



**Mwamutsi (As administrator of the Estate of David Mwamutsi Murira) & 2 others v Nzioka & 5 others (Environment & Land Case 3 of 2022) [2023] KEELC 22427 (KLR) (6 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22427 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 3 OF 2022  
EK MAKORI, J  
DECEMBER 6, 2023**

**BETWEEN**

**JOYCE NINGALA MWAMUTSI (AS ADMINISTRATOR OF THE ESTATE OF DAVID MWAMUTSI MURIRA) ..... 1<sup>ST</sup> PLAINTIFF  
PRISCILLA PASCAL MZUNGU ..... 2<sup>ND</sup> PLAINTIFF  
LUWALI MOHAMED NDEKA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**AGNES NGUMBI NZIOKA ..... 1<sup>ST</sup> DEFENDANT  
FREDRICK MNAO NGASHO ..... 2<sup>ND</sup> DEFENDANT  
NEW CONNECTIONS SUPPLIERS LIMITED ..... 3<sup>RD</sup> DEFENDANT  
COUNTY LANDS REGISTRAR, KILIFI ..... 4<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT  
MOCHI NZONGA NGASHO ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. Preliminary Objection has been raised significantly that:
  - a. The plaintiffs do not have *locus standi* to sue the defendants herein.
  - b. The Court lacks jurisdiction to hear and determine this suit as it offends the provisions of Sections 29 and 30 of the [Land Adjudication Act](#) which commands that before a suit is commenced during the active operations of a Land Adjudication Section, consent has to be



obtained from the Adjudication Officer which was not the case here, as an Appeal lies before the Minister.

2. Parties were directed to file written submissions.
3. The 4<sup>th</sup> and 5<sup>th</sup> defendants averred that the plaintiff in this matter lacks locus standi to bring this matter since from the pleadings the plaintiff claims land belonging to deceased persons. The plaintiffs did not display letters of administration to show they are administratrix/ administrators of the respective estates of the deceased. The 4<sup>th</sup> and 5<sup>th</sup> defendants on this point cite the case of *Otieno v Joash Ochieng Ougo & another* [1987]eKLR and *Sisilia Nyakoe & another v Attorney General & 4 Others* [2021] eKLR.
4. The 4<sup>th</sup> and 5<sup>th</sup> respondents submitted that this matter was prematurely filed as appeals were pending before the Minister. This can be deciphered from paragraphs 14, 20, 27, and 32 of the plaint. The filing of this suit and the pendency of an appeal before the Minister offends the provisions of Sections 29 and 30 of the *Land Adjudication Act*. The decision in the case of *Secretary County Public Service Board and another v Hulbhai Gedi Abdille* [2017] eKLR.
5. The plaintiff and the 6<sup>th</sup> defendant oppose the Preliminary Objection. The 1<sup>st</sup> plaintiff contended she has a letter of administration which will be shown at the hearing hereof while the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs say they bring the suit as known owners suit property as recognized during the adjudication proceedings.
6. On the issue of Sections 29 and 30 of the *Land Adjudication Act*, the plaintiff and the 6<sup>th</sup> defendant adopted a similar stance that the proceedings before the Minister had closed which is why the title was issued in favour of the 6<sup>th</sup> defendant under the *Land Registration Act*. Therefore, no proceedings were pending for consent to have been sought from the Adjudication Officer as required by law. The decisions in *Kanyarkwat Group Ranch & 4 Others v Meringiro Lodakir Joseph & 3 Others* [2021] eKLR and *Stringer Muzungu Lumwe & another v Shida Tuji Tsuma & 2 Others* [2021]eKLR, are quoted to support this position.
7. The issue for the determination of this Court is whether the preliminary Objection herein is sustainable.
8. In *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Limited* (1969) EA 696 a Preliminary Objection is held was held to constitute:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is exercise of judicial discretion.”

The Court further stated that:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings and which if argued as a preliminary point may dispose of the suit.”

9. The first ingredient of a Preliminary Objection will then be that it must be based on pure points of law. The second element is that the objection must arise from matters that are pleaded and which if argued as a preliminary point may dispose of the suit.



10. As properly submitted by the 4<sup>th</sup> and 5<sup>th</sup> respondents on the issue of lack of locus standi, when one is suing and the subject matter revolves around a deceased person's estate, letters of administration have to be taken out before suing - see *Hawo Shanko v Mihammed Uta Shanko* [2018] eKLR:

“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. The Judgement by Justice M.A. Ang'awa (as she then was) in Nairobi Succession Cause no 1731 of 2000, in the matter of the estate of Moraji Bhanji Dhanak (deceased) delivered on 30<sup>th</sup> November 2000 is to the effect that a grant limited to the filing of a suit has to be issued before the suit is filed.

