



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT BUSIA**

**ELC CASE NO. 177 OF 2016**

**MONICAH NAFULA ADUI.....1ST PLAINTIFF/RESPONDENT**

**JUDITH NERIMA OGOMBE.....2ND PLAINTIFF/RESPONDENT**

**VERSUS**

**LEONARD OTUBA SANYA.....DEFENDANT/APPLICANT**

**RULING**

1. The Applicant moved this Court under the provisions of section 3A of the Civil Procedure Act on the 15th of October, 2020 for orders THAT:

a. The cause of action in this instant suit no longer exists and the suit be dismissed with costs; and

**b. The costs of this application.**

2. The Application was supported by the affidavit of **Mr JUMBA** advocate for the Defendant/Applicant dated 15th Dec, 2020 and on the following grounds;

*a. That, the titles were issued in succession cause No. 92 of 2015 which has been revoked;*

*b. The suit cannot be prosecuted due to orders issued in Busia P&A 92/2015.*

3. In the Supporting Affidavit, Mr. **JUMBA** advocate deposed partly that

*a. The applicant obtained registration on the strength of the certificate of confirmation of grant dated 28th July, 2006;*

*b. The said grant was subsequently revoked on 4th February, 2020;*

*c. The suit parcels by operation of law has been reverted back to L.R SAMIA/BUDONGO/99 in the name of WILMINA APONDI.*

4. The Respondents opposed the application by filing their Replying Affidavit jointly sworn on the 8th of December, 2020 deposing that:

*a. That the mother of the Applicant filed a succession cause in Nairobi for the estate of the late Cosmas Ogombe vide Nairobi Succession Cause Number 684 of 1986 without disclosing the true beneficiaries of the said estate, the Respondents being among them;*

*b. That the other beneficiaries not having knowledge of the succession cause in Nairobi, filed Succession Cause No 92 of 2015 in Busia.*

*c. That it was only after the Applicant raised an objection during confirmation that he Respondents knew there existed another succession cause in respect of the estate;*

*d. That the trial judge then ordered the administrator in Busia Succession Cause 92 of 2015 to file an objection in the Nairobi Cause as well which he did;*

*e. That the Nairobi Succession cause has been transferred to Busia and the Respondents have through, Wilfred Wandera Were, have filed an application to have the grant issued in the Nairobi Succession Cause No. 684 of 1986 revoked.*

5. Parties agreed to canvass the application by way of written submissions.

However only the Applicant filed his brief submissions on 23rd of March, 2021 submitting that the Respondents have no locus standi to prosecute the instant suit as the grant in Busia HCA P&A No. 92 of 2015 was annulled rendering their ownership of the suit titles null and void.

6. The issue of **locus** goes to the root of any case and essentially deals with the jurisdiction of the Court. The Defendant has submitted that the Plaintiffs have no **locus standi** to continue the present suit considering the fact that the grant that gave them possession of the suit land was revoked. That due to the lack of capacity the present suit is incompetent and should therefore be struck out.

7. Gacheