



**Dhanjal (Suing as Administrator of the Estate of Dalip Singh Dhanjal) & another v  
Mass Trust Registered Trustees & 12 others; Shaaban & 2 others (Interested Parties)  
(Land Case E026 of 2024) [2025] KEELC 4351 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4351 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
LAND CASE E026 OF 2024  
SM KIBUNJA, J  
JUNE 11, 2025**

**BETWEEN**

**NIRMAL SINGH DHANJAL (SUING AS ADMINISTRATOR OF THE ESTATE  
OF DALIP SINGH DHANJAL) ..... 1<sup>ST</sup> PLAINTIFF**

**JOGINDER SINGH DHANJAL (SUING AS ADMINISTRATOR OF THE  
ESTATE OF JASWANT SINGH BOOR SINGH) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MASS TRUST REGISTERED TRUSTEES ..... 1<sup>ST</sup> DEFENDANT**

**MOHAMED SHEIKH BIN SHEIKH ..... 2<sup>ND</sup> DEFENDANT**

**FATMA ABUBAKAR SHARI ..... 3<sup>RD</sup> DEFENDANT**

**GURE MOHAMED MUSA ..... 4<sup>TH</sup> DEFENDANT**

**AHMADUNA HOUSING PROPERTIES ..... 5<sup>TH</sup> DEFENDANT**

**ABDULHAKIM FARAJ ..... 6<sup>TH</sup> DEFENDANT**

**HARON RASHID HAMISI ..... 7<sup>TH</sup> DEFENDANT**

**SUNAINA ABDULLA BREK ..... 8<sup>TH</sup> DEFENDANT**

**SAID ABDALLA SAID ..... 9<sup>TH</sup> DEFENDANT**

**FAIZA SWALLEH ..... 10<sup>TH</sup> DEFENDANT**

**ABDULHAKIM JAFFER ALI ..... 11<sup>TH</sup> DEFENDANT**

**ASHA BAKARI ..... 12<sup>TH</sup> DEFENDANT**

**CHIEF LANDS REGISTRAR MOMBASA ..... 13<sup>TH</sup> DEFENDANT**

**AND**



**JUMA SHAABAN ..... INTERESTED PARTY**  
**RYMAH AJEMA ..... INTERESTED PARTY**  
**FEISAL ABEID SAID ..... INTERESTED PARTY**

## **RULING**

[Plaintiff's notice of motion dated 29<sup>th</sup> March 2024 & 1<sup>st</sup> to 12<sup>th</sup> defendants' preliminary objection dated 30<sup>th</sup> October 2024]

1. The plaintiff filed the notice of motion dated the 29<sup>th</sup> March 2024, seeking for inter alia:
  - a. Temporary injunction orders at prayers (2) & (3), "pending the hearing and determination of this application inter-partes ..."
  - b. At prayer 4, for an order that the 1<sup>st</sup> to 12<sup>th</sup> defendants to deposit all the original titles for parcel numbers 406 to 417 with the court.
  - c. At prayer 5, an order for OCS Makupa Police Station to enforce compliance of the above orders.

The application is premised on the twelve (12) grounds on its face and supported by the affidavit of Nirmal Singh Dhanjal, plaintiff, sworn on the 29<sup>th</sup> March 2024. It is the plaintiff's case inter alia that Mombasa/Block XV1/292 to 299, the suit properties, were in the name of Jaypee and Sons Limited, whose directors were Dalip Singh Dhanjal and Jaswant Singh Dhanjal, who are now deceased. That Succession Causes Numbers 259 of 2013 and 20 of 2006, in respect of their estates were filed and are still pending in court. That the plaintiff has in his administrator's duties found some unauthorised constructions on the company's properties and that the suit properties have been subdivided into parcels 406 to 417, and new titles issued. That the 1<sup>st</sup> to the 12<sup>th</sup> defendants are illegally in possession of the suit properties and have frustrated the efforts of the beneficiaries of the deceased's estates to administer and distribute the same. That the 13<sup>th</sup> defendant has acknowledged that there was an error in issuing new title deeds over the suit properties before the old title deeds were surrendered. That the plaintiff instituted several suits before the Chief Magistrates Court which were later withdrawn on jurisdiction considerations after valuations were conducted. That the court should order the new title deeds to be deposited with the court to ensure no further dealings like resales to third parties or charging with financial institutions occurs. That the constructions on the suit properties should be stopped to avoid further wastage thereof.

