



**Mbugua v Mathara Holdings Limited & another (Environment & Land  
Case E072 of 2021) [2022] KEELC 40 (KLR) (9 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 40 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E072 OF 2021**

**BM EBOSO, J**

**MAY 9, 2022**

**BETWEEN**

**SAMUEL MUGO MBUGUA ..... PLAINTIFF**

**AND**

**MATHARA HOLDINGS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**VICTORIA NYAMBURA KARUGU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Falling for determination in this ruling are two applications. The first application is the plaintiff's notice of motion dated 19/7/2021, through which the plaintiff seeks a temporary injunctive order restraining the 1st and 2nd defendants against denying him and his family unlimited user and / or access through what he describes as a public road of access comprised in Land Reference Numbers 14274/7/1, 14274/8/1 and 14274/9/1. He further seeks an interlocutory mandatory injunctive order compelling the two defendants to remove the barrier erected on Land Reference Number 14274/7/1. The second application is the 1st defendant's notice of motion dated 9/11/2021, through which the 1st defendant seeks an order striking out this suit on the ground that the plaintiff lacks the locus standi to bring and prosecute this suit. The court has considered the two applications. Since the 1st defendant's application dated 9/11/2021 challenges the validity of the plaintiff's suit, that particular application will be disposed first. Whether or not the court will make pronouncements on the plaintiff's application dated 19/7/2021 will depend on the outcome of the 1st defendant's application dated 9/11/2021.
2. The plaintiff initiated this suit through a plaint dated 19/7/2021. His case is that between 2018 and 2019, Land Reference Number 14274/37 was subdivided into three parcels identified as Plots "A", "B", and "C". Surveys relating to the three subdivisions are pending registration. The three plots have been allocated to the three households of Johnson Mbugua Mugo. Plots "A" and "C" are accessible through a nearby public road. However, Plot "B" which was assigned to one Jane Wambui Mbugua



[now deceased] can only be accessed through Land Reference Number 14274/7/1 which forms part of a public road that was created during the subdivision of Land Reference Number 14274/38 by its joint owners, M/s J. M Mugo Investments Company Limited and the estate of the late James Ngethe Mwareri.

3. The plaintiff contends that in 2019, the defendant erected a barrier across the road at the end of Land Reference Number 14274/7/1. It is the case of the plaintiff that erection of the barrier constitutes a violation of his right of user and access through the road. He adds that on 24/12/2020, the 2nd defendant caused its security guards to deny him and his family access to “their plot B” by means of motor vehicles. He adds that the only access allowed to Plot “B” by the defendants is by foot.
4. The plaintiff seeks, among other prayers, a declaration that Land Reference Numbers 14274/7/1, 14274/8/1 and 14274/9/1 are not private properties and that they comprise a public road of access; a permanent injunction restraining the defendants against erecting barriers or road blocks at any section of the said parcels of land; and general damages for violation of his right of user and/or access.
5. As stated in the opening paragraph of this ruling, the 1st defendant’s application under consideration seeks an order striking out the plaintiff’s suit on the ground that the plaintiff lacks the necessary locus standi. It is supported by an affidavit sworn on 9/11/2021 by Victoria Nyambura Karugu. The 1st defendant’s case is that the suit herein has been wrongly filed by the plaintiff on behalf of Johnson Mbugua Mugo and the estate of Jane Wambui Mbugua. The 1st defendant contends that the purported power of attorney donated by Johnson Mbugua Mugo is held jointly and does not authorize the plaintiff to act solely without his co-donees, namely, David Njihia Mbugua and Stephen Kiania Mbugua. Secondly, the 1st defendant contends that the limited grant of letters of administration issued to the plaintiff on 15/6/2021 only authorizes the plaintiff to prosecute or defend Nairobi High Court Commercial Case No. 008 of 2020 and Nairobi Court of Appeal Civil Appeal No E 288 of 2020 on behalf of the estate of the late Jane Wambui Mbugua. It is the case of the 1st defendant that the limited grant does not authorize the plaintiff to initiate nor prosecute this suit on behalf of the estate of Jane Wambui Mbugua. Thirdly, the 1st defendant contends that the proprietors of the land alleged to be entitled to be served by the alleged public road are a limited liability company, J M Mugo Investments Company Limited, and the estate of James Ngethe Mwareri and the two proprietors are not parties to this suit. It is the case of the 1st defendant that the suit herein is frivolous, vexatious and an abuse of the process of the court and ought to be struck out.
6. Responding to the application, counsel for the plaintiff makes reference to Section 28 of the [Land Registration Act](#) and submits that the right of way is an overriding interest. Counsel adds that the substratum of the plaintiff’s suit is that Land Reference Numbers 14274/7/1, 14274/8/1 and 14274/9/1 were surrendered to the Government in 2009 by the plaintiff’s family for establishment of a public access road. He adds that the plaintiff and his family are beneficial owners of abutting properties that are serviced by the public road. He adds that the plaintiff has a beneficial interest in Land Reference Number 14274/35 owned by a family company, J. M Mugo Investment Company Limited, and in Plot “B” which is a portion of Land Reference Number 14274/37 owned by the Plaintiff’s late mother, Jane Wambui Mbugua, but which is still registered in the name of M/s J. M Mugo Investments Company Limited.
7. The 2nd defendant supports the 1st defendant’s application. Her arguments are, by and large, the same as those advanced by the 1st defendant.
8. I have considered the pleadings, evidence and the respective submissions in relation to the application dated 9/11/2021. The single question falling for determination in the said application is whether the plaintiff’s suit is fatally defective for want of locus standi on part of the plaintiff.



