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Civil Suit 41 of 2011

JOSEPH

OTWABE

MARAGIA OGETO.....PLAINTIFF.

ROBINSON TAI

VERSUS

JACKSON NYANDIEKA.....DEFENDANT.

R U L I N G.

(ON PRELIMINARY OBJECTION)

The preliminary objection by the defendant/respondent is dated 8th February, 2012, it is premised on three grounds viz:-

(a)That, a representative order was not sought and obtained before filing of this suit.

(b)That, the plaintiffs have **no “locus-standi”** to institute the claim.

(c) That, so far as the suit is brought by way of plaint, the same cannot be a constitutional application thus fatally defective.

On ground one and two, learned counsel for the defendant, **Mr. Ambutsi**, argued that the plaintiff did not seek leave of the court to file a representative suit and that it is only the attorney general who may sue on behalf of the public. In that regard, reliance was placed on the decisions in the case of **Maathai Vs. Kenya Times Media Trust Ltd (1989) KLR 267 and Sonko&Others vs. Haluna&Another (1971) EA 443.**

The defendant further argued that for the aforesaid reasons, the plaintiffs have no “**locus-standi**” in filing the suit.

The plaintiffs through their learned counsel, **Mr. Wafula**, argued that the present Civil Procedure Rules did away with the requirement to apply for leave to file a representative suit such that the requirement no longer applies. On “**locus-standi**”, the plaintiffs argued that the averments in the plaint show that they have an interest in this matter. In any event, Articles 159, 20 and 21 of the Constitution vests them with the necessary “**locus-standi**”.

The view of this court is that this is basically a dispute revolving around a portion of land said to have been reserved for public utility by members of an organization known as Nyamira Farm which is said to comprise about one hundred and eighty four (184) members including the plaintiffs and the defendant herein.

It is averred that the organization caused a sub-division of the entire portion of land and distributed distinct portions to its members who obtained title deeds in respect thereof. It is also averred that a portion of the land was set aside for public utility and was registered as parcel No. Kiminini/Matunda Block 4/75. However, the defendant who is the registered owner of portion No. Kiminini/Matunda Block 4/78 has since trespassed into the said Block 4/75 thereby defeating the purpose for which it was intended. It is apparent from the foregoing that being members of the Nyamira Farm, the plaintiffs and other members including the defendant have a common interest in land parcel Block 4/75. The plaintiffs therefore do have the necessary interest or “**locus-standi**” to institute this suit and they could do so on their own behalf as well as other members of the farm by dint of Order 1 Rule 8 of the Civil Procedure Rules so long as necessary notice is given to other members of the organization. Leave of the court would not be necessary.

Since it is the members of the farm who decided that part of their land be set aside for public utility, the Attorney General would not feature in the circumstances. The dispute involves members of a group in which the Attorney General would have no interest. This is a private interest matter which has correctly been brought by way of a plaint and even though Article 22 of the constitution is invoked, the suit did not have to be instituted by way of a Constitutional reference or petition. Article 22 merely gives every person the right to institute court proceedings if a right has been violated. The Article allows a person to institute proceedings on behalf of others.

For all the foregoing reasons, this preliminary objection is devoid of merit. It must and is hereby dismissed with costs.

[Read and dated this 19th day of June, 2012.]
J.R. KARANJA.
JUDGE.