2. The application is opposed by the 1<sup>st</sup> to the 12<sup>th</sup> defendants through the replying affidavit of Fahad Haji Mansur, one of the 1<sup>st</sup> defendant's trustees, sworn on the 7<sup>th</sup> February 2025, inter alia deposing that the plaintiff does not have locus standi to file the instant suit in his own name; that the suit properties' title documents are not in the name of the plaintiff or the deceased but in the name of Jaypee and Sons Limited, a limited liability company, and plaintiff cannot bring a suit over a property owned by another legal person; that though the plaintiff claim all the directors of the company are deceased and he is a administrator of one of the deceased directors, he has not provided evidence, including CR12, in support; that the 1<sup>st</sup> to 12<sup>th</sup> defendants are the bona fide owners and occupiers of the suit properties as detailed at paragraph 7 of the affidavit; that 1<sup>st</sup> defendant was an innocent purchaser of its parcel of land and has built a mosque thereon which is almost complete; that the 2<sup>nd</sup> to 3<sup>rd</sup> defendants are also bona fide purchasers and are constructing apartments on their respective parcels; that the



defendants had agreed with the previous occupants of the suit properties who had houses without land thereon, to vacate after which they demolished the structures erected thereon, before commencing their developments; that the plaintiff has never been an owner or occupier of the suit properties and is not entitled to any compensation and or order of vacant possession; that the plaintiff does not stand to suffer any loss or damage unlike the defendants who stand to suffer irreparable harm and damage if injunctive orders sought are issued, due to their ongoing constructions.

3. The 1<sup>st</sup> to 12<sup>th</sup> defendants filed the preliminary objection dated the 30<sup>th</sup> October 2024, raising two grounds that:

SUBPARA a.

The plaintiff is devoid of the requisite locus standi to commence, originate and or otherwise maintain the present suit.

SUBPARA b.

The suit is bad in law, defective and should be dismissed with costs to the 1<sup>st</sup> to 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> defendants.

4. The plaintiff opposed the 1<sup>st</sup> to the 12<sup>th</sup> defendants preliminary objection through their grounds of opposition dated 28<sup>th</sup> February 2025, summarized as follows:

- a. That the preliminary objection does not raise a pure point of law as the issue of locus standi involves factual matters that require evidence and cannot be raised as a preliminary objection.
- b. That the preliminary objection is unduly burdensome, premature, misconceived oppressive and if allowed it will deny the plaintiff the right to be heard contrary to Article 50(1) of *the Constitution*.

5. The court on 31<sup>st</sup> October 2024, and 11<sup>th</sup> February 2025 directed the application dated 29<sup>th</sup> March 2024 and the preliminary objection dated 30<sup>th</sup> October 2024 to be canvassed together through written submissions to be filed and exchanged within the timelines given.

6. The leaned counsel for the 1<sup>st</sup> to 12<sup>th</sup> defendants and plaintiffs filed their submissions dated the 7<sup>th</sup> February 2025 and 28<sup>th</sup> February 2025, respectively, which the court has considered.

7. The issues commending themselves to the court for determinations are as follows:

- a. Whether the issue of plaintiff's locus raised in the preliminary objection by the 1<sup>st</sup> to the 12<sup>th</sup> defendants amounts to a pure point of law that is capable of being determined without calling evidence.
- b. Whether the plaintiff has met the threshold for the injunctive order sought to be determined at this interlocutory stage.
- c. Who pays the costs.

8. The court has carefully considered the grounds on the application, affidavit evidence, grounds on preliminary objection and opposition, submissions by the learned counsel, superior courts decisions cited thereon, the pleadings filed and come to the following determinations:

- a. Considering the nature and outcome of the prayers in the notice of motion and the preliminary objection, I find it appropriate to determine the latter first. It is also trite that a preliminary objection on capacity of a party goes to the root of the suit and touches on the court's jurisdiction in the matter at hand. The preliminary objection should be dealt with first because



if upheld, it will determine the suit and there will be no need for the court to pronounce itself on the application. In the case of *Mukisa Biscuits Manufacturing Ltd versus West End Distributors Ltd*, Civil Appeal No. 9 of 1969 (1969) EA 696, the court defined a preliminary objection as follows:

“ A preliminary objection consists of a point of law which has been pleaded, or which arises from a clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”

The court further went on to state that:

“ A preliminary objection is in the nature of what used to be called demur. It raises a pure point of law, which is argued on the assumption that all the facts pleaded are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

Simply put, the 1<sup>st</sup> to 12<sup>th</sup> defendants’ main ground on the preliminary objection dated the 30<sup>th</sup> October 2024 is that the 1<sup>st</sup> plaintiff does not have the capacity/locus standi to commence, originate and or otherwise maintain this suit. The second ground is that the suit is bad in law, incurably defective and should be dismissed with costs to the 1<sup>st</sup> to 6<sup>th</sup>, 8<sup>th</sup>, 10 & 11<sup>th</sup> defendants.

- b. The learned counsel for the 1<sup>st</sup> to 12<sup>th</sup> defendants has submitted that from the 1<sup>st</sup> plaintiff’s own pleadings at the first ground on the application and paragraph 15 of the plaint, it is clear the suit properties are in the name of Jaypee and Sons Limited. That the suit properties title documents that the 1<sup>st</sup> plaintiff relies on are in the name of the said company, and not in his own name or that of the deceased. The counsel further submitted that Jaypee and Sons Limited is a limited liability company, which is a legal person having a separate existence from its shareholders, and can sue or be sued in its name. The counsel cited the seminal case of *Solomon versus Solomon & Company Limited* [1896] UKHL 1, [1897] AC 22, [1895–99] ALL ER 33, in support of his submission that a company on incorporation becomes a juristic person that can acquire its own property, and has rights and liabilities separate from those of its members (shareholders). The counsel relied the case of *Christopher Mutiambu Machimbo & 3 Others versus County Surveyor, Trans Nzoia & 4 Others* [2022] eKLR, where the court cited with approval the case of *Amin Akberal Manji & 2 others versus Altaf Abdulrasul Dadani & Another* [2015] eKLR, where Court of Appeal pronounced itself on the issue of locus in relation to a limited liability company as follows:

“ ...The centuries old case of *Solomon versus Solomon Company Limited* [1895-99] ALL ER 33 laid that principle to rest. There is no argument that the proper plaintiff in any proceedings or action in respect of a wrong done to the company, is the company itself. Again, that was established over 160 years ago in *Foss versus Harbottle* [1843] 67 ER 189 (the Foss case), popularly referred to in company law as “the rule in *Foss versus Harbottle*” (the rule). The rule was restated by Jenkins L.J. in the case of *Edwards versus Halliwell* [1950] ALL ER 1064, as follows:

“The rule in *Foss versus Harbottle*, as I understand it, comes to more than this. First, the proper plaintiff in an action in respect of a wrong alleged to be done to a company or association of persons is prima facie the company or the association of persons itself. Secondly, where the alleged wrong is a transaction which might be made binding on the company or association and on all its members by a simple



majority of the members, no individual member of the company is allowed to maintain an action in respect of that matter for the simple reason that if a mere majority of the members of the company or association is in favour of what has been done, then cadit quaestio; or if the simple majority challenges the transaction, there is no valid reason why the company should not sue.”

In essence, the rule established two principles. The first is the “proper plaintiff principle” and the second is “the majority principle”. Through the former, a wrong done to the company may be vindicated by the company alone. On the second principle, if the alleged wrong can be confirmed or ratified by a simple majority then a shareholder is barred from bringing an action. The principal effect in the rule is to bar actions by minority shareholders.

This court and others in this country have indeed cited and followed the Foss case and others which came after it as good law. The cases of Rai & Others versus Rai & Others [2002] 2 EA 537 and Grace Wanjiru Munyinyi & Another versus Gedien Waweru Githunguri & 5 Others [2011] eKLR, were cited before us to confirm that the rule in Foss case still stands in Kenya. In a recent case, Arthi Highway Developers Ltd versus Westend Butchery Ltd & 6 Others, Civil Appeal No. 246 of 2013, this court followed the summing up of the rule by Lord Denning M.R in Moir versus Wallerstainer [1975] 1 ALL ER 849, at page 857, thus:

“It is a fundamental principle of our law that a company is a legal person with its own corporate identity, separate from the directors or shareholders and with its own property rights and interests to which alone it is entitled. If it is defrauded by a wrongdoer, the company itself is the one person to sue for the damage. Such is the rule in Foss versus Harbottle [1843] 2 Hane 461. The rule is easy enough to apply when the company is defrauded by outsiders. The company itself is the only one who can sue. Likewise, when it is defrauded by insiders of the minor kind, once again, the company is the only person who can sue.”

That counsel submitted that from the pleadings, the person wronged is the company and not the plaintiff, and therefore the plaintiff is without capacity.

- c. In opposition to the preliminary objection, the learned counsel for the 1<sup>st</sup> plaintiff submitted that the question of a party’s capacity is not a pure point of law and requires factual proof. That as the 1<sup>st</sup> plaintiff is the duly appointed administrator of his late father’s estate who was one of the directors in Jaypee & Sons Limited, he has the legal right to seek redress to protect and preserve the estate’s assets. The counsel cited the case of Muumbo & Another versus Mwingi View Lodge Limited & 8 Others ELC NO. 10 of 2023 [2024] KEELC 6921 (KLR), cited in Mwalungu Mwambui Nyiyo & 201 Others versus Total Oil Products (East Africa) Limited & Another (2021) eKLR, where the court held that:

“... A preliminary objection is in the nature of what used to be a demurer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”



The counsel also relied on the case of Alfred Njau & 5 Others versus City Council of Nairobi [1983] KECA 56 (KLR) where the Court of Appeal stated that:

“Capacity to sue is a matter of mixed law and fact, which is to be decided on legal principles (with common sense coming into it) and not a matter of discretion. The learned judge, with respect, erred when he decided that the appellants had no locus standi in the matter to which the suit related...”

And, submitted that as the issue of the plaintiff capacity requires evidence to be adduced on whether he is an administrator of his father’s estate, who was one of the company’s directors, then it cannot be raised through a preliminary objection and decided at this stage, as to do so would deny the plaintiff’s right to present his case.

- d. That 1<sup>st</sup> plaintiff has in ground number 2 of the notice of motion, paragraph 2 of the supporting affidavit and paragraphs 15 and 25 of the plaint pleaded that the listed parcels of land, suit properties, are registered in the name of Jaypee and Sons Limited. The 1<sup>st</sup> to 12<sup>th</sup> defendants have at paragraphs 5 of the replying affidavit and their submissions confirmed that the suit properties are from the title documents relied upon by the plaintiff, in the names of Jaypee and Sons Limited. The question on who is registered with the suit properties is therefore not in dispute between the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> to 12<sup>th</sup> defendants. From paragraphs 18 to 25 of the plaint and prayers 1 to 4 thereof, the 1<sup>st</sup> plaintiff’s claim/cause of action is based on illegalities attributed to the defendants over the suit properties that are registered in the name of Jaypee and Sons Limited, a limited liability company. The plaint dated 29<sup>th</sup> March 2024 has Nirmal Singh Dhanjal, suing as administrator of the estate of Dalip Singh Dhanjal, as the plaintiff [1<sup>st</sup> plaintiff] and at paragraph number 1 the plaintiff is described as “..a company incorporated and with its registered offices within the Republic of Kenya ....”, while at paragraph number 1 of the supporting affidavit, the deponent, Nirmal Singh Dhanjal, deposed that “I am a male adult of sound mind and disposition. I am the plaintiff and I am an administrator of the estate of Dalip Singh Dhanjal.....”. I will proceed with this ruling on the basis that the person named Nirmal Singh Dhanjal, on the plaint and other court processes filed herein, is the plaintiff in this suit.
- e. This suit though revolving over the suit properties registered in the name of Jaypee and Sons Limited, has not been originated or commenced by the said company. I understand the legal position crystalized through the various superior courts decisions, both locally and externally, including the case of Christopher Mutiambu Machimbo & 3 Others versus County Surveyor, Trans Nzoia & 4 Others [2022] eKLR, where the court cited with approval the case of Amin Akberal Manji & 2 others versus Altaf Abdulrasul Dadani & Another [2015] eKLR, to be that legal disputes, including like in the instant case the alleged illegal transactions over the suit properties registered with a company, like Jaypee and Sons Limited, should be commenced in the name of the company, as it is the only one with capacity/locus to do so.
- f. The plaintiff in this suit is not Jaypee and Sons Limited, but Nirmal Singh Dhanjal, suing as administrator of the estate of Dalip Singh Dhanjal. Whether or not the late Dalip Singh Dhanjal, deceased, was a director of the said company and or that Nirmal Singh Dhanjal, plaintiff, has been appointed an administrator of the deceased’s estate does not cloth the plaintiff with capacity/locus standi to sue over the suit properties registered in the name of the limited liability company. The court finds in this instance, the issue of the plaintiff’s capacity to originate, commence and or maintain this suit and the application thereof, is a matter that can be argued, and indeed has been argued, without the need to call evidence. The ground



therefore amounts to a pure point of law and having found merit in it, the same is upheld. The inevitable result is that the suit commenced/originated by the plaintiff through the plaint dated the 29<sup>th</sup> March 2024, was filed by a party without capacity and is for striking out. The court therefore does not need to pronounce itself on the merits or otherwise on the notice of motion dated 29<sup>th</sup> March 2024 as it has fallen by the way.

- g. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the events unless where otherwise directed by the court. In this instance, the court does not find any reasonable basis to depart from that legal edict on costs.
9. Flowing from the determinations set out above on the application and preliminary objection, the court finds and orders as follows:
- a. That the 1<sup>st</sup> to 12<sup>th</sup> defendants' preliminary objection on the ground of the plaintiff's lack of capacity to sue over the suit properties registered in the name of the limited liability company is upheld.
- b. That accordingly, the plaintiff's suit commenced through the plaint dated 29<sup>th</sup> March 2024, and the notice of motion of even date is stuck out with costs to the 1<sup>st</sup> to 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> & 11<sup>th</sup> defendants.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 11<sup>TH</sup> DAY OF JUNE 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In The Presence Of:

Plaintiffs : No Appearance

Defendants : Mr Maulidi For 1<sup>st</sup> To 12<sup>th</sup> Defendants And Ms Saro For 13<sup>th</sup> Defendant.

Interested Parties : No Appearance

Shitemi-court Assistant.

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

