons' who can move the court to protect the *Constitution* or human rights and fundamental freedoms.

31. In Civil Application 29 of 2014, *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2014] eKLR the learned Supreme Court Judges spoke to wide scope of *locus standi* in constitutional petitions as follows;

> (92) the *Constitution* enlarges the capacity to file a claim in defence of the *Constitution* thereby laying the basis for rights and constitutional enforcement. Article 3(1) provides that "every person has an obligation to respect, uphold and defend this Constitution." It further defines "person" to "include a company, association or other body of persons whether incorporated or unincorporated." the *Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, adopts the constitutional definition of person. Article 258(1) in turn provides that "every person has the right to institute court proceedings, claiming that this Constitution has been contravened or is threatened with contravention." In constitutional adjudication therefore, the traditional strictures of locus have been broken to allow every person the capacity to file a constitutional claim.

32. There is no doubt that the dispute before the Trial Court was not a Constitutional Petition. The issue of locus standi, therefore, needed to be addressed at the earliest opportunity by the Court since it is a jurisdictional issue.

33. The foregoing takes me back to the decision in *Khelef Khalifa El-Busaidy v Commissioner of Lands & 2 Others* (*supra*). In the case, it was made a requirement that for one to have 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.

34. The operative words in the foregoing excerpt are interest, vested or contingent which is legal. Thus, it can be discerned that it is not enough to simply claim an interest in a subject matter, one must demonstrate that the interest is legal in order to have recourse in law.

35. Naturally, the question that ensues is, what is the meaning of the term 'Legal Interest'. *Black's law dictionary* defines 'Legal Interest' in page 969 in the following manner:An interest that has its origin in the principles, standards, and rules developed by Courts of law as opposed to Courts of Chancery.An interest recognized by law, such as legal title.

36. For purposes of this suit, therefore, the Appellants' legal interest in the first instance is the interests recognized in law to claim ownership of the suit land on behalf of Glory Outreach Ministries and ask for judicial protection.

37. Therefore, was the trial Court justified in questioning Benson Ekeno Ekuwan's (the Appellant's) right to claim the land and the legal documentation authenticating his claimed Trusteeship to Glory Outreach Ministries? The answer to the foregoing question is a resounding Yes! As has been stated hereinbefore, locus standi is the right to appear in Court. It is the right to be heard.

38. Therefore, in view of the fact that the Appellant was not suing on his own behalf, it was incumbent upon him to demonstrate that he had a "representative" legal standing of Glory Outreach Ministries. Such standing was to be demonstrated by Church Registration Documents, evidence of Trusteeship and or Power of Attorney among other documents, and its legal bestowment on the Appellant.

39. As things stood before the Trial Court, the lack of evidence that the Appellant was acting on behalf of Glory Outreach Ministries made him appear like he was suing on his own behalf, essentially depriving him of the locus standi to sue on behalf the Church.

40. The aspect of jurisdiction can be raised at any time and at any stage in the proceedings, even on Appeal. In Civil Appeal 621 of 2019 (Consolidated with Civil Appeal 74 of 2020), *Attorney General & 2 others v Okiya Omtata Okoiti & 14 others* [2020] eKLR, The Court of Appeal spoke of Jurisdiction as follows:

> Thus, for example, in *Adero v Ulinzi Sacco Ltd* [2002] 1 KLR 577, the question was whether the High Court had jurisdiction to hear a dispute that by statute was reserved for the Co-operative Tribunal. Ringera, J. (as he then was), expressed himself as follows on the issue of jurisdiction:
>
> > "On whether the High Court could have had jurisdiction at the time the suit was instituted on the grounds that the Co-operative Tribunal had not been constituted, my view is that jurisdiction either exists or does not exist ab initio and the non-constitution of the forum created by statute to adjudicate on specified disputes could not of itself have the effect of conferring jurisdiction on another forum which otherwise lacked jurisdiction. And as regards the consent order of 1.3.00, it is trite law that jurisdiction cannot be conferred by the consent of the parties. Much less can it be assumed on the grounds that parties have acquiesced in actions which resume the existence of such jurisdiction. And jurisdiction is such an important matter that it can be raised at any stage of the proceedings and even on appeal."

41. That being the case, and in light of the question of locus standi being a jurisdictional issue, I find no fault in the Trial Court suo moto establishing first whether the Appellant herein had locus standi.

42. In Civil Appeal 81 of 2016, *John K. Malembi v Trufosa Cheredi Mudembei & 2 Others* [2019] eKLR, the Court of Appeal sitting in Eldoret restated the propriety of a Court on its own motion to question jurisdiction. It was observed as hereunder;

> " ...on our part, we find it was proper for the trial court to suo motu raise and determine the issue of its own jurisdiction".

43. The Appellant's lack of competence to sue rendered the case before the Trial Court and subsequently before this Court incompetent. For purposes of analogy, I will refer to the Court of Appeal decision in Civil Appeal 145 of 1990, *Trouistik Union International & another v Jane Mbeyu & another* [1993] eKLR where it was observed as follows;

> " The question at issue in that appeal was the right of a widow to bury her intestate husband when she obtained no letters of administration to his estate. The Court gave vent to an important principle of law of universal application with respect to the right of a party to fulfil the role of an administrator of an intestate without obtaining letters of administration. The court, inter alia, observed:
>
> > "The administrator is not entitled to bring an action as administrator before he has taken letters of administration. If he does, the action is incompetent at the date of its inception".

44. In the premises, the Trial Court ought not to have made any further step in assessment of the evidence since the suit was incompetent. The Appellant had not demonstrated the right to bring the action before the Court.

45. That being the case, this Court needs not to make any further step on the merits or otherwise of the other grounds of appeal. The Appellant could have taken the earliest opportunity to remedy the defect rather than pursuing the appeal. Consequently, to the extent that the Appeal was hinged on the finding of the trial Court on the Appellant's lack of locus standi, which he actually lacked, I dismiss the Appeal with costs to the Respondents. But while doing so, I substitute the final order of the trial court with an order striking out the suit rather than dismissal.

46. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 11TH DAY OF DECEMBER, 2023.

HON. DR. IUR FRED NYAGAKA

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JUDGE,ELC KITALE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR