



REPUBLIC OF KENYA



**Mwawughanga v Mdulo (Environment and Land Appeal E003 of 2023)
[2024] KEELC 5061 (KLR) (Environment and Land) (4 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5061 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E003 OF 2023**

EK WABWOTO, J

JULY 4, 2024

BETWEEN

FESTUS MWASI MWAWUGHANGA APPELLANT

AND

PRUDENCE MDULO RESPONDENT

*(Being an appeal from the Judgment of Hon. A. M. Obura (Mrs.) (CM)
delivered on 27th July 2023 at Voi Law Courts ELC Case No. E007 of 2021)*

JUDGMENT

1. This is an appeal from the Judgment and Decree issued at the Chief Magistrate's Court by Hon. A. M. Obura (Mrs.) in respect to MCELC CASE No. E007 of 2021 wherein the learned Magistrate dismissed the Plaintiff's suit and counter claim vide her judgment delivered on 27th July 2023.
2. The Appellant being aggrieved by the said decision filed the instant appeal vide a Memorandum of Appeal dated 21st August 2023. The said memorandum raised the following grounds:-
 1. That the Honourable Magistrate erred in both law and fact in finding that the Appellant had not proved his case against the weight of the evidence on record.
 2. That the Honourable Magistrate erred in both law and fact in finding that the Appellant had no proved ownership of the suit property against the overwhelming evidence as to ownership on record.
 3. That the Honourable Magistrate erred in both law and fact in finding that the Appellant did not have the legal capacity to sue herein when the evidence on record as to ownership indicated he was the legal owner of the suit property after adjudication.



4. That the Honourable Magistrate erred in both law and fact in finding that dismissing the Appellant's case against weight of the evidence tendered in court.
3. Upon which the Appellant prayed that the judgment delivered on 27th July 2023 be set aside and or varied. The Appellant also sought for costs of the appeal.
4. The appeal was canvassed by way of written submissions. The Appellant filed written submissions dated 27th March 2024 while the Respondent filed an undated submission on the 3rd June 2024.
5. The Appellant submitted on the following issues in his submissions dated 27th March 2024; whether the learned Magistrate erred in finding that the Appellant had not proved ownership of the suit property, whether the learned Magistrate erred in finding that the Appellant had no capacity to sue and who is to bear the costs of the Appeal.
6. It was argued that the suit land herein falls within an adjudication section which is still open and as such proof of ownership of such land must be domiciled in the documents from the adjudication process. The cases of *Caroline Awinja Ochieng & Another =Versus= Jane Anne Mbithe Gitau & 2 Others (2015) eKLR* and *Kwale ELC Case No. 100 of 2021 Mwaja & 5 Others =Versus= National Land Commission & Another (Environment & Land Case 100 of 2021) (2023) KEELC 16458 (KLR) (27 March 2023) (Judgment)* were cited in support.
7. It was submitted that documentary evidence presented before the trial court by the Appellant at pages 11 and 12 of the record of appeal, speak to the ownership of the suit property by the Appellant which shows the root of title to suit property. The copy of records of demarcation held by the demarcation officer dated 21st March 2018 produced in evidence during trial confirmed that the suit land had been recorded in the name of the Appellant herein as the owner. The latter from the Ministry of Lands, Adjudication and Settlement Officer dated 30th April 2018 also confirmed that the suit land is owned by the Appellant. The agreement dated 25th December 2015 produced during trial confirmed that the suit land had been given to the Appellant by one Martin Ngala who was its initial owner.
8. It was further submitted that the trial court erred when it made a finding that the Appellant lacked the capacity to sue for lack of Letters of Administration pursuant to section 79 of the *Law of Succession Act* because the documents in respect to ownership of the land had been recorded in the Appellant's name and not the deceased's name. The court was urged to allow the appeal with costs and grant the reliefs sought.
9. The Respondent in her submissions before court restated the facts of the suit before the lower court and submitted that the Appeal lacks merit. She also added the Appellant had failed to prove his case during trial and further that he lacked legal capacity to file the instant suit as was observed in the Ruling delivered by Wundanyi ELC Suit No. 5 of 2019.
10. The court has considered the entire Record of Appeal and the written submissions filed by the parties herein and has outlined the following issues for determination: -
 - i. Whether the Appellant had the legal capacity to institute the suit before the trial court.
 - ii. Whether the Appeal is merited.
 - iii. What orders should issue as to costs.
11. The court shall now consider all the issues sequentially.



