



Edel Weiss Limited v Kimani & another (Environment & Land Case E379 of 2021) [2023] KEELC 814 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEELC 814 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E379 OF 2021
OA ANGOTE, J
FEBRUARY 9, 2023**

BETWEEN

EDEL WEISS LIMITED PLAINTIFF

AND

SIMON NGIGI KIMANI 1ST DEFENDANT

RUDUFU LIMITED 2ND DEFENDANT

RULING

1. This Ruling is in respect of the 1st defendant's notice of preliminary objection dated December 2, 2021. In the preliminary objection, the 1st defendant has averred that the plaintiff lacks the locus standi and cannot institute, initiate or commence an action in this suit.
2. The preliminary objection proceed by way of written submission. The 1st defendant's counsel submitted that the plaintiff has not completed the transfer process and cannot commence this suit in its own name and that this proposition has been admitted by the plaintiff.
3. It was submitted that no explanation has been offered by the plaintiff why the suit could not be filed by the trustee, NationalBank of Kenya and that section 43 of the Land Act recognizes the registration of the transfer as the only process that can confer proprietorship rights to a party.
4. On the part the plaintiff's advocate, he submitted that the preliminary objection as filed by the 1st defendant lacks sufficient information and characteristics of a preliminary objection and that it is meant to delay the expedient determination of the suit.
5. It was submitted that the plaintiff's advocates on record attended an auction of the suit property Dagoretti/Riruta/S. 129 on May 18, 2021 at Naivasha outside KCB Bank; that the plaintiff's bid of Kshs12,500,000 was the highest and that the plaintiff fully honoured the terms of the auction sale.



6. The plaintiff's counsel submitted that after paying the full purchase price to the National Bank; the plaintiff was issued with the memorandum of sale and the certificate of sale and that upon successful auction and payment, the plaintiff executed the transfer.
7. It is the plaintiff's advocates submissions that in breach of the plaintiff's beneficial rights and rights to possession, the defendants obstructed and interfered with the plaintiff's peaceful possession of the suit property by vandalizing and causing deliberate destruction to the suit property between November 5, 2021 and December 4, 2021.
8. The only issue for determination is whether the plaintiff has the *locus standi* to sue the defendant for recovery of the suit property.
9. In the Plaintiff, the plaintiff has averred that it's the lawful beneficial owner of the property known as Dagoretti/Riruta/S.129 (the suit property) having successfully bid for and purchased the said property at an auction sale held on May 18, 2021 on the instructions of National Bank of Kenya Limited.
10. According to the plaintiff, it was declared the highest bidder at the price of Kshs.12,500,000 and that it paid the full purchase price to the chargee. This chronology of events has not been contested by the defendants.
11. In the case of *Alfred Njau and others v City Council of Nairobi* [1982] KAR 229, the court defined the word locus standi as follows;

“the term Locus Standi means a right to appear in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings.”
12. Although the 1st defendant has argued that it is only a legal owner of land that can sue in his name, and not the beneficial owner, he has not referred this court to any law or authority that says so.
13. If indeed the plaintiff purchased the suit property and signed the Memorandum of Sale, he has the right to file a suit for recovery of the land that he purchased, or at worst, the money he paid for the land. The issue of whether the suit property has been transferred to him or not can only be raised by the defendants at trial, and only with a view of challenging the legality of the said sale and not the locus standi of the plaintiff.
14. In fact, purchasers of land have always filed suits in respect of the land they have purchased irrespective of whether they have titles or not. The moment one becomes a beneficial owner of land by purchase, he has the locus standi to institute a suit, with the only limitation being the capacity in which he institutes such a suit.
15. For those reasons, I find the notice of preliminary objection dated December 2, 2021 to be unmeritorious. The notice of preliminary objection is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9TH DAY OF FEBRUARY, 2023.

O. A. ANGOTE

JUDGE

In the presence of;

Ms Ongunda for the Plaintiff/Applicant



**No appearance for the Respondent
Court Assistant- June**

