



**Obiero v Ogola (Environment and Land Appeal 18 of 2022)
[2022] KEELC 14765 (KLR) (15 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14765 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL 18 OF 2022
GMA ONGONDO, J
NOVEMBER 15, 2022
(FORMERLY MIGORI ELC APPEAL NO. 29 OF 2019)**

BETWEEN

JOSEPH OBIERO APPELLANT

AND

BEATRICE OGOLA RESPONDENT

(Being an appeal from the Ruling of Hon. T. Olando, Principal Magistrate, delivered on 9th October, 2019 in Homa Bay Chief Magistrate's Court Environment and Land Case No. 26 of 2019)

JUDGMENT

1. This is an appeal that arises from the trial court's ruling delivered on the 9th October, 2019 by the Honourable T. Olando, Principal Magistrate, in Homa Bay Chief Magistrate's Court Environment and Land Case No. 26 of 2019 where the learned trial magistrate found that:
 - a. The appellant's preliminary objection dated 29th May 2019 lacked merit and dismissed the same.
 - b. The respondent's application dated 29th April 2019 was meritorious and prayers (a), (b) and (c) thereon were allowed accordingly.
2. Dissatisfied with the said ruling, the appellant namely Joseph Obiero, acting in person, mounted the instant appeal by way of a memorandum of appeal dated 29th October 2019 and duly filed on 13th February 2020. The Appeal is anchored on grounds 1 to 3 as set out on the face thereof and the same include:
 - a. The learned trial magistrate erred both in law and fact by entertaining a suit filed on behalf of the estate of the deceased without obtaining grant beforehand.



- b. The learned magistrate completely ignored the capacity of the plaintiff before, during and at the point of filing the suit.
3. Wherefore, the appellant has sought the order that the instant appeal be allowed and the part of the ruling dismissing the preliminary objection of the 6th respondent, be set aside. Further, that the entire suit be struck out with costs to the defendants.
4. The appeal was transferred to this court for hearing and determination from Migori Environment and Land Court on 21st March 2021.
5. The appeal was heard by way of written submissions pursuant to this court's directions of 17th November 2021.
6. Accordingly, the appellant filed submissions dated 19th November 2021 on 14th December 2021 and identified twin issues for determination thus: whether the plaintiff in the trial court who filed suit on 29th April 2019, lacked locus standi to do so since she had not obtained grant of letters ad litem and whether the suit should be dismissed with costs.
7. The appellant submitted that the plaintiff at the trial court did not have locus standi to institute suit as at the time of instituting suit as she had not obtained a grant of letters of administration ad litem. That therefore, the Preliminary Objection filed by the appellant herein ought to have been allowed. The appellant cited Section 80(2) of the Law of Succession Act Chapter 160 Laws of Kenya. He also relied on the case of *Patrick Asike Mutisya (Suing on behalf of the Estate of Nzomo Mutisya –vs- KB Shangani and Sons Limited* (2012) eKLR, to fortify his submissions.
8. Learned counsel for the respondent, H. Obach & Partners Advocates, filed submissions dated 10th January 2022 on 24th January 2022 and identified one issue for determination thus: whether the respondent had locus standi to institute the suit on behalf of the deceased. Counsel submitted that indeed the respondent obtained a limited grant of letters of administration ad litem vide Chief Magistrate's Court at Homa Bay Succession Cause no. 21 of 2019 on 1st June, 2019. Counsel cited Article 22 of the Constitution of Kenya, 2010 and Article 258 of the same constitution.
9. In the foregone, the issues for determination in this appeal are as captured in the grounds of appeal and compressed to:
 - a. Whether the respondent had locus standi to institute suit at the trial court and
 - b. Subject to issue (a) hereinabove, is the appellant entitled to orders as stated at paragraph 3 hereinabove?
10. It is important to note that the instant appeal is the first one from the trial court in the matter. Therefore, this court is obliged to review the record of the trial court, evaluate it and arrive at its own conclusions herein as I subscribe to the Court of Appeal decision in *Mwanasokoni-vs Kenya Bus Services Ltd* (1982-88) 1KAR 278 applied in the case of *Titus Ong'ang'a Nyachio-vs-Martin Okioma Nyauuma and 3 others* (2017) eKLR.
11. Originally, the suit was commenced by way of a plaint dated 29th April 2019 and duly filed on 16th May 2019 by the respondent herein seeking the following orders:
 - a. An order of eviction evicting the defendants from land parcel Gem/Kajulu/2 measuring approximately four decimal zero (4.0) hectares in area (the suit land herein).



- b. A permanent order of injunction restraining the defendants, their agents, servants and/or employees from further trespassing, further encroaching, disposing, alienating, transferring, leasing and/or in any other way interfering with any part thereof of the suit land.
 - c. Costs of the suit and interest thereon as from the date of filing suit until payment in full.
 - d. Any other relief the honourable court deems just and expedient to grant.
12. In response, one Clifford Obiero, a donee of a power of attorney donated by the 6th respondent, lodged a Notice of Preliminary Objection dated 29th May 2019 on the ground that the plaintiff lacks locus standi to institute suit. Further, that the suit was time-barred.
 13. In arriving at the impugned ruling, the learned trial magistrate noted thus:

“...I note that the plaintiff obtained letters of administration ad litem to file the suit and the fact that the plaintiff has not indicated that he filed the suit as the administrator does not render the suit to be frivolous or vexatious...”
 14. The appellant asserted that the suit at the trial court was flawed from the start for want of locus standi by the plaintiff. Simply put, that the same was a non-starter.
 15. Evidently, the respondent obtained grant of letters of administration ad litem on 1st June 2019. The suit at the trial court was instituted on 16th May 2019 by way of a plaint dated 29th April 2019. So, did the respondent have locus standi to institute proceedings on behalf of the estate of the deceased as provided for under Section 82(a) of the *Law of Succession Act* (supra)?
 16. Locus standi is the right to appear or be heard in court or other proceedings as noted in Chudasama case (infra). Thus, if one alleges the lack of the same in certain court proceedings, he means that party cannot be heard.
 17. In *Rajesh Pranjivan Chudasama vs Sailesh Pranjivan Chudasama* (2014)eKLR, the Court of Appeal addressed itself on the issue of locus standi in succession matters as follows:-

“... But in our view the position in law as regards locus standi in succession matter is well settled. A litigant is clothed with locus standi upon obtaining a limited grant or a full grant of Letters of Administration in cases of Intestate succession. In Otieno v Ougo (supra) this court differently constituted 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.' (Emphasis added)
 18. The appellant contends that the learned trial magistrate erred in failing to appreciate that the respondent took out grant of letters of administration ad litem law after initiating the suit.
 19. I, however, note that at the time of the impugned ruling, the respondent had been issued with a limited grant of letters of administration ad litem. The grant has not been challenged. The Preliminary Objection had been overtaken by events. Therefore, the grounds of appeal are untenable.
 20. In the premises, I proceed to endorse the learned trial magistrate’s ruling.
 21. It is therefore, the finding of this court that the learned trial magistrate’s ruling is faultless at law. I hereby uphold the same.



22. Wherefore, the instant appeal commenced by way of a memorandum of appeal dated 29th October 2019 and lodged in court on 13th February 2020, is hereby dismissed with costs to the respondent.
23. Orders accordingly.

G.M.A ONG'ONDO

JUDGE

DELIVERED, DATED AND SIGNED AT HOMA-BAY THIS 15TH DAY OF NOVEMBER 2022.

Present

Ms. Ochieng, learned counsel for the respondent

Mr. C. Obiero, learned counsel for the appellant

Okello, Court Assistant

