



**Pawa Africa v Co-operative Bank & 2 others (Civil Appeal
E029 of 2023) [2025] KEHC 11119 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11119 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E029 OF 2023
FN MUCHEMI, J
JULY 24, 2025**

BETWEEN

PAWA AFRICA APPELLANT

AND

CO-OPERATIVE BANK 1ST RESPONDENT

GIDEON MURIUKI 2ND RESPONDENT

NGURU AUCTIONEER 3RD RESPONDENT

*(Being an Appeal from the Ruling and Order of Hon. P. Mutua (SPM)
delivered on 1st November 2023 in Thika CMCC No. E251 of 2023)*

JUDGMENT

Brief facts

1. This appeal arises from the ruling of Thika Senior Principal Magistrate in CMCC No. E251 of 2023 whereby the appellant's suit was struck out with costs on the basis that the appellant lacked the requisite locus standi to institute the suit based on a contract between one Caroline Gichuki and the 1st and the 2nd respondents.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 5 grounds of appeal summarized as follows:-
 - a. The learned trial magistrate erred in law and in fact in failing to appreciate that Article 47 of [the Constitution](#) granted the appellant locus standi.
 - b. The learned trial magistrate erred in law and in fact by overlooking the provisions of law on which the case is premised being Articles 3,22, and 258 of [the Constitution](#) and [the Constitution](#)



of Kenya (Protection of Rights and Fundamental Freedoms) Practice & Procedure Rules, 2013.

- c. The learned trial magistrate erred in law and in fact by failing to appreciate the lack of basis of the objection raised and the subversive nature of activities of the respondent leading to the application, the adverse consequences it projects to the public, the aggrieved party and parties unable to defend themselves before the court.
3. Parties disposed of the appeal by way of written submissions.

The Appellant's Submissions

4. The appellant submits that it is a civil society organization specializing in Social Justice, Human Rights and Governance in Kenya. The appellant further states that it is acting in public interest and protecting human and constitutional rights in instituting the suit on behalf of the aggrieved party one Caroline Gichuki who has no ability to act in her own capacity as she has severe health complications that have hindered her from any form of access to justice.
5. The appellant submits that it sought for the orders of an injunction under Article 23 of *the Constitution* to restrain the respondents from causing abuse, denial, violation and infringement of the rights of the aggrieved party, one Caroline Gichuki. The appellant argues that locus standi was granted to it by virtue of Article 3, 22, 47, 48, 50 and 258 of *the Constitution* and *Legal Notice No. 117 of 2013, The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. The appellant further submits that by virtue of Article 22 of *the Constitution* and the fact that the aggrieved party has no ability to act in her own name and has severe health complications that hindered her from accessing justice satisfies the provisions of Article 22(1), (2) & (3) and 23 of *the Constitution* and Part II Section 2(i) of the *Legal Notice No. 117 of 2013*. The appellant therefore submits that the power of attorney and medical records of the aggrieved party that it produced show that it had the requisite locus standi to institute the claim.
6. The appellant argues that the respondents had illegally advertised and threatened to sell the property of the aggrieved party on account of an illegally imposed levy of Kshs. 100,000/- in addition to her loan facility without following the law thus in contravention of Articles 31 and 47 of *the Constitution*. The appellant further argues that the 1st respondent misled the court into believing that that matter before it was on a credit facility contract. The aggrieved party is servicing a credit facility with the 1st respondent and is not in any default except that she has fallen into arrears due to the hiking of interest on the loan by the respondent without informing her. The appellant submits that the respondent is coercing the aggrieved party to pay Kshs. 100,000/- levy using illegal means including damaging her property, demanding bribes, publication of her property in a print media without consent contravening her right to privacy by invasion and publication, contravention of her right to a fair administrative action under Article 47 of *the Constitution* and illegally listing her with the Credit Reference Bureau (CRB) contrary to Section 26(1), (3), (4), (9) and (10) of the Credit Reference Bureau Regulations 2020 without any notice.
7. The appellant submits that it did not seek to interfere in any way, infringe or alter the contract between the 1st respondent and the aggrieved party and was very specific on seeking injunctive orders to restrain the respondents from causing abuse, denial, violation, infringement and threat of rights of the aggrieved party.



The Respondent's Submissions.

8. The respondents submit that the 1st respondent advanced a loan facility to one Caroline Gichuki, the borrower, who was also a former employee of the 1st respondent. The loan advanced to the borrower was secured by a charge registered against property Title Number Juja/Kiaura Block 7(Mang'u)/1002 in Kiambu County.

The borrower defaulted in her obligations with respect to the loan facility which prompted the 1st respondent to take steps to recover the amount outstanding through the sale of the suit property.
9. The respondents submit that the instant appeal is a nonstarter since the memorandum of appeal and the record of appeal are not properly filed. The lack of a proper memorandum of appeal and record of appeal goes to the substance and the competency of the appeal thereby the jurisdiction of this honourable court.
10. The respondents refer to Order 42 Rule 1 of the Civil Procedure Rules and submit that the memorandum of appeal was filed out of the timelines prescribed for filing the same and it does not concisely set out the grounds upon which the appeal is founded. Further, there is a glaring anomaly on the record of appeal that was filed by the appellant. The respondents argue that what the appellant filed does not fall within the meaning and definition of a record of appeal as contemplated under Order 42 Rule 13(4) of the Civil Procedure Rules. Further, the appellant has not provided before the court copies of all the pleadings that were filed by the parties herein at the lower court to enable the court come to a just finding in the determination of the appeal. Additionally, the appellant has not filed a certificate of delay to demonstrate the delay in filing the record of appeal. Where crucial documents fail to be part of the record of appeal, the record is basically incomplete and hence incompetent. To support their contentions, the respondents rely on the cases of *Law Society of Kenya vs Centre for Human Rights and Democracy & Others* Supreme Court Petition No. 14 of 2013 and *Bwana Mohammed Bwana vs Silvano Buko Bonay & Others* [2015] eKLR.
11. The respondents argue that the record of appeal is incomplete for want of proceedings from the lower court and the certificate of delay and as such the same is incompetent. The result is that the jurisdiction of the court has not been properly invoked. Thus admitting the said appeal would be contravening the rules of drafting and that may set a precedent for bad practice in the field of appellate litigation.
12. The respondents argue that the appellant does not have the requisite locus standi to institute the suit and by extension, the instant appeal. The respondents further argue that the appellant and one Patrick Gitaari do not have any legitimate interest in the suit property which forms the subject matter of the instant case that would enable it to file this suit against them. Further, the appellant is not even remotely affected by the actions of the 1st respondent with respect to the suit property. The respondents further argue that there is no evidence of ownership of the suit property by the appellant being a legal person and that only the registration of the property in the name of the appellant can confer rights to it to institute the instant suit. Thus, the appellant does not have locus standi and capacity to institute this suit and it should not therefore get the audience of the present court. Relying on the case of *Law Society of Kenya vs Commissioner of Lands & Others* Nakuru High Court Civil Case No. 464 of 2000, the respondents submit that due to the said lack of capacity, the suit is incompetent and ought to be struck out.
13. The respondents submit that the appellant has not demonstrated that the proprietor of the suit property is incapable of instituting this suit in her name to warrant the actions of the appellant of instituting the suit on her behalf. Relying on the case of *Kenya Medical Laboratory Technicians and Technologists Board & 6 Others vs Attorney General & 4 Others* [2017] eKLR, the respondents argue



that the appellant has failed to demonstrate to the court any adverse effect that it will suffer in the event the orders sought herein are not granted. The appellant has failed to prove to the court that the owner of the suit property is unable to personally approach this court and seek the reliefs personally as opposed to having the appellant herein to do it on her behalf and the appellant has failed to establish that it is acting in the interest of a group or a class of persons and as such it lacks locus standi. The respondents submit that the appellant does not meet the considerations of capacity to institute legal proceedings hence the suit in the lower court and the appeal are incurably defective.

14. The respondents argue that the appellant is a busy body, not privy to the contract between the borrower and the 1st respondent that led to the need for selling the suit property by public auction in order for the 1st respondent to be able to recover the loan amount outstanding. The appellant is thus estopped by the doctrine of privity of contract from suing on a contract that it was not party to.
15. The respondents submit that when the 1st respondent moved to recover the amount in arrears through sale of the suit property, the appellant filed the suit protesting the 1st respondent's actions in recovering the loan amount outstanding yet it was completely oblivious of the contractual agreement between the borrower and the 1st respondent. The respondents submit that the honourable court does not have jurisdiction to entertain this suit for the reason that the appellant is not in any way affected by the cause of action disclosed in the suit.
16. The respondents refer to the case of *Mumo Matemu vs Trusted Society of Human Rights Alliances & 5 Others* (2014) eKLR and submits that locus standi is a point of law that touched on jurisdiction and thus the same ought to be resolved at the earliest opportunity.

Issue for determination

17. The main issue for determination is whether the appeal has merit.

The Law

18. Being a first Appeal, the court relies on a number of principles as set out in *Selle and Another vs Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

19. In *Gitobu Imanyara & 2 Others vs Attorney General* [2016] eKLR the Court of Appeal stated that:-

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

20. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles:-



- a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
- b. That in reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
- c. That it is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

Whether the appeal has merit.

