



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 142 of 2012

CHRIST CHAPEL MINISTRIESPLAINTIFF

=VERSUS

GLORIA NDUNGE KATEE.....DEFENDANT

RULING:

The Applicants herein brought a Notice of Motion dated 23/1/2012 and Interim Orders were granted. On 16/4/2013, Counsel for the Respondent raised a preliminary objection and stated that the applicants had no **locus standi** to file the notice of Motion dated 23/1/2013 as they had not been enjoined in the suit. That the matter was Res-judicata as it had been decided by Judge Ougo who struck out the applicants Notice of Motion dated 20/3/2012.

The Respondent urged the court to vacate the orders issued on 23/1/2013 as the suit is **null** and **void** by virtue of the fact that plaintiffs did not have locus to bring out the instant application.

I have considered the rival arguments. I have noted that the Notice of Motion dated 20/3/2012 was indeed struck out by Judge Ougo on 24/9/2012. It was not dismissed. The applicant could still bring similar application after regularizing the **defect** or **want** that caused the Motion to be struck out.

I have considered the provisions of Section 1A and 1B of **the Civil Procedure Act** that touches on the overriding objectives of the Act. I have also considered the provisions of Article 159 (2) of the constitution which provides that :-

“In exercise of judicial authority, the court shall be guided by...justice shall be administered without undue regard to procedural technicalities”.

The issues that the Respondent has raised are procedural in nature. They can be raised during the prosecution of the Notice of Motion and will be considered in the final analysis.

The overriding objective of the Civil Procedure Act is to have Civil Disputes resolved **justly** and **expeditiously**. The applicants should be given an opportunity to prosecute their Notice of Motion dated 23/1/2013 and the same be decided on merit.

Consequently the Court overrules the Respondent preliminary objection raised on 16/4/2013 and orders that Notice of Motion dated 23/1/2013 be heard and determined on merit.

Dated, signed and delivered this 24th May, 2013

L. N. GACHERU

JUDGE

In the Presence of:-

.....For the Plaintiffs
.....For the Defendants
.....Court Clerk

L. N. GACHERU

JUDGE