



**Migwi (Suing on His Own and Also on Behalf of the Estate of Migwi Mariga - Deceased) v Ngunjiri & another (Environment & Land Case E044 of 2023) [2024] KEELC 476 (KLR) (6 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 476 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E044 OF 2023**

**MD MWANGI, J  
FEBRUARY 6, 2024**

**BETWEEN**

**FRANCIS NGUNJIRI MIGWI (SUING ON HIS OWN AND ALSO ON BEHALF OF THE ESTATE OF MIGWI MARIGA - DECEASED) ..... PLAINTIFF**

**AND**

**KENNEDY MARIGA NGUNJIRI ..... 1<sup>ST</sup> DEFENDANT**

**EQUITY BANK (KENYA) LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Background**

1. This ruling is in respect of the 1<sup>st</sup> Defendant's Preliminary Objection dated 27<sup>th</sup> October, 2023. The Preliminary Objection raised objections to the Plaintiff's suit on the following grounds:
  - a. That the Plaintiff/Applicant together with Alexander Ngotho Migwi, are co-administrators in the Estate of Migwi Mariga (deceased) having been issued with a grant of letters of administration intestate on 8<sup>th</sup> April, 2011.
  - b. That the letter of administration issued on 8<sup>th</sup> April, 2011 conferred on the administrators the power to act jointly in terms of the instrument of appointment.
  - c. That by virtue of Section 82 (a) of the *Law of Succession Act* (Cap 160, Laws of Kenya), the Plaintiff/Applicant lacks the *locus standi* to institute the suit on behalf of the Estate of the deceased.
  - d. That the present suit therefore is misconceived, bad in Law and fatally defective.



- e. That for the foregoing reasons, the suit should be dismissed with costs to the 1<sup>st</sup> Defendant/ Respondent.

### **Court's Directions**

2. the Court directed that the preliminary objection be heard first and that it be canvassed by way of written submissions. All the parties complied. The Court has had an opportunity to read and consider the submissions filed.

### **Issues for determination:**

3. The gist of the 1<sup>st</sup> Defendant's Preliminary Objection. is that the Plaintiff lacks the locus standi to institute this suit as he has purported to, on behalf of the estate Migwi Mariga (deceased) on the premises that he is not the sole administrator of the Estate of the deceased. He is a co-administrator of the Estate of the deceased with one, Alexander Ngotho Migwi, but has filed the suit alone. The 1<sup>st</sup> Defendant therefore submits that he lacks the legal capacity/locus standi to act singly on behalf of the Estate.
4. The issue for determination is only that; whether the Plaintiff as one of the administrators of the Estate has the capacity to file suit alone.

### **Analysis and Determination**

5. From the amended plaint filed in this matter, the Plaintiff states that this suit is filed on his own and also on behalf of the Estate of Migwi Mariga – deceased. At paragraph 4 of the amended plaint, he describes himself as one of the administrators of the estate of Migwi Mariga alias Migui Mariga (deceased), jointly with one Alexander Ngotho Migwi.
6. It is clearly discernible from the amended plaint that the Plaintiff brings the suit on behalf of the Estate of the deceased; though he also purports it is on his own behalf too.
7. The 1<sup>st</sup> Defendant submits that the Plaintiff lacks legal capacity to file suit singly without his co-administrator. The 1<sup>st</sup> Defendant relies on the decisions in the cases of *Republic v Nairobi City County & 3 others ex parte Christine Wangare Gachege suing on behalf of the Estate of Rahab Wanjiru Evans* [2014] eKLR and *Hassan Iddi Malambu suing as the administrator of Amina Nanyu Malambu v Bestel Agencies Company Ltd & another* [2015] eKLR, where it was held that the capacity to sue on behalf of the estate of the deceased, inheres in the administrators duly appointed by the Court.
8. The 1<sup>st</sup> Defendant further referred to the case of *Peter Kimani Nene v Nation Newspapers Ltd* [2021] where Majanja, J affirmed the above position.
9. The 2<sup>nd</sup> Defendant supports the Preliminary Objection by the 1<sup>st</sup> Defendant.
10. In response, the Plaintiff submitted that the Preliminary Objection raised by the 1<sup>st</sup> Defendant does not qualify to be considered as such. He alleges that it is not on a pure point of Law.
11. In further response, the Plaintiff submitted that he personally felt that he has been deprived of his enjoyment of his ½ share interest in the subject property and has the right to seek redress on his own behalf. He avers that he has a direct interest in the said property having jointly developed it with the 1<sup>st</sup> Respondent.
12. The Plaintiff further submits that though the grant was issued jointly, it does not limit the exercise of powers of one administrator, if the other joint administrator is absent, or sick or disinterested in



- enforcing the rights touching on the estate. He therefore asserts that he has the capacity to institute the suit on his own behalf and on behalf of the estate.
13. The Plaintiff asserts that under Order 1 rule 9 of the *Civil Procedure Rules*, no suit should be defeated for misjoinder or non-joinder of parties. He urges the Court to exercise its discretion to order that the omitted administrator be joined as a party in the suit.
  14. The Plaintiff refers to the decision in *Esther Muthoni Mwangi v Samuel Maina Njaria* [2021] eKLR where it was held that the Plaintiff had significant locus to mount a case on behalf of the estate of a deceased person where the suit was advancing a claim to protect the estate.
  15. A Preliminary Objection as already well established from a plethora of authorities raises a pure point of law which must not be blurred with factual details. The capacity of a party to sue is one such pure point of law.
  16. The court's finding in respect to the Plaintiff's submissions that the Preliminary Objection by the 1<sup>st</sup> Defendant does not qualify to be a Preliminary Objection is that it has no legal basis.
  17. As I stated earlier, the capacity of the Plaintiff is clearly disclosed in his amended plaint. I will therefore proceed to consider it on its merits.
  18. The Plaintiff as pointed out submitted that he has the capacity to institute the suit on his own behalf as has been deprived of his enjoyment of his ½ share interest in the subject property. The Estate of the Deceased has however not been distributed. The alleged ½ share interest in the suit property has not been confirmed and ascertained. It is speculative. As it stands now, the alleged ½ share in the suit property, if at all can only be claimed by the estate of the deceased.
  19. The 1<sup>st</sup> Defendant has correctly submitted on the position of joint administrators under Section 82 of the *Law of Succession Act*. They are obligated to act jointly in all matters concerning the estate.
  20. In this case it is not disputed that the Plaintiff in this matter is a co-administrator with another administrator in the estate of Migwi Mariga; yet he filed this suit alone. The Plaintiff has not demonstrated that he had the written authority/consent of the co-administrator at the time of filing suit.
  21. This is not a matter of non-joinder as the Plaintiff puts it in his submissions. The issue is whether he had the locus to file the suit as he did at the time he did. If he did not have the capacity/locus standi to do so, the suit is a nullity. As Mrima J in the case of *Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (suing as the administrator of the Estate of Fanuel Evans Amudavi, Deceased)* 2016 eKLR, stated:-

“... the issue of locus standi is so cardinal in a civil matter since it runs through to 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. Locus standi relates mainly to the legal capacity of a party. 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. It is also 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.”
  22. I agree with the holding of Majanja, J in *Peter Kimani Nene v Nation Newspapers Ltd* [2021], to the effect that where one or more administrator has been appointed, they must act jointly at all times. One administrator alone cannot bind the estate of the deceased or file suit alone on behalf of the estate of



the deceased. I respectfully disagree with the decision in *Esther Muthoni Mwangi v Samuel Maina Njaria* [2021] eKLR as cited by the Plaintiff.

23. Lack of *locus standi* is a fatal to the suit. It renders the suit a nullity. It is incurable.
24. That being the position, I have no choice but to strike out the Plaintiff's suit in its entirety with costs to the Defendants.
25. And since the Notice of Motion dated 7<sup>th</sup> August, 2023 was hinged on the suits, it too collapses. It is also struck out with costs to the Defendants.
26. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**M.D. MWANGI**

**JUDGE.**

In the virtual presence of:

Ms. Maureen Ng'andu h/b for Mr. Busaidy for the 2<sup>nd</sup> Defendant

Ms. Atieno for the 1<sup>st</sup> Defendant

Ms. Watitu h/b for Mr. Mahinda for the Plaintiff

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE.**

