



REPUBLIC OF KENYA



KENYA LAW
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**Taura & 3 others v Taura (Environment & Land Case 148 of 2017)
[2025] KEELC 148 (KLR) (27 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 148 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 148 OF 2017
FM NJOROGE, J
JANUARY 27, 2025**

BETWEEN

**CHAI KAZUNGU TAURA 1ST PLAINTIFF
SAFARI AZIZ BAYA 2ND PLAINTIFF
CHARO CHIVATSI BAYA 3RD PLAINTIFF
FOLENI CHARO KIRIBA 4TH PLAINTIFF**

AND

MWAREMA TAURA DEFENDANT

JUDGMENT

1. In the further amended plaint dated 30/10/2020, the following prayers are sought:
 - a. A permanent injunction restraining the defendant from interfering with the plaintiff's portion of land in the larger LR Kilifi/Mavuuni/3b/432 in whatever manner and any structure raised thereon by the defendant be demolished and he be evicted
 - b. Costs of the suit
2. The basis of the plaintiff's claim is that the 1st plaintiff is a beneficial owner in the land by virtue of inheritance while the 2nd 3rd and 4th plaintiffs are legal representatives of the estates of the registered owners of the land known a LR No Kilifi/Mavuuni/3B/43 (hereinafter also called "the suit land.") The suit land is 15.35 h. It is said to be registered in the names of persons who are said to hold it in trust for the Chibindo family and each member has his own share where he cultivates and lives. It has not been subdivided. The defendant lives thereon. The plaintiffs aver that in or about the year 199 the defendant leased a portion of the suit land for Kshs 2000/-. The defendant continued to use the portion leased to him until 201 when the 1st plaintiff was shown his share of the family land and the leased portion fell on his share. The 1st defendant mobilized the Chibindo family and raised the borrowed money.



However, the defendant purported that the money borrowed was not Kshs200/- but Kshs365/=; the latter amount was nevertheless paid and the defendant vacated the leased portion. Later the defendant returned and laid claim to the trees on the portion and demanded payment of consideration for the same. He erected a structure on the portion of land. The defendant has claimed to have purchased the portion from one Ndaa Mwanje. According to the plaintiffs Ndaa Mwanje possessed no rights of ownership capable of being transferred to the defendant. The plaintiffs therefore seek the orders set out herein above.

3. The defendant relies on the amended defence dated 18/2/201. Therein he denies that the plaintiff has inherited any portion of land; he also denies that the suit land is held in trust for the larger Chibindo family. Further he denies that he merely leased the portion. He avers that the plaintiffs are trespassers on the suit property, intent on dispossessing him despite his occupation which has lasted 2 years during which he has developed it and established a home thereon. He avers that not only is the amended plaint fatally defective as it does not disclose any cause of action against him, but also that the plaintiffs lack capacity to sue.
4. The defendant's defence analyzed hereinabove was filed in response to the amended plaint but as no further amended defence was filed in response to the further amended plaint filed after it, it must be deemed the answer to that last pleading. Evidence was taken in the matter and the parties filed submissions. It is noteworthy that the defendant's submissions began by addressing the issue of lack of locus standi of the plaintiff. That being a matter that can resolve this suit in limine, this court must deal with it first.
5. To begin with, it was said that Chai Kazungu Taura lacked capacity to file suit from the beginning on 5/7/201 since he did not have a grant of letters of administration for the estates of either his grandfather or his father through whom he was claiming the land. Secondly, the other persons named as his co-plaintiffs were not the registered owners of the suit lands too. Thirdly, no formal application was made to court to join his co-plaintiffs to the suit. Fourthly, two of the plaintiffs were deceased as at the time of seeking to amend the plaint to join them to the suit, and thus lacked capacity to be so joined.
6. Upon deep scrutiny of the pleadings in this suit, I find that this is a claim principally by the 1st plaintiff whose sole complaint is that the defendant is illegally living on what should be his inheritance hence he ought to be evicted. It is not a substantive claim by the 2nd, 3rd and 4th defendants against the defendant.
7. It is notable that all the way to the end the 1st plaintiff remained in the proceedings as the principal claimant having a real substantive claim against the defendant. This is evident in paragraph 1(1) (a) of the further amended plaint where he states that the portion of land he was allocated is the one the defendant occupies. The land has not been registered in his name. The portion still remains the property of the estate of either his father or grandfather. As he is claiming not as an owner but as a beneficiary of the estate of one of those two persons, the plaintiff himself lacked capacity to sue unless he first obtained a grant of letters of administration before filing suit, or unless some other person appointed administrator sued on his behalf.
8. In *Trouistik Union International & another v Jane Mbeyu & another* [1993] eKL the court had this to state:

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. It says “personal representative means executor or administrator of a deceased person”.

