



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chirchir v Rono (Environment & Land Case 79 of 2018)  
[2022] KEELC 2617 (KLR) (14 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2617 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE 79 OF 2018**

**MC OUNDO, J**

**JULY 14, 2022**

**BETWEEN**

**JULIUS CHERUIYOT CHIRCHIR ..... APPLICANT**

**AND**

**DAVID KIPKEMOI RONO ..... RESPONDENT**

**RULING**

1. Before me for determination is myriad of Grounds of Opposition dated 14<sup>th</sup> November 2019, to the Originating Summons dated 6<sup>th</sup> November 2018 raised by the Respondent. Most of the said Grounds of Opposition to me, are factual matters which would have been well addressed in a Replying Affidavit and/or submissions. The law is clear that a Preliminary Objection and/or Grounds of Opposition, in reference to the decided case in Mukisa Biscuits Manufacturing Ltd v West End Distributors [1969] EA 696, relates purely to matters of law.
2. The only Ground of Opposition that I can decipher from the Grounds of Opposition listed, that consists of a point of law which if argued as a preliminary point may dispose of the suit, is that the Respondent herein has no capacity to be sued on behalf of the estate of Kiprono Ngeno in regard to parcel of land No. Kericho/ Kipsonoi/1848, which ground, I shall deal with at this preliminary stage.
3. The Application was disposed of through written submissions.
4. The Applicant chose not to file a response to the Respondent's opposition but instead filed their submissions challenging the said Grounds of opposition. The Supreme Court of Kenya in Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR held as follows:

“A Replying Affidavit is the principal document wherein a Respondent's reply is set and the basis of any submissions and/or List of Authorities that may be subsequently filed. Absence of this foundational pleading, the Replying Affidavit, it follows that even the



Written Submissions purportedly filed by the 1<sup>st</sup> Respondent on 17<sup>th</sup> August, 2018 are of no effect.”

5. That said and done, I find that the Applicant’s written submissions of 10<sup>th</sup> February 2022 are of no effect without a Replying Affidavit.

**The Respondent’s written submissions.**

6. The Respondent framed their issues for determination as follows;
  - i. Whether the Respondent has the locus standi to be sued or defend on behalf of the estate of Kiprono Ngeno because of lack of letters of administration.
  - ii. Whether or not the Applicant has a cause of action against the Respondent.
  - iii. Whether the land sale agreement between the Applicant and the deceased is time barred due to lack of consent from the Land Control Board.
7. On the first issue for determination, the Respondent submitted that he had never filed any succession proceedings to the estate of the deceased to enable him register the land parcel No. Kericho/ Kipsonoi/1848 from the deceased to his name. That he thereof lacked the locus standi to be sued or defend the suit not having obtained the Letters of Administration in respect to the deceased’s estate. The suit was therefore void ab initio. Reference was made to the decided case in Uniliver Tea Kenya Limited v National Land Commission & 2 others [2018] eKLR.
8. That the issue of locus standi was a point of law that went to the root of the suit and its absence rendered a suit fatally defective.
9. On the second and third issues for determination, the Respondent submitted that the Applicant had no cause of action against him because the sale agreement of 10<sup>th</sup> September 2000 was between the Applicant and the deceased Kiprono Ngeno and further that the same was void for lack of consent from the Land Control Board.
10. The Respondent urged that the suit be struck out.

**Determination.**

11. I have considered the application herein and having reviewed the pleadings and submissions by the Respondent, it is clear and not in dispute that the Applicant’s claim in the suit is that of an adverse possessor of 1 acre piece of land comprised in LR No. Kericho/ Kipsonoi/1848, having bought the same from Respondent’s deceased father, one Kiprono Ngeno on the 10<sup>th</sup> September 2000.
  - i. The matter for determination for me is whether the Respondent herein had the locus standi to be sued.
12. From the pleadings, it is clear that there were no succession proceedings conducted in reference to the deceased Kiprono Ngeno’s estate and therefore no Letters of Administration had been issued to his (deceased’s) representatives. This fact is conceded by the Applicant at para 7, 12, 13 and 15 of his Supporting affidavit to the Originating Summons. In effect therefore, the Respondent herein was not a personal representative to the deceased as provided for in Section 3 of the [Law of Succession Act](#), which defines a personal representative to include the executor or administrator, as the case may be, of a deceased person. The Respondent herein could therefore not be sued in any court to propound the deceased’s estate as he did not possess the locus standi.



13. In Alfred Njau & Others v City Council of Nairobi [1982-88] 1 KAR 229 the Court of Appeal gave meaning to the term locus-standi by stating:

“.....to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”
14. The Court of Appeal delivered itself on the issue of locus standi in case of Trouistik Union International & another v Jane Mbeyu & Another [2008] IKLR (G&F) 730 where it held that;

“To determine who may agitate by suit any cause of action vested in the deceased 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”
15. The issue on locus standi is a primary point of law almost similar to that of jurisdiction and since the Respondent was not an administrator to the deceased’s estate herein, he lacked the capacity to be sued on behalf of the deceased’s estate which renders the suit incompetent. Indeed the Court of Appeal authoritatively delivered itself on the issue of locus standi in Virginia Edith Wamboi Otieno v Joash Ochieng Ougo & Another (1982-99) 1 KAR, Morjaria v Abdalla [1984] KLR 490 and in *Trouistik Union International (supra)* to the effect that Locus standi is a primary point of law almost similar to that of jurisdiction and the lack of capacity to sue or be sued renders the suit incompetent.
16. The Respondent has been sued as the legal representative of the Estate of Kiprono Ngeno (deceased) where no grant of representation was applied for and/or obtained. The issue of locus standi is so cardinal in a civil matter since it runs through 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. 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 and lack of it cannot therefore be termed as a mere technicality. The issue of locus standi becomes even more serious in a case like this on where the matter involves the estate of a deceased person since in most cases, the estate involves several other beneficiaries or interested parties.
17. In the end I find that the Respondent in this matter lacked the requisite locus standi to be sued and therefore the proceedings herein are a nullity as they lack the legal leg to stand on. Having found that the issue of locus standi is a point of law which goes to the root of any suit and where its absence renders a suit fatally defective, I herein proceed to strike out the Applicant’s suit with costs to the Respondent.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 14<sup>TH</sup> DAY OF JULY 2022.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

