



REPUBLIC OF KENYA



Taib v Shafi (Succession Appeal E017 of 2021) [2025] KEHC 11256 (KLR) (29 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11256 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION APPEAL E017 OF 2021**

AM MUTETI, J

JULY 29, 2025

BETWEEN

ZUBEDA TAIB APPELLANT

AND

ABDUL JUMA SHAFI RESPONDENT

RULING

1. The respondent in this appeal filed a Notice of Motion dated 15th February 2023 expressed to be brought under Rule 16 of High Court (Organization and Administration) Rules, Order 51 rule 1(3) (4) of the *Civil Procedure Rules*, Section 1A, 1B, 3A of the *Civil Procedure Act*, Section 80(2) of the *Law of Succession Act* and all other enabling provisions of the law.
2. The Respondent/Applicant sought the following orders:-
 - a). That Respondent/applicant be granted leave to be heard during recess.
 - b). That this application be certified as urgent and service be dispensed with in the first instance.
 - c). That the Memorandum of Appeal dated 16th June, 2021 and the attendant application dated 29th June, 2021 be struck out for lack of legal capacity by the Appellant/Respondent to institute the same.
 - d). That costs of this application be provided for.
3. The notice of motion was premised on the following grounds:-
 - (a) That the Appellant/Respondent herein seeks to defend her late mother's intestate estate in Nyeri/Municipality Block 11/75 which is currently registered in the joint names of her late mother and Joseph Kinyua Gachuki;
 - (b) That It is trite law that parties in any suit must possess legal capacity and in the instant case the Appellant/Respondent lacks legal capacity as she is neither an administrator nor an executor;



- (c) That the Appellant/Respondent misled this Honourable Court in staying proceedings before the Kadhi's court which sought preservation of both the suit property and the attendant rental income yet she had not clothed herself with the requisite legal capacity.
- (d) That Legal capacity is mandatory and cannot be excused as a mere technicality hence it is in the interest of justice that this application be allowed as prayed.
4. The application was expressed to be supported by the affidavit of Feisal Hussein Swaleh but the respondent annexed an affidavit sworn by Abdul Juma Shafi the respondent.
 5. The respondent deposed that the appellant has no legal capacity to institute the appeal and that she obtained an order of stay of proceedings in the Kadhi's court without legal capacity.
 6. In response to the application, Zubeda Taib swore an affidavit on the 3rd June 2023. She expressly states "that it is true as averred in paragraph 3 the supporting affidavit that the Appellant/Respondent, (myself). I am not the administrator, nor executor to bring this appeal, however, the same was precipitated, by the applicant who instituted Nyeri Kadhi's Court Succession Cause No. E002 OF 2021 and obtained adverse orders against me and had to move to this Court to seek remedy and justice."
 7. The admission by the appellant crystalizes the question for determination by this court which is whether a party without legal capacity can institute and maintain proceedings in a court of law.
 8. The parties filed submissions and urged the court to dispose off the matter relying on the written submissions and this court having perused through the pleadings and submissions is left with no doubt that the appellant lacks the legal capacity to initiate and maintain the appeal in this matter.
 9. The argument by the appellant that she initiated the appeal on the basis of the fact that the respondent had obtained orders adverse to her amounts a legal misnomer. The mere fact of an order issuing against an individual cannot cloth the affected party with legal capacity to file an appeal directly to the high court seeking to reverse the order.
 10. The appellant if indeed she was a victim of an adverse order issued against her by the Kadhi when she was not an administrator of the estate of Marmum Ali Abdullahi the legal option available to her would have been to seek to be enjoined in the proceedings before the Kadhi and apply to set aside the orders in that court. It is only after such proceedings that the appellant would have a right to approach the High court on appeal.
 11. It is however clear that the appellant moved to this court without first seeking to be heard by the Kadhi and thereafter exercise her right to access the High Court by way of an appeal.
 12. A party without locus standi lacks the right to institute and/ or maintain the suit even where a valid cause of action exists. In *Alfred Njau v City Council of Nairobi* (1983) KLR 625 the court of appeal held : "...locus standi literally means a place of standing and refers to the right to appear or heard in court or proceedings and to say that a person has no locus standi means that he/she has no right to appear or be heard in such and such proceedings"
 13. Locus standi is a jurisdiction issue which must be determined in limine where a party is shown not to have a legal standing before a court the court seized off the matter must make a determination whether or not it can competently take any step in the proceedings. In the Attorney General v Malawi Congress Party & Another Civil Appeal No. 22 of 1996 the court held : " locus standi is a jurisdictional issue. It is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject of it, that it to say he stands in a sufficient close relation to it as to give right which requires prosecution or infringement of which he brings action"



14. The appellant in this matter has conceded that she is neither the administrator nor executor in matters relating to the estate of one Marmum Ali Abdullahi and therefore she came out arrogate herself the right to defend the estate or challenge any orders affecting any of the properties related on connected therewith. In the *Owners of Motor Vessel "Lillian S" V Caltex Oil (Kenya) Ltd* (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989 (Judgment) Nyarangi, JA held that : "jurisdiction is everything and without it a court cannot take any one more step in a proceeding. The court would be acting in futility if it were to entertain proceedings knowing too well that it lacks jurisdiction to entertain the matter."
15. The appellant has come to this court without the requisite legal capacity, that fact was not disclosed to the court before orders could be issued in favor of the appellant. The respondent has by way of this application brought to the attention of this court the incapacity of the appellant to maintain these proceedings. No doubt therefore the jurisdiction of this court was improperly invoked and the orders granted by the court were issued in error and without jurisdiction.
16. The court having come to that conclusion, the consequential order is to order the striking out of the appeal with no order as to costs.
17. The orders of stay granted on the strength of the appeal effectively fall by the wayside.
18. It is so ordered.

DATED, SIGNED AND DELIVERED IN VIRTUAL COURT AT NAIROBI THIS 29TH DAY OF JULY 2025.

A. M. MUTETI

JUDGE

In the presence of:

Kiptoo: Court Assistant

Kabira for Appellant/Respondent Absent

Feisal for Respondent/Applicant

