



**Njuguna v Mungai & 3 others (Environment & Land Case
E53 of 2022) [2023] KEELC 477 (KLR) (6 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 477 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E53 OF 2022
FM NJOROGE, J
FEBRUARY 6, 2023**

BETWEEN

WACHIRA NJUGUNA PLAINTIFF

AND

DANSON GATHEMEI MUNGAI 1ST DEFENDANT

DANIEL MACUA 2ND DEFENDANT

LAND REGISTRAR NAKURU COUNTY 3RD DEFENDANT

NATIONAL LAND COMMISSION 4TH DEFENDANT

RULING

1. This is a ruling is in respect of the 1st and 2nd defendants' preliminary objection dated October 5, 2022 which is on the following grounds:
 - a. That the Plaintiff/Applicant herein has no locus standi to sue for and or on behalf of the estate of Erastus Njuguna Kamau.
 - b. That the entire suit is defective and a non-starter as it has been presented by a party who has no legal capacity to sue on behalf of the Estate of the late Erastus Njuguna Kamau.
 - c. That the entire suit should be struck out with costs.
2. The plaintiff commenced this suit vide the Complaint dated September 29, 2022 and filed on September 30, 2022. The complaint was filed together with an application dated September 29, 2022 and also filed on September 30, 2022. In response to the application the 1st and 2nd defendants filed the preliminary objection under consideration together with a replying affidavit sworn on October 5, 2022. The plaintiff then filed a further affidavit sworn on October 11, 2022 and filed on the same date whose



contents were replicated by the plaintiff in his submissions on the preliminary objection. The court on November 3, 2022 directed the parties to first address the Preliminary Objection.

3. The preliminary objection was canvassed by way of written submissions. The 1st and 2nd defendants filed their submissions dated November 16, 2022 on the same date, the plaintiff filed his submissions dated November 28, 2022 on December 2, 2022 while the 3rd defendant filed his submissions dated December 2, 2022 on December 5, 2022.
4. The 1st and 2nd defendants submitted that the main issue raised in their preliminary objection is that the plaintiff has no locus standi to institute the present proceedings. They submitted that the plaintiff commenced the present proceedings on behalf of Erastus Njuguna Kamau (deceased) seeking proprietary rights over the suit property; that it is trite law that the representation of any estate of a deceased person in any legal proceedings can only be done by a person duly authorized by the law to do so and they have to apply and be issued with a grant of letters of administration allowing them to file or defend a suit on behalf of the estate of a deceased person.
5. The 1st and 2nd defendants relied on Section 83 of the [Law of Succession Act](#) and stated that the plaintiff in his Further Affidavit filed on October 11, 2022 indicated that he had capacity to institute the suit as a beneficial owner of the suit property having inherited the same vide Nakuru Succession Cause No 11 of 2019, that since the property is still being claimed as a property of the estate of the late Erastus Njuguna Kamau, the only person with such authority in law to sue on behalf of the estate is the administrator.
6. They also submitted that the plaintiff attached a grant issued on October 6, 2022 to his further affidavit to show that he had capacity to sue but that the said grant was issued a day after they had filed their preliminary objection. They relied on Section 80(2) of the [Law of Succession Act](#) which provides as follows:

' A grant of letters of administration, with or without the will annexed shall take effect only as from the date of such grant.'
7. The 1st and 2nd defendants further submitted the fact that the proceedings to obtain the said grant were commenced well before the filing of the suit does not legitimize the grant. That the said proceedings did not confer on the plaintiff the legal capacity to institute the suit before the grant was issued and therefore his capacity to institute the suit was effective from October 6, 2022 and not September 30, 2022 when the suit was filed. They relied on the case of [Isaya Masira Momanyi v Daniel Omwoyo & another \[2017\] eKLR](#) in support of their arguments.
8. The 1st and 2nd defendants concluded their submissions by seeking that their preliminary objection be allowed.
9. In reply the plaintiff submitted on whether he has the locus standi to sue for and or behalf of the estate of Erastus Njuguna Kamau and whether the suit is defective and a non-starter on the ground that it has been presented by a party who has no legal capacity to sue.
10. On the first issue, the plaintiff relied on Section 53 of the Law Succession Act and submitted that he had petitioned for limited Grant Ad Litem vide Nakuru High Court Succession Cause No E083 of 2022 after the administrator of the estate of the late Erastus Njuguna one Susan Wairimu Mwangi declined to institute the suit to safeguard the interest of the beneficial owners of the property.
11. He submitted that the succession cause was transferred to the Chief Magistrate's Court and given a new case number which is Nakuru Succession Misc 292/2022 which was heard on September 12, 2022



and allowed. That due to the delay in the registry in typing P & A 47 'A' and presenting the same for signing the same was issued on October 6, 2022.