In the case of *Morjaria v Abdalla* [1984]KLR, 490 holding no 7 of the Court of Appeal reads as follows as page 491:-

Notwithstanding that the grant of letters of administration ad colligenda bona was not a form of grant appropriate for this case and that it did not follow Form 47 in the First Schedule to the *Law of Succession Act* as provided by rule 36(2) of the *Probate and Administration Rules*, the grant was specifically limited to “the purpose only” of representing the appellant in his appeal and those words in themselves constituted a valid grant under rule 14 enabling the appellant's son and his step-mother to represent the appellant in this appeal.

In the case of *Julian Adoyo Ongunga v Francis Kiberenge Abano* Migori Civil Appeal no 119 of 2015, Justice A. Mrima had this to say on the issue of a party filing a suit without having obtained a limited grant.

“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.”



The effect of the above cases is that for a party to have *locus standi* and appear in a case involving a deceased person, he or she must first obtain a grant limited for that purpose.

11. In this suit, the 1<sup>st</sup> plaintiff contended she has letters of administration to propagate this matter. It will require evidence to be taken to prove or disapprove that position as taken by the 1<sup>st</sup> plaintiff. Therefore, it cannot be said that the Preliminary Objection is hinged on purely matters of law; some evidence will need to be taken.
12. The 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs stated that they will be pressing this matter on their behalf as legitimate owners of the suit property hence no requirement to take out letters administration. In the end, evidence will have to be taken on the issue of *locus standi* and capacity to sue in this suit.
13. On the issue of consent within the meaning of Sections 29 and 30 of the [Land Adjudication Act](#), and the pendency of an Appeal to the Minister, I am persuaded by the authorities cited by the respondents that once a title is issued under Section of the [Land registration Act](#), the Adjudication process is deemed to have come to an end – see Odeny J. in [Kanyarkwat Group Ranch & 4 Others v Meringiro Lodakir Joseph & 3 Others](#) [2021] eKLR:

“Under the [Land Adjudication Act](#), the process of ascertainment and recording of rights and interests in Trust Land follows a few simple steps. I summarize them here below.

12. First, the Government, through the relevant Ministry by a County Council to or itself identifies an area of Trust Land whose ownership rights should be ascertained and recorded and makes an order to that effect. That is done pursuant to the provisions of Section 3 of the Act. Second, the Ministry declares that areas as an Adjudication Area. Third, the Ministry appoints by Gazette Notice an Officer to be in charge of the adjudication area. Fourth, the Adjudication Officer appoints survey, demarcation and recording officers to be in charge of the adjudication area but under him.
13. Fifth, Adjudication Officer establishes adjudication sections within the area or proceeds with the process as one block of adjudication. In case the officer proceeds with the former, a separate notice must be issued for each adjudication section. Sixth, there is establishment of Adjudication Committees and Provincial Arbitration Boards which shall record and make decisions about the ascertainment of the interests, and arbitrate on matters arising from the Committees respectively. Seventh, anyone claiming interest in the land shall make such claims to the Recording Officer in accordance with Section 19 as read with Section 5(2) of the Act. Eighth, objections to claims are made, recorded, handled as in civil proceedings except where the decisions made thereon but if the Recording Officer is unable to determine them, he shall refer them to the Committee which if unable to resolve shall refer them to the Board.
14. Ninth, once decisions are made in accordance with Sections 20, 21 and 22 of the Act, an Adjudication Register will be made in accordance with Section 23. Tenth, upon completion of the Register, it is published in terms of Section 25 and any objections made. Eleventh, if none is made or if made and resolved the Register is finalized under Section 27 only subject to appeals to the Minister as provided under Section 29. Twelfth, upon determination of the Appeals in accordance with the law, the Minister shall send the same to the Director of



Land Adjudication and the Chief Land Registrar. Thirteenth, the Director of Adjudication alters the Register in line with the determinations of the appeals and certify on the duplicate that is final.

15. Fourteenth, he will send it to the Chief Land Registrar who makes final alterations. Fifteenth, titles are issued thereafter. At this point, the land ceases to be under the *Land Adjudication Act*. Once that happens, the Land Adjudication Officer ceases to have anything to do with the land. He cannot therefore be required to give authority to institute suit. No other person is required to do so, except if the land was owned by a registered company, in which case then a Resolution of the shareholders giving such permission would be required either before or after instituting suit but before the hearing.”

14. At this point, I will find that no consent was required from the Land Adjudication Officer after the process of Adjudication had been completed and the title issued.

15. The Preliminary Objection is hereby dismissed with costs.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 6TH DAY OF DECEMBER 2023.**

**E. K. MAKORI**

**JUDGE**

**In the Presence of:**

**Mr. Mwanzia for 6th Defendant**

**Ms. Makena for the 3rd defendant**

**Court Clerk: Happy**

**In the absence of:**

**The AG for the 4th and 5th Defendants**

**Ms Mwanja for the plaintiffs**

