



REPUBLIC OF KENYA



KENYA LAW
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**Superon Schweisstechnik India Ltd v Oxychem Africa Limited;
Registrar of Trademarks (Interested Party) (Civil Suit E635 of 2023)
[2025] KEHC 8298 (KLR) (Commercial and Tax) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8298 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E635 OF 2023
FG MUGAMBI, J
JUNE 13, 2025**

BETWEEN

SUPERON SCHWEISSTECHNIK INDIA LTD PLAINTIFF

AND

OXYCHEM AFRICA LIMITED DEFENDANT

AND

THE REGISTRAR OF TRADEMARKS INTERESTED PARTY

RULING

Background and Introduction

1. The plaintiff, Superon Schweisstechnik India Limited, instituted this suit by way of a plaint dated 27th November 2023, alleging trademark infringement by the defendant. In response, the defendant raised a Preliminary Objection dated 19th March 2024 seeking to have the suit dismissed on the following grounds:
 - i. That the plaintiff is a foreign entity with no registered or principal place of business in Kenya and therefore lacks the requisite *locus standi* to institute and sustain these proceedings;
 - ii. That the plaintiff's legal status is unascertainable, as it is neither resident in Kenya nor does it have a physical address, place of business, or contact in the country;
 - iii. That the suit offends the provisions of Section 974(1) of the *Companies Act*, 2015, which prohibits unregistered foreign companies from carrying on business in Kenya;



- iv. That the plaintiff company has allegedly been dissolved in India, rendering it legally non-existent and incapable of suing.
2. In response, the plaintiff filed a replying affidavit dated 25th June 2024 sworn by its Vice President, Mr. Sreekanth Sreedhar Kurup. He avers that while the company has no registered office in Kenya, it retains legal capacity to sue a Kenyan resident in the Kenyan courts. The deponent further states that the plaintiff's status as a registered company in India is evidenced by a certificate of incorporation and other corporate records on file.
3. The affidavit also outlines the business relationship between the parties, noting that the defendant's CEO, Mr. Samuel Muchogu, had previously engaged in commercial dealings with the plaintiff both in Kenya and India. The plaintiff also provides a physical address, contact details, and website, countering the allegation that it is untraceable. Regarding the allegation of dissolution, the plaintiff clarifies that it merely underwent a corporate name change from Superon Schweisstechnik India Limited to Stellaris Specialities India Limited, which is verifiable through official documentation from the Indian Ministry of Corporate Affairs.
4. The plaintiff contends that the issues raised by the defendant, particularly regarding its legal status and whether it is carrying on business in Kenya, are factual in nature and cannot be resolved through a preliminary objection. The preliminary objection, in its view, fails to meet the threshold of a pure point of law.

Analysis and Determination

5. The parties filed their respective submissions in support of their positions, which I have carefully considered. The main issue for determination is whether the Preliminary Objection is properly founded and sustainable in law.
6. A preliminary objection was authoritatively defined in the landmark case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*, [1969] EA 696. The Court held that a preliminary objection must raise a pure point of law arising from the pleadings, and which, if successful, would dispose of the entire suit. It must be premised on the assumption that the facts pleaded by the opposing party are true. A valid preliminary objection cannot involve disputed facts, require the ascertainment of evidence, or call for the court to exercise discretion.
7. The defendant's objection squarely raises the issue of whether *locus standi* is necessarily contingent upon registration under Section 974(1) of the *Companies Act*. It is trite law that where a party's *locus standi* is in issue, and the court finds that the party lacks the requisite standing, the suit may be rendered incompetent and liable to striking out.
8. *Locus standi*, as defined in *Black's Law Dictionary* (9th Ed, page 1026), refers to a party's right to bring an action or to be heard in a given legal forum. It signifies the legal capacity to initiate proceedings and to seek judicial redress before a competent court. It serves as a substantive threshold question that determines whether a party has a sufficient interest in the subject matter to warrant the court's attention. The Courts have consistently affirmed this principle.
9. In *Law Society of Kenya v Commissioner of Lands & Others*, Nakuru HCCC No. 464 of 2000, the Court emphasized that *locus standi* is anchored in the party's demonstrable interest in the issues raised. Similarly, in *Alfred Njau & Others v City Council of Nairobi*, [1982] KAR 229, the Court held that *locus standi* is about the sufficiency of a party's legal or equitable interest in the matter. Thus, the doctrine of *locus standi* is concerned with whether the claimant has a genuine stake in the matter before the court.



10. Consequently, the question of registration, such as under Section 974(1) of the *Companies Act*, may be relevant in certain contexts, but it is not, in itself, determinative of *locus standi*. In my view, what is essential is whether a party can demonstrate a real and substantial connection to the subject matter of the litigation.
11. Against this background, the plaintiff's *locus standi* arises from its alleged claim as the registered proprietor of the trademark "Superon" in various jurisdictions, including Kenya. The foundation of its legal standing is not based on its status as a foreign company, but rather on its proprietary interest in the intellectual property rights allegedly infringed by the defendant.
12. The plaintiff asserts that the defendant has unlawfully continued to use or pass off goods under the "Superon" mark without its authorization, thereby infringing its registered trademark and causing it to suffer economic loss, reputational harm, and dilution of brand value. The right to bring an action for trademark infringement is conferred upon a registered proprietor of the mark under Section 7(1) of the *Trade Marks Act* (Cap. 506), which provides that:

“Subject to the provisions of this *Act*, the registration (whether before or after the commencement of this *Act*) of a person in Part A of the register as proprietor of a trade mark in respect of any goods shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trade mark in relation to those goods.”
13. Thus, it is my finding that the plaintiff's standing is firmly anchored in statutory intellectual property rights, and not in its corporate registration status under the *Companies Act*. The assertion that the plaintiff is suffering continuing harm as a result of the defendant's conduct provides a sufficient legal and factual basis to invoke the jurisdiction of this court and to seek redress through civil proceedings. The *locus standi* requirement is satisfied by the plaintiff's demonstrable proprietary interest in the trademark and the alleged violation of that interest within Kenya.
14. To that extent, the preliminary objection that challenges the plaintiff's standing on the basis of corporate registration under Section 974(1) of the *Companies Act* is in my view misdirected. The cause of action is not predicated on the plaintiff conducting business in Kenya, but rather on the enforcement of a legal right conferred by trademark law. The Court must therefore consider the plaintiff's capacity to sue from the lens of intellectual property rights, which transcend territorial corporate registration and are enforceable against infringement wherever they are duly registered. Accordingly, it is my finding that the plaintiff has *locus standi* to prosecute this claim.
15. I would equally agree with the plaintiff that the right to access justice is not contingent upon corporate registration, especially where the dispute arises within the Kenyan jurisdiction and affects persons resident or domiciled in Kenya. In this regard, the *Constitution of Kenya* provides robust safeguards. Article 48 guarantees every person the right of access to justice, while Article 50 (1) entitles every person to a fair and public hearing before an independent and impartial court or tribunal. Further, Article 22 (1) allows any person, including a juristic person, to institute proceedings where a right or fundamental freedom in the Bill of Rights is threatened or violated.
16. Therefore, the ability of a foreign company to sue in Kenya must be assessed in the broader constitutional context of access to justice, and not narrowly confined to compliance with company registration requirements. Where a foreign entity seeks to vindicate rights that are legally recognized within the Kenyan legal system, such as intellectual property rights under the *Trade Marks Act*, the courts must ensure that procedural or technical objections do not subvert the right to be heard.



17. I therefore find that the plaintiff's foreign status and lack of registration under Section 974 (1) of the *Companies Act* do not extinguish its right to institute these proceedings, particularly where the alleged infringement and harm occurred within Kenya.
18. Additionally, the issues raised by the defendant regarding the dissolution of the plaintiff in India, breach of the provisions of the *Companies Act* and whether the plaintiff is carrying on business in Kenya or not are all factual and evidentiary in nature. They cannot be resolved without recourse to evidence.
19. In *Oraro v Mbaja*, [2005] 1 KLR 141, the Court emphasized:

“A preliminary objection ... must not be blurred with factual details liable to be contested and in any event to be proved through the process of evidence... Any assertion, which claims to be a preliminary objection, yet bears factual aspects calling for proof... is not a true preliminary objection.”

Disposition

20. Accordingly, the Preliminary Objection dated 19th March 2024 is devoid of merit. It is dismissed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 13TH DAY OF JUNE 2025.

F. MUGAMBI

JUDGE