12. The plaintiff also submitted that at the time of instituting this case which was on September 30, 2022, he had the legal capacity to do so as per the orders of the court issued on September 12, 2022 by Hon D Macharia. He concluded his submissions by seeking that the 1st and 2nd defendants' preliminary objection be dismissed with costs.
13. The 3rd defendant submitted on whether the plaintiff has the locus to institute the suit. Counsel for the 3rd defendant relied on the case of *Julian Adoyo Ogunga & Anor v Francis Kiberenge Bondeva Civil Appeal 119 of 2005* and submitted that for anyone to institute a suit on behalf of the estate of a deceased person, they must have a grant of letters of administration. In the event that pleadings are filed in court by persons with no locus standi the said pleadings are void ab initio and the court does not have jurisdiction over such.
14. The 3rd defendant also relied on the cases of *Ibrahim v Hassan & Charles Kimenyi Macharia [2019] eKLR*, *Otieno vs Ougo [1986-1989] EALR 468* and concluded their submissions by praying that the suit be dismissed as the plaintiff lacks locus standi to institute the present suit.

Analysis and Determination

15. After considering the preliminary objection and the submissions, the only issue that arises for determination is whether the plaintiff has the locus standi to institute the suit.
16. The plaintiff in the Plaint describes himself as a beneficial owner of land parcel No Nakuru Municipality Block 4/130 having inherited the same from the late Erastus Njuguna Kamau in whose name the property is still registered.
17. Legal proceedings on behalf of the estate of a deceased person can only be commenced by persons who have been issued with grant of letters of administration. Section 82 of the *Law of Succession Act* provides as follows:

' Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers-

- (a) To enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
- (b) To sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that-

- (i) Any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
- (ii) No immovable property shall be sold before confirmation of the grant;
- (c) To assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;'



18. In the present matter, the 1st and 2nd defendants are challenging the plaintiff's locus standi to institute the suit. They allege that at the time of the institution of the suit which was on September 30, 2022, the plaintiff lacked the locus standi to institute the present suit on behalf of the estate of Erastus Njuguna Kamau (deceased).
19. The plaintiff on the other hand alleged that he commenced proceedings before the High Court seeking grant of letters of administration Ad Litem which were later transferred to the Chief Magistrate's court for hearing. He alleges further that the matter was heard on September 12, 2022 and he was granted letters of administration Ad Litem on the said date. That due to a delay in the signing of the said P & A Forms, the letters of administration Ad Litem was issued on October 6, 2022.
20. Annexed to the Plaintiff's further affidavit sworn on October 11, 2022, is a copy of the limited grant of letters of administration Ad Litem issued to the plaintiff on October 6, 2022. As pointed out by the 1st and 2nd defendants, the suit was filed on September 30, 2022. The question then arises as to whether the plaintiff had the locus standi to institute the present suit given that he was issued with the grant of letters of administration ad litem on October 6, 2022.
21. The court in the case of *saya Masira Momanyi v Daniel Omwoyo & another* (supra) held as follows:
 - ' 9. In the instant matter, the issue is whether or not at the time the plaintiff filed the instant suit he had obtained the requisite letters of administration to the estate of the deceased to clothe him with capacity or locus standi to represent the estate of the deceased. The plaintiff did not file any affidavit to respond to the 1st defendant's assertions that he had not obtained grant of letters of administration to enable him to bring the instant suit. The plaintiff instead filed grounds of opposition set out earlier in this ruling through which he appears to view failure to obtain a grant of letters of administration before filing suit as a mere procedural technicality which the court can overlook. With respect I do not agree that failure to obtain a grant of letters of administration to a deceased's estate to enable one to acquire capacity to file a suit on behalf of the deceased estate would be a mere procedural technicality. The law is express that a deceased estate can only be represented by a person who is duly authorized to do so.
 10. In his filed submissions the plaintiff has unprocedurally annexed as 'Ex.4' a copy of letters of administration to the estate of Marisa Onsase dated July 20, 2016 issued to Isaya Masira Momanyi in CMC Succ Cause No 219 of 2016. The letters of administration are to the plaintiff in the present suit meaning that as at June 8, 2016 when he filed the suit he never had any letters of administration to the deceased estate. He definitely did not have any capacity and/or locus standi to file the suit on behalf of the deceased estate. The suit is incompetent and filed in abuse of the process of the court. The suit was null and void ab initio and cannot be sustained.'
22. The plaintiff argues that his petition for grant of letters of administration Ad Litem was heard on September 12, 2022 and issued on the same date by Hon D Macharia but no evidence in support of the same was adduced. The rule of evidence is that he who asserts proves. It is improper for the respondent to expect this court investigate his allegations and obtain the evidence by which he ought to have supported his applications.



23. Since the letters of Administration Ad Litem attached to the plaintiff's further affidavit clearly indicate that it was issued on October 6, 2022, at the time the plaintiff was instituting the case on September 30, 2022 he did not have the locus standi to do so as far as the Affidavit evidence presented is concerned.
24. In conclusion therefore, the 1st and 2nd defendants' preliminary objection has merit and the plaintiff's suit is hereby struck out with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 6TH DAY OF FEBRUARY, 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

