



REPUBLIC OF KENYA



**Bruton Gold Trading LLC v Amadi (t/a Amadi Associates Advocates) & 6 others (Civil Case E211 of 2023) [2025] KEHC 12657 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12657 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E211 OF 2023  
F GIKONYO, J  
JULY 24, 2025**

**BETWEEN**

**BRUTON GOLD TRADING LLC ..... PLAINTIFF**

**AND**

**ANNE ATIENO AMADI (T/A AMADI ASSOCIATES ADVOCATES) .... 1<sup>ST</sup>  
DEFENDANT**

**BRIAN OCHIENG AMADI ..... 2<sup>ND</sup> DEFENDANT**

**ANDREW NJENGA KIARIE ..... 3<sup>RD</sup> DEFENDANT**

**KIKANAE ADRIAN TOPOTI ..... 4<sup>TH</sup> DEFENDANT**

**DANIEL MURIITHI ..... 5<sup>TH</sup> DEFENDANT**

**EDWARD TAYLOR ALIAS MBORONDA SEYENKULO SAKOR .... 6<sup>TH</sup>  
DEFENDANT**

**AFRICAN BANKING CORPORATION LIMITED (AKA ABC  
BANK) ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

**Locus standi of foreign company**

1. The plaintiff, Bruton Gold Trading LLC, is a gold trading company based in Dubai, United Arab Emirates (UAE). It instituted this suit through a plaint dated 17<sup>th</sup> May 2023, alleging fraud, professional misconduct, abuse of office, breach of law and illegality.



2. In response, the 1<sup>st</sup> defendant filed a preliminary objection (PO) dated 26<sup>th</sup> May 2025, raising seven points. The main ground is that the plaintiff lacks locus standi to sue as it is non-compliant with section 974 of the *Companies Act*, which requires foreign companies to be registered in Kenya.
3. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants also raised a PO of the same date, to the effect that the plaintiff has no legal capacity to institute and maintain this suit.

### **Submissions**

4. The POs were canvassed through written submissions. The 1<sup>st</sup> defendant filed written submissions dated 3<sup>rd</sup> June 2025. She also argued that the plaintiff is non-compliant with section 974 of the *Companies Act*, which requires foreign companies to be registered in Kenya to retain the locus standi requisite to file the present suit.
5. According to the 1<sup>st</sup> defendant, it is not disputed that the plaintiff is a limited liability company incorporated in Dubai within the UAE and carrying on business in Dubai. She contended that a non-existent person cannot sue and once a court is made aware that a plaintiff is non-existent, it cannot allow the action to proceed.
6. The 1<sup>st</sup> defendant relied on: -
  1. Alfred Njau, Aluchio Liboi, Joseph Muya Mukabi, Peter Inyangala, Akhonya Analo and Jacob Gichigo v City Council of Nairobi (Civil Appeal 74 of 1982) [1983] KECA 56 (KLR) (Civ) (28 June 1983) (Judgment)
  2. Turn Key International Trade Limited v Sunmatt Limited (Sundip Shah) [2024] KEHC 2701 (KLR)
  3. Stichting Rabo Bank Foundation v Ava Chem Limited & Another [2024] KEHC 9931 (KLR)
  4. Root Capital Incorporated v Tekangu Farmers Co-operative Society Ltd & another [2018] KEHC 5687 (KLR)
7. In support of the 1<sup>st</sup> defendant's PO, the 7<sup>th</sup> defendant filed written submissions dated 10<sup>th</sup> June 2025. It contended that the PO has satisfied the threshold set out in Mukisa Biscuits Manufacturing Company Ltd v West End Distributors [1969] EA 696, as it raises pure points of law.
8. The plaintiff filed written submissions dated 4<sup>th</sup> July 2025. It argued that the PO is res judicata and ought to be dismissed. Through a ruling dated 20<sup>th</sup> November 2024, the court held that the plaintiff is registered and carries on business in Dubai. No appeal was filed against the said ruling. The 1<sup>st</sup> defendant did not raise any objection on locus standi in her previous applications dated 19<sup>th</sup> May 2023 and 26<sup>th</sup> February 2024. The issue is res judicata as it ought to have been raised earlier.
9. The plaintiff highlighted that the court found that its claim is not frivolous because it claims that it lost money through the 1<sup>st</sup> defendant's accounts or accounts operated or opened by her.
10. The plaintiff submitted that its claim is not founded on a business requiring its registration as a foreign company in Kenya. It thus argued that the Turn Key International Trade Limited v Sunmatt Limited [supra] is distinguishable. It also argued that the PO is based on grounds that would lead the court to delve into factual matters contrary to the threshold in Mukhisa Biscuits [supra].
11. The plaintiff submitted that Section 14 of the *Civil Procedure Act* grants it the locus standi to pursue compensation.



12. The plaintiff prayed for costs at a higher scale upon dismissal of the POs, owing to the 1<sup>st</sup> defendant's several attempts to frustrate the hearing of the suit.
13. The plaintiff relied on: -
  1. Yvonne Celia Adhiambo Rareiya & another (suing on behalf of the late Tabitha Obala Ogutu) v Oloo Onyango Elly t/a Epic Aviation College & 2 others [2020] eKLR

### **Analysis And Determination**

#### **Res judicata**

14. Before I consider the merits of the POs, the plaintiff contended that the grounds of the objections are res judicata. It relied on the court's findings in the ruling of 20<sup>th</sup> November 2024.
15. I have gone through the ruling. The ruling was in respect of the 1<sup>st</sup> defendant's application dated 26<sup>th</sup> February 2024, seeking security for costs. At para. 16, the court observed that: - "The fact that it (the plaintiff) carries business outside jurisdiction cannot per se be the basis for ordering security for costs."
16. The POs before the court challenge the plaintiff's locus standi and legal capacity to sue, on the basis that it is a foreign company and not registered in Kenya under section 974 of the Companies Act.
17. One of the key conditions for res judicata under section 7 of the Civil Procedure Act is that the issue ought to have been heard and finally determined. From the ruling, I am not persuaded that the issues raised through the PO were heard and finally decided.
18. Therefore, the plea of res judicata is not appropriately situated or pleaded. Thus, not applicable in the circumstances. The claim for res judicata is rejected.

#### **Threshold of a PO**

19. In *Mukisa Biscuits Manufacturing Company Ltd v West End Distributors* [supra], Sir Charles Newbold P., stated that a PO: -

"...raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion confuse issues. This improper practice should stop."
20. I will apply this test.

#### **Legal capacity and locus standi**

21. The defendants seem to argue two issues. One, of legal capacity of the plaintiff company; and the other on locus standi to sue. Making it necessary to discuss the two and their relationship.
22. Legal capacity is "the capability and power under law of a person to occupy a particular status or relationship with another or to engage in a particular undertaking or transaction" Merriam Webster Dictionary,
23. Legal capacity is distinct from locus standi. Locus standi is a party's right to bring an action or to be heard in a legal forum. Black's Law Dictionary (9<sup>th</sup> Ed.) However, legal capacity is an important element in locus standi.



## Of legal capacity

24. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants argued that the plaintiff lacks legal capacity to sue. According to them, the plaintiff is a non-existent entity because it is not registered as required under section 974. The latter argument subsumes the subject of legal personality or legal existence of a company.
25. Despite the foregoing argument, the 1<sup>st</sup> defendant, does not dispute that the plaintiff is a limited liability company incorporated in Dubai within the UAE and carrying on business in Dubai.
26. The plaintiff asserted that its claim is not founded on a business requiring its registration as a foreign company in Kenya.
27. What does Section 974 of the *Companies Act* provide? It provides that: -

“974.

- 1) A foreign company shall not carry on business in Kenya unless—
    - (a) it is registered under this Part; or
    - (b) it has applied to be so registered and the application has not been dealt with within the period prescribed for the purposes of this section.
  - (2) For the purposes of subsection (1), carrying on business in Kenya includes  
(but is not limited to)—
    - (a) offering debentures in Kenya; or
    - (b) being a guarantor for debentures”
28. The above section prohibits a foreign company from carrying on business in Kenya unless it is registered or has applied to be registered in accordance with Part XXXVII – Foreign Companies- of the *Companies Act*.
  29. The section defined carrying on business to include: - “offering debentures in Kenya or being a guarantor for debentures”.
  30. The said provision is not exclusive; it leaves the definition of carrying on business and the requirement for registration open to interpretation. But, the question is whether by interpretation, the section includes locus standi. This is the crux of the objections and will be determined later.
  31. The argument that the plaintiff is non-existent for non-compliance with the registration requirements under section 974 of the *Companies Act* invariably invites the discussion below.
  32. Under Article 260 of *the Constitution*, a “person” includes a company, association or other body of persons whether incorporated or unincorporated.
  33. More specifically, a foreign company is recognised under section 2 of the *Companies Act*, as “a company incorporated outside Kenya.”
  34. Some of the critical documents for registration of a foreign company under Part XXXVII – Foreign Companies- of the *Companies Act* include; ‘a certified copy of a current certificate of the foreign



company's incorporation or registration in its place of origin, or a document of similar effect'. Section 975(3)(a) of the *Companies Act*.

