



Republic v Michieka; Wahome (Exparte Applicant) (Environment and Land Judicial Review Appeal 1 of 2018) [2022] KEELC 4916 (KLR) (28 June 2022) (Ruling)

Neutral citation: [2022] KEELC 4916 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND JUDICIAL REVIEW APPEAL 1 OF 2018**

**L WAITHAKA, J
JUNE 28, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

E MICHIEKA RESPONDENT

AND

ISAIAH WAHOME EXPARTE APPLICANT

RULING

1. This ruling is in respect of the notice of preliminary objection (PO) dated February 7, 2019. Through that PO the Attorney General for the respondent seeks to strike out the notice of motion filed in this matter, dated December 5, 2018 on among other grounds, that the *ex parte* applicant lacks *locus standi* to bring the judicial review application herein as he is not the legal representative of the estate of Githaiga Mwangi, the defendant in land case No 4 of 2000 which is the subject matter of the judicial review proceedings herein.
2. When the PO came up for hearing, counsel for the respondent, Mr Njoroge reiterated the grounds on the face of the application.
3. The *ex parte* applicant neither filed a response to the PO nor attended court when the same was called for hearing.
4. I have read and considered the grounds on which the PO is premised and the submissions by counsel for the respondents.



5. The legal principles that undergird a PO were espoused in *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696, by Law JA (as he then was) thus:-

“So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

6. Regarding Locus standi, in the case of *Joseph Muriuki Kithinji v Peterson Ireri Mwaniki & 3 Others* (2021) eKLR the court *inter alia* stated:-

“The term Locus Standi means a right to appear in court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

21. A claim that one has no *locus standi* therefore challenges a party’s right to be heard before a court and if a determination is made in the affirmative then this issue has the capability of disposing of the suit. A claim that a party lacks *locus standi* therefore is a pure point of law and one that needs to be raised and determined at the earliest.....

Having made a determination that the issue of *locus standi* is a pure point of law, there is need to determine whether the plaintiff has a right to be heard before this court.....

In the case of *Julian Adoyo Ongunga & Another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi (Deceased))* eKLR Mrima J described a party filing a suit without an *Ad Litem* as follows;

...Simply put, a party without *locus standi* in a civil suit lacks the right to institute and/or maintain the suit even where a valid cause of action exists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit *locus standi* can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is 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...”

29. Further in the case of *Hawo Shanko v Mohamed Uta Shanko* [2018] eKLR Justice Chitembwe while addressing the failure to obtain a grant prior to filing a suit observed that:

.....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 court further stated that;

'...if any relationship with the deceased does exist whether son, daughter, wife, widow is not sufficient. That relationship does not give the locus standi to any relative to obtain suit before obtaining limited grants. One's relationship to the deceased does not clothe such a party with the locus standi. It is the limited grant which does '

30. From the above cases, it is apparent that for a party to have locus standi in a suit involving a deceased person then they must first obtain a grant limited for that purpose. I find that the plaintiff ought to have obtained a grant prior to filing a suit and further should have ascertained the 1st defendant's capacity to defend the suit. In view of the foregoing, both the plaintiff and the 1st defendant have no locus standi to be before this court."

7. In *re-Estate of John Karani Keberenge (Deceased)*(2018) eKLR it was stated:-

"The court takes the view that in order to undertake legal proceedings in a court of law on behalf of a deceased person, there must be legal authority for it. The mere fact that the applicant had undertaken such representation before other fora without objection is immaterial. It cannot confer legal capacity where there is none. According to Black's Law Dictionary (9th Edition), a legal representative may refer to either a lawful representative or personal representative. A personal representative is described as;

"A person who manages the legal affairs of another because of incapacity or death, such as the executor of an estate. Technically, an executor is a personal representative named in a will, while an administrator is a personal representative not named in a will."

18. In the Kenyan context, a personal representative is defined in section 3 of the *Law of Succession Act* (Cap 160) as follows;

"Personal representative means the executor or administrator of a deceased person"

An executor is defined in the same section to mean the person to whom the execution of the last will of the deceased person is confided whereas an administrator is defined as a person to whom a grant of letters of administration has been granted.

19. In the case of *Trouistik International Union and Ingrid v Jane Mbeyu & Another* Civil Appeal No 145 of 1990 [1993] eKLR, the Court of Appeal made the following



observations in respect of a person's legal capacity to undertake legal proceedings on behalf of a deceased person;

“To determine who may agitate by suit any cause of action vested in him at the time of his death, one must turn to section 82 (a) of the Law of Succession Act. That section confers that power on personal representatives and on them alone. As to who are personal representatives within the contemplation of the Act, section 3, the interpretative section, provides an all inclusive answer.”

20. The court has noted that despite this objection having been raised in the replying affidavit of the 2nd interested party filed way back on June 13, 2014, the applicant has not been able to demonstrate that he is either an executor or administrator of the deceased, Kariuki Ngari. The court consequently finds and holds that the applicant has no legal capacity to commence or prosecute legal proceedings before this court. The instant application for judicial review is therefore incompetent.”
8. It is clear from the above cases that the issue of *locus standi* is a question of law capable of determining this suit preliminarily.
9. The instant suit/proceedings are challenged on among other grounds the ground that the *ex parte* applicant lacks *locus standi* to institute the suit/proceedings as he is not the administrator/legal representative of the estate of the late Richard Githaiga Mwangi, the deceased.
10. The answer to the issue as to whether or not the *ex parte* applicant is the administrator/legal representative of the estate of the deceased is found in paragraphs 2, 5 and 7 of the verifying sworn by the *ex parte* applicant on November 16, 2018 and filed on November 22, 2018. In those paragraphs the *ex parte* applicant deposed as follows:-

“2.
That I am the son and beneficiary of the estate of the late Richard Gathaiga Mwangi.....

5. That no beneficiary applied for letters of administration with a purpose of substituting the 2nd defendant in land case number 4 of 2000....

8. That we are more than 7 beneficiaries who have direct interest in the land and we have not been involved...”
11. From the above averments, there cannot be any doubt that the *ex parte* applicant is not the administrator of the estate of the deceased person herein.
12. On the strength of the authorities cited herein above which authorities I have no reason to differ or depart from, I agree with the respondent that the *ex parte* applicant lacks *locus standi* to bring and prosecute this suit.
13. As was observed in the case of re-Estate of John Karani Keberenge supra, the legal import of the foregoing determination is to render the suit incompetent and fatally defective. Consequently, I uphold the PO and dismiss the notice of motion dated December 5, 2018 with costs to the respondent.
14. Orders accordingly.



DATED AND SIGNED AT ITEN THIS 2ND DAY OF JUNE, 2022.

L. N. WAITHAKA

JUDGE

Read, signed and delivered at Nyeri this 28th day of June, 2022.

J. O Olola

JUDGE