9. The court is alive to the fact that it has been invited to exercise the jurisdiction of striking out a suit. The said jurisdiction is a draconian one and should always be exercised with great caution and only in a clear case. Indeed, the Court of Appeal made the following guiding observation in Nairobi CA Civil Appeal No 85 of 2002; *Fremar Construction Company Ltd v Minakash N Shah*:

“..... striking out a pleading is a drastic remedy and the powers of the court are to be exercised with great caution and only in clear cases. But the power is clearly donated in the rules and exists inherently for the court in the interest of justice, to reject manifestly frivolous and vexatious pleadings and suits to protect itself from abuse of its powers.”

10. The gist of the plaintiff's suit is that between 2018 and 2019, Land Reference Number 14274/37 was subdivided into three plots designated as “A”, “B” and “C”. Plot “B” was given to his late mother, Jane Wambui Mbugua. Plots “A” and “C” are serviced by one public road of access. Plot “B” is supposed to be serviced by a public road that is comprised in three parcels that were surrendered to the Government as a public road, namely Land Reference Numbers 14274/7/1, 14274/8/1 and 14274/9/1. The plaintiff's gravamen is that the defendants have erected a barrier on Land Reference Number 14274/7/1 which is a public road servicing Plot No “B” and the barrier is inhibiting access to and from Plot “B” by way of motor vehicles. Does the plaintiff have the locus standi to ventilate the above gravamen? Looking at the pleadings, witness statement, and evidential materials presented by the plaintiff, I do not think he had the necessary locus standi to initiate and prosecute this suit.

11. The plaintiff made the following averments in paragraphs 4 and 5 of the plaint:

“4. . The plaintiff is a the personal representative of Jane Wambui Mbugua (deceased) who was wife to Johnson Mbugua Mugo. The plaintiff is also a donee of the said Johnson Mbugua Mugo pursuant to a general power of attorney. Johnson Mbugua Mugo is the managing director and shareholder of J. M Mugo Investments Company Limited alongside Jane Wambui Mbugua; and he is the beneficial owner of the company.

5. At all times relevant hereto, Johnson Mbugua Mugo owned L.R No 14274/9 through J. M Mugo Investments Company Limited. Johnson Mbugua Mugo also co-owned L. R 14274/8 and L.R 14274/7 with James Ngethe Mwareri (deceased) in the name of Gakui Farmers Limited. Abutting L.R 14274/8 are L.R No.85/6 – 15 (orig. No. 85/4/2 – 11) belonging to James Boro Karugu but held/registered in the name of the 1st defendant. All the foregoing properties are situate in Kiambu.”

12. Further, the plaintiff sated as follows in paragraphs 3, 4 and 5 of his witness statement.

“3. My mother Jane Wambui Mbugua died on 7/2/2021 and I was appointed by the High Court in Nairobi as her person representative on 15/6/2021. I am therefore competent to file the suit herein on behalf of the Estate of Jane Wambui Mbugua.

4. I am also a donee of Johnson Mbugu Mugo pursuant to the general power of attorney dated 17/7/2010, alongside my brother, David Njihia Mbugua and Stephen Kiania Mbugua. The power of attorney authorizes us to manage the affairs of Johnson Mbugua Mugo, in the protection of his interests and those of his family.



5. Johnson Mbugua Mugo is the managing director and shareholder of J. M Mugo Investments Company Limited alongside Jane Wambui Mbugua (deceased) and my step mothers. The said company was incorporated by Johnson Mbugua Mugo to hold properties/assets for his benefit and for the benefit of his family; and Johnson Mbugua Mugo is the beneficial owner of the company.”
13. It is clear from the above excerpts from the plaintiff’s pleadings and witness statement that the plaintiff brought this suit on behalf of the estate of the late Jane Wambui Mbugua whom the plaintiff contends is the beneficial owner of Plot No. “B” which is alleged to be serviced by the road comprised in Land Reference Number 14274/7/1. Secondly, it is clear from the materials placed before this court that the grant of letters of administration which the plaintiff relied on when initiating this suit on behalf of the estate of the late Jane Wambui Mbugua only authorized him to prosecute or defend Nairobi High Court Commercial Cause No 008 of 2020 and Nairobi Court of Appeal Civil Appeal No E 288 of 2020. The said limited grant did not authorize the plaintiff to initiate this suit.
14. Our courts have umpteen times unequivocally stated that where one seeks to sue on behalf of a deceased person, the person seeking to sue must first obtain an appropriate grant of representation under the law of succession. Consequently, given that the plaintiff initiated this suit on behalf of the estate of the late Jane Wambui Mbugua without first obtaining an appropriate grant of representation, the suit is fatally and irredeemably defective and stands to be struck out.
15. Through his pleadings and averments in the witness statement, the plaintiff similarly purports to sue on behalf of Johnson Mbugua Mugo whom he describes as the managing director and shareholder of J M Mugo Investments Company Limited, the registered proprietor of the parcel of land out of which Plots “A”, “B”, and “C” are intended to be surveyed. First, a limited liability company is a distinct legal entity with powers to sue in its own name in relation to rights appurtenant to its real properties. It does not initiate suits in the names of its shareholders or children of its shareholders.
16. Further, even if Johnson Mbugua Mugo was the registered proprietor of Plot “B”, the power of attorney which the plaintiff relied on to initiate this suit did not authorize him to solely initiate a suit on behalf of Johnson Mbugua Mugo. The authority granted through the alleged power of attorney is to be exercised jointly by the three donees.
17. For the above reasons, the court finds merit in the 1st defendant’s application dated 9/11/2021. Further, the court is satisfied that this is a proper case where the jurisdiction to strike out a suit can be properly exercised. The result is that the plaintiff’s suit is fatally and irredeemably defective and is hereby struck out on the ground that the plaintiff did not have the requisite locus standi to initiate the suit. The suit having been struck out, the plaintiff’s application dated 19/7/2021 stands struck out alongside the suit. The plaintiff will bear costs of the suit and the two applications.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 9TH DAY OF MAY 2022**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Ms Mutuku holding brief for Mr Miyare for the Plaintiff

Mr Kinyanjui holding brief for Mr Thatcher Owuor for the 1st defendant

Mr Graig Oyugi for the 2nd defendant



Court Assistant: Lucy Muthoni