35. Flowing from the above, legal personality or existence of a foreign company is not necessarily given through registration under Part XXXVII – Foreign Companies- of the *Companies Act*. A refresher of class 101 on Company Law is that, upon incorporation in the country of origin, the foreign company becomes a legal person. See *Salomon vs. Salomon & Co Ltd*<sup>1</sup>.
36. But, of greater significance is that, the issue of whether a foreign company is incorporated in their country of origin is an evidentiary matter which requires probing of evidence and cannot therefore, found a preliminary objection. Such matter should be evaluated and determined in the trial.
37. Thus, it is irreconcilable notion that, the plaintiff, which is a foreign company incorporated in its country of origin, is non-existent for it has not been registered under Part XXXVII – Foreign Companies- as required under section 974 of the *Companies Act*.

### **Of locus standi proper**

38. Locus standi refers to the right or capacity of a person to bring legal action or to appear in court. It is essentially premised on having a sufficient or legitimate interest in a matter to be heard by the court. Locus standi is also considered to be the empowerment tool for parties to access justice; and obtain remedy and protection of rights. Which explains why in many jurisdictions, rules on locus standi have been relaxed and the right and legal capacity space widened to enhance access to justice as a way of sustainable development<sup>2</sup>.
39. Under Article 260 of *the Constitution*, a "person" includes a company, association or other body of persons whether incorporated or unincorporated. Legal standing to sue has been greatly enlarged by *the Constitution*. Article 48 guarantees every person the right of access to justice. 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 with violation or violated.
40. The *Civil Procedure Act* does not contain any or any specific provision that prohibits a foreign company from instituting a suit before the Kenyan courts.
41. The correct question therefore, is whether locus standi of a foreign company to seek remedy before the courts in Kenya, is necessarily dependent upon registration requirements under section 974 of the *Companies Act*.
42. In dealing with this question, the court (Dr. Mugambi J) in *Superon Schweisstechnik India Ltd v Oxychem Africa Limited; Registrar of Trademarks (Interested Party)* (Civil Suit E635 of 2023)<sup>3</sup>, observed that: -

“9. ...the doctrine of locus standi is concerned with whether the claimant has a genuine stake in the matter before the court.

<sup>1</sup> [1897] AC 22

<sup>2</sup> Constitution of Kenya

<sup>3</sup> [2025] KEHC 8298 (KLR) (Commercial and Tax) (13 June 2025) (Ruling)



10. Consequently, the question of registration, such as under Section 974(1) of the Companies Act, may be relevant in certain contexts, but is not, in itself, determinative of locus standi.”

43. Thus, locus standi is a fundamental principle of law premised on; a) the right to be heard<sup>4</sup> and access to justice<sup>5</sup>; and b) having a sufficient or legitimate interest in a matter to be heard by the court. *Law Society of Kenya v Commissioner of Lands & Others, Nakuru HCCC No. 464 of 2000*, and, *Alfred Njau & Others v City Council of Nairobi*<sup>6</sup>.

44. Locus standi should therefore ‘be assessed in the broader constitutional context of access to justice, and not narrowly confined to compliance with company registration requirements.’<sup>7</sup>.

45. These presents form the functional foundation for determination of the objections herein.

### Conclusions and orders

46. Legal personality or existence of a foreign company is not necessarily given through registration required under section 974 of the Companies Act.

47. Locus standi of a foreign company is not also necessarily dependent upon registration requirement under section 974 of the Companies Act. Although ‘the question of registration, such as under Section 974(1) of the Companies Act, may be relevant in certain contexts, but is not, in itself, determinative of locus standi.’<sup>8</sup>

48. The issue of whether a foreign company is incorporated in the country of origin is an evidentiary matter requiring probing of evidence, thus, not a matter for preliminary objection.

49. In any event, from the plaint, the plaintiff’s suit emanates from an agreement to export gold from Kenya to Dubai. Kenyan courts have the jurisdiction over an agreement which is made to be performed in Kenya. *United India Insurance Co Ltd v East African Underwriters (Kenya) Ltd*<sup>9</sup>

50. In the upshot, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants’ POs dated 26<sup>th</sup> May 2025 are dismissed. Costs to be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH TEAMS ONLINE APPLICATION THIS 24<sup>TH</sup> DAY JULY, 2025**

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**F. GIKONYO M.**

**JUDGE**

In the presence of: -

Murage for plaintiff

<sup>4</sup> Article 50 of the Constitution of Kenya, 2010

<sup>5</sup> Article 48 of the Constitution of Kenya, 2010

<sup>6</sup> [1982] KAR 229

<sup>7</sup> Supra note 2

<sup>8</sup> Supra note 2

<sup>9</sup> [1985] KECA 39 (KLR)



Odiwuor for Ms. Muthoni for 1<sup>st</sup> defendant  
Ms. Nyariki for Nyaberi for 2<sup>nd</sup> & 3<sup>rd</sup> defendant  
Ms. Wanjira for Ngugi for 5<sup>th</sup> defendant  
Gakunga for 7<sup>th</sup> defendant  
Kinyua C/A