12. This being the first appeal, this Court has power to review the facts and evidence and draw its own conclusions. In the case of Abok James Odera & Associates –Vs- John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR the Court of Appeal restated the duty of first appellate Court as thus: -

“This being a first Appeal, we are reminded of our primary role as a first appellate Court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way,”

13. The first issue that the court ought to consider is whether the Appellant had the capacity to institute the suit herein. The Appellant herein instituted the suit before the trial court on 29th January 2021 vide a plaint dated 22nd January 2021. It was pleaded that the suit parcel Number 1263 belongs to the Appellant. The subject parcel had disputes before adjudication between the Appellant’s parents and the Respondent as seen in Wundanyi ELC Case No. 5 of 1996. It was also pleaded that upon the death of the Plaintiff’s father and upon coming of the adjudication process in the area, the subject suit property was adjudicated and registered in the names of Martin Ngala Nyambu on 12th February 2010 but later on the 21st March 2018 Martin Ngala Nyambu surrendered the land and transferred the plot to the Appellant. It was also submitted that there was no suit pending save for Wundanyi ELC No. 5 of 2019 which was dismissed on technicality after the Plaintiff wrongly appeared to have filed the suit on behalf of the late father’s estate without letters of administration.

14. During trial, the Appellant who had testified as PW1 stated that this case involved the same subject matter as in Wundanyi ELC No. 5 of 1996. In respect to the Appeal, the Appellant submitted that the suit land was recorded in the Appellant’s name and not the deceased name and hence the Appellant had the requisite locus standi to appear and maintain the suit.

15. Locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.

16. Section 79 of the Law of Succession Act vests the property of the deceased in the personal representative. It states:-

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of the grant, and subject to any limitation imposed in the grant all the property of the deceased shall vest in him as personal representative.”

17. The effect of Section 79 is that the personal representative steps into the shoes of the deceased, but as trustee on behalf of the beneficiaries. It is him who has the power to enter into contracts on behalf of the estate, like sale agreements, and to enforce any contracts existing between the estate and third parties.

18. The issue as to whether the Appellant instituted the suit without applying for letters of administration in respect to the suit property was first considered by the trial court in Wundanyi ELC No. 5 of 2019. The Wundanyi Court held that the Plaintiff (now Appellant) had instituted the suit without obtaining a limited grant which authorises him to file the suit and hence without the letters of administration of grant the court lacked jurisdiction to hear and determine the suit. The said issue was also considered by the trial court in its judgment which it held that the Appellant ought to have obtained a grant of letters of administration to enable him pursue any claim in relation to his deceased father’s estate. The



court further held that the Appellant ought to have complied with the said provisions instead of filing a fresh suit.

19. The court has perused the Record of Appeal herein and considered the submissions made by the parties. It is evident that the land belonged to the Appellant's father called Mwawuganga Tole who died on 18.9.2012 before the suit was filed. There was no evidence adduced herein to show that the Appellant even obtained any letters of grant to institute the suit on behalf of the deceased. The Appellant filed the current suit without demonstrating that evidence and as such the Appellant's suit before the lower court was a non starter and this court proceeds to uphold the trial court's finding on the said issue. The Appellant did not have the locus standi to institute the suit before the lower court.
20. Having found that the Appellant lacked the locus standi to institute the suit, it is trite law that without it, even when a party has a meritorious case, he cannot be heard because of that. Locus standi is so important that in its absence, a party has no basis to claim anything before the court. In view of the foregoing this court cannot even address itself on the other issues raised herein.
21. Consequently, it is the finding of this court that the appeal is unmeritorious and this court proceeds to dismiss the same with an order that each party do bear own costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 4TH DAY OF JULY, 2024.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Mutinda for Appellant.

Mr. Mwanyumba for Respondent.

Court Assistants: Mary Ngoira and Norah Chao.