9. I Ibrahim v Hassan & Charles Kimenyi Macharia, Interested Party [2019] eKL the court held as follows:

The position in law as regard /locus stand/ in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession. In Otieno v Ougo [1986-1989] EALR 468, the Court rendered itself thus

“...An administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.

10. In Peter Kaukau Asituha & 3 others v Olekia Mahindu Makunga & another [2021] eKL it was held as follows:

15. Although the Respondents claim in paragraph 25 that they are pursuing protection of overriding interest which they hold over the suit land the claim as presented in the Plaintiff and more particularly the prayers is a claim to preserve the estate of the deceased until succession is done.

A litigant pursuing a claim of this nature must first obtain capacity by petitioning the court for and being granted Letters of Administration to the estate of the deceased.”

11. It is clear then that the life of a suit is granted to it upon the filing of a plaintiff by a competent person has been restated in many court decisions. The suit can not lie unless it is filed by a person with locus standi. The 1st plaintiff commenced this suit alone. It was null ab initio. Not even the joinder of administrators of the estates of the registered owners of the land could bring it to life. However, it also behoves this court to investigate the status of the other plaintiffs in this suit if only for greater clarity of the full extent of its nullity.
12. Baya Taura Baya was also joined as the 2nd plaintiff vide the same amended plaintiff. He died on 28/9/2018 according to the exhibited grant in the same application. His joinder as well as his substitution by Safari Aziz Bay was improper because no revival of the suit against him was sought prior to the substitution application, yet the suit had abated by 27/9/2019, he having passed met his demise on 28/9/2018.
13. Also, an administrator was brought in to substitute one deceased person who had also been joined to the suit after his demise: Charo Chivatsi Bay was joined vide an amended plaintiff dated 5/7/2017 on the basis that he was alive yet the grant ad litem attached to the application dated 24/8/2020 showed that he had died on 17/10/1997.
14. Foleni Charo Chirib had a grant of letters to the estate of Charo Chiriba Rova issued to him before he was joined. However, as the 1st plaintiff commenced the suit and later joined Foleni, it was necessary that Foleni executed an affidavit to make the court know that he is aware of the suit, which never happened. He thus has not verified the claims made in the plaintiff. The fact that he never testified in the suit renders it possible for this court to believe that he was not aware of the suit.
15. It is also clear that neither Baya Chai Kibind nor his administrator, if he is deceased, was joined to the suit.
16. The outcome of the foregoing analysis is that it is as though Safari Aziz Bay and Charo Chivatsi Bay were not in these proceedings in the first place as they lack capacity to be so joined. Therefore, none of the



four persons registered as proprietors of the suit land or their administrators, have been competently joined to the suit.

17. The plaintiff has stated in his plaint at paragraph that his entitlement to the land runs down from the lineage of his grandfather called Hazizi and his father called Kazungu Taura yet, as stated herein before, he lacked capacity to sue unless he first obtained a grant of letters of administration before filing suit.
18. This court is of the view that either the owners of the land or their administrators ought to have been joined in the suit as plaintiffs owing to their interests in the land. As things stand now, with the disqualifications of his co-plaintiffs as enumerated above, the 1st plaintiff is the lone claimant in a suit yet he lacks locus standi to bring the suit since he does not possess a grant of letters of administration to either his grandfather's estate or his father's estate and he is also not the registered owner of the land. As the plaintiff lacks capacity to institute these proceedings, the present suit is hereby struck out with costs to the defendant.

JUDGMENT DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 27TH DAY OF JANUARY 2025

MWANGI NJOROG

JUDGE, ELC, MALINDI