21. On the issue of admitting the appeal, the court already pronounced itself on the issue and admitted the appeal on 28th May 2024. The court granted the appellant 21 days to file the record of appeal on 27th March 2025 which they did on 14th April 2025. I have perused the record and noted that the same contains a memorandum of appeal, the proceedings of the magistrate and the ruling. It is evident that the record of appeal is not complete as it lacks the order emanating from the ruling, a certificate of delay, the application dated 2023 and the respondents' replying affidavit and all documentary exhibits. However, as noted earlier the appellant is a layman and may not understand what the record of appeal entails. Furthermore Article 159 of *the Constitution* emphasizes on the court paying regard to the substance rather than the form. It is noted that the appeal has already been admitted and will be admitted and heard on its merits. The respondent states that the record of appeal is not complete and that the proceedings of the lower court are missing. The respondent has a right to bring the matter to the attention of the court and demand that a supplementary record be filed. Filing an incomplete R OA does not make the appeal defective.
22. The appeal is mainly premised on the grounds that the appellant had no locus standi to institute the suit in the lower court and also in filing this appeal.
23. The court in *Law Society of Kenya vs Commissioner of Lands & Others* [2001] eKLR held as follows on the issue of locus standi:-

Locus standi signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in a court of law. Further in the case of *Alfred Njau & Others vs City Council of Nairobi* [1982] KAR 229, the court also held that:-

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.
24. Further in *Julian Adoyo & Another vs Francis Kiberenge Bondeva*(Suing as the administrator of the Estate of Fanuel Evans Amudavi (Deceased) eKLR where Mrima J held:-

A party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings.
25. It is clear that locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. A claim that a party lacks locus standi is a pure point of law and one that needs to be raised and determined at the earliest opportunity.



26. In the instant case, one Caroline Gichuki, the borrower and a former employee of the 1st respondent, took out a staff loan from the 1st respondent for the sum of Kshs. 1,700,000/- and she secured the same by registering a charge against her property LR No. Juja/Kiaura Block 7 (Mang'u) in Kiambu County. The borrower defaulted in her obligations with respect to the loan facility forcing the 1st respondent to exercise its statutory power of sale through sale by public auction. Following which, the appellant filed a Notice of Motion application dated 30th May 2023 seeking orders that the respondents be ordered to suspend any activity regarding auction, trespass or interference with the property on the basis that the respondents had increased the interest rates and added hidden charges. Interestingly, the said application was supported by an affidavit sworn by the borrower Caroline Gichuki.
27. From the pleadings, it is evident from the proceedings that the proprietor of the suit property is Caroline Gichuki. Furthermore she is the one who took out a loan thereby entering into a contract with the 1st respondent. Furthermore, to secure the loan, she put up her property up for collateral which charge amounts to a contract between the lender and borrower. Thus, nowhere has the appellant shown us that he is the proprietor of the said land or whether he was a borrower of the loan or a guarantor of the same. Furthermore, the alleged hefty interest rates that the appellant alleges have been imposed on the borrower do not affect him in any way or form. Privity of contract stipulates that a contract cannot consent rights or impose obligations on any person other than the parties to the contract. Therefore the appellant cannot sue the respondents based on a charge entered into between the 1st respondent and the said Caroline Gichuki.
28. The appellant further states that the power of attorney and the medical records of Caroline Gichuki give him the requisite locus standi to institute the suit as she cannot do so under her own name. Order 9 Rule 1 of the Civil Procedure Rules 2010 stipulates that a party can sue through his or her recognized agent. Rule 2 of the Rules provides the recognized agents to include persons holding powers of attorney who can only act with the approval of the court.

In the instant case, the plaintiff is not a recognized agent of Caroline Gichuki as he does not have powers of attorney and neither did they obtain approval from the court to sue on her behalf either under Order 9 Rule 1 of the *Civil Procedure Act* or under the *Mental Health Act* depending on the nature of incapacity affecting the subject. Furthermore, medical records is a not a ground that is recognized as empowering a party to sue on another's behalf. Additionally, the appellant insinuates that *the constitution* guarantees him the requisite locus standi to institute the suit on behalf of Caroline Gichuki. It is evident that the matter before the lower court was not a constitutional petition and neither was it a public interest case so as to fall under Article 22 of *the Constitution*. The matter before the court is a civil claim based on a contract between the borrower and lender, the 1st respondent. Following the fact that the appellant lacked the requisite locus standi to institute the suit and thus upheld the preliminary objection and dismissed the suit. It is my finding that the appellant lacked the required locus standi to file the suit and as such the magistrate's ruling on the preliminary objection was based on law applicable.

29. Accordingly, I find no merit in this appeal and it is hereby dismissed with costs to the respondents.
30. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED THIS 24TH DAY OF JULY 2025.

F. MUCHEMI

JUDGE

