



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 381 OF 2012**

***In the matter of the Estate of NDWIGA NJERU (Deceased)***

JAMES NYAGA NDWIGA

PETER NJUKI MBOGO

PATRICK KINYUA NJERU .....APPLICANTS

JACOB KARIUKI NAFTARY

ALEX NJIRU

VERSUS

ROISE WARIIMI OBADIAH..... RESPONDENT/PETITIONER

**R U L I N G**

This is a notice of motion dated 5/5/2015 seeking inter alia;

1. *That the order of temporary injunction be issued restraining the respondent/petitioner and all newly elected buying center committees, and the chairman Mungania Tea factory Company Ltd from precluding, interfering with Kamugere Tea Buying Centre affairs or convening meeting, dealing with any matter touching land No.Gaturi/Nembure/4263 or in any manner solicit funds from any members of the said Kamugere Tea Buying Centre pending hearing and determination of the application dated 20/6/2014 and 9/6/2014.*
2. *Cost of the application be provided for*

The application is supported by the joint affidavit of James Nganga Ndwiga, Jacob Kariuki Naftary and Alex Njiru.

In the affidavit it is stated that the applicants and the respondent are members of Kamugere Tea Buying Centre. It is deponed that the petitioner's husband decided to sell 0.8 ha. of his land to the tea buying center. The parties attended the Land Control Board on 16/12/1992 and were issued with the consent to transfer a portion of Gaturi/Nembure/4263. On the same day the respondent's husband received KShs.20,000/= from the tea buying center and acknowledged receipt. The respondent received KShs.700/= and her co-wife KShs.500/= for their upkeep. The respondent's husband died before the completion of the process. It is argued that the respondent did not involve the applicants when she filed the succession.

The applicants are seeking to have the grant issued to the respondent revoked or in the alternative that

Kamugere Tea Buying Center be included as a dependant of the deceased's estate. The chairman of Mugania Tea Factory should be restrained from prejudicing the court process by influencing other members to cause havoc towards the tea buying committee. Unless the court issues a temporary injunction restraining the respondent and the chairman Mungania Tea Factory from collecting money and interfering with Gaturi/Nembure/4263 the members will suffer irreparable loss.

In her replying affidavit the respondent/petitioner stated that the applicants are no longer elected members of Kamugere Tea Buying Center as there are new officials elected by members. The applicants have brought this application after realizing that the elected officials are negotiating an out of court settlement with the respondent.

The members of Kamugere Tea Buying Center are behind the newly elected members and have agreed to pay some money so that the respondent can transfer the portion of land from Gaturi/Nembure/4263. The orders sought are against the chairman of Mungania Tea Factory who is not a party to this suit and does not have an opportunity to respond to the allegations. The application is meant to frustrate the implementation of the agreement between the new members and the respondent as they know the application for revocation of grant will collapse.

The applicants do not have the interest of Kamugere Tea Buying Center at heart. The portion of land in dispute is a public land which belongs to the members of the said tea buying center. The application is an abuse of court process.

The 5th applicant submitted on behalf of the other applicants. He stated that he was one of the three deponents of the affidavit. He stated that the petitioner/respondent inherited Gaturi/Nembure/4263 wholly. The land ought to have gone to Kamugere Tea Buying Center but the respondent failed to disclose this fact.

The land had been fully paid for and the Land Board consent had been obtained before the deceased died. The counsel for the respondent Ms. Muthoni submitted that in the application for revocation for grant, the applicants were officials of the tea buying center at the time of the transaction. A second application dated 20/6/2015 was filed by the applicants. The current officials of the Tea Buying Centre have now entered into an agreement with the respondent. The new officials admitted that the tea buying center had not fully paid for the land.

The respondent is willing to transfer the land to the tea buying center as soon as the payment is completed. One of the applicants has registered a caution on the said land which is wrong. The applicants have no respect for the new officials and for Mugania Tea Factory which is negotiating the deal with the respondent. The application for stay of execution of grant was filed on 20/6/2015 and has not been prosecuted.

The 5th applicant submitted that the agreement was meant to obstruct justice. The land in question was jointly owned by the deceased and others as indicated in the green card. When the applicants filed the application, they were the officials of the tea buying center.

The respondent in her affidavit submitted that the applicants were no longer officials of Kamugere Tea Buying Center. The applicants have not denied this fact and that the application was filed when they were still officials of the tea buying center.

The three deponents of the supporting affidavit have stated that they are members of Kamugere Tea Buying Center. They have not indicated that as members they have the authority of other members of the said tea buying center, to swear the affidavit on their behalf. It is not clear under what capacity they have brought the application considering that there are elected officials already in office.

The Black Law Dictionary 9th edition defines *locus standi* as a right to bring an action or right to be heard in a given forum.

In the case of *NJAU VS CITY COUNCIL OF NAIROBI [1983] KLR 625* the Court of Appeal held *locus standi* literally means a place of standing and refers to the right to appear or be heard in court or other proceedings. To say that a person has no *locus standi* means that he has no right to appear or to be heard in such and such proceeding.

In the case of *LAW SOCIETY OF KENYA VS COMMISSIONER OF LANDS & OTHERS*, Nakuru High Court, Civil Case No. 464 of 2000, KLR 706 the Court held that for the test of *locus standi* to be met, a party must have a sufficiency of interest to sustain its standing to sue in a Court of law.

The respondent states that there is an agreement between her and the Committee members of Kamugere Tea Buying Center to settle the matter out of court. It is not in dispute that the applicants have not demonstrated that they have *locus standi* to bring the application on behalf of Kamugere Tea Buying Centre. The fact that they are members of the tea buying centre does not confer upon them the authority to bring any proceedings for the benefit of the tea buying centre. The tea buying centre has elected officials who are now seized of the business of the tea buying centre. The former officials have no business pursuing the interests of the centre. Their mandate to represent the Tea Buying Centre expired when they vacated office.

The respondent/petitioner states that she has made an agreement with the tea buying centre to pay her some money so as to secure the land in issue for the tea buying centre. The petitioner is entitled to negotiate afresh with the tea buying centre if the circumstances so require. The applicants being the former officials should not interfere with such negotiations.

The applicants have no *locus standi* in this matter. For this reason, the application dated 5/5/2015 is not properly before the court and it is hereby struck out with costs.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 22ND DAY OF OCTOBER, 2015.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Ms. Muthoni for Respondent**

**All Applicants**

**Respondent/Petitioner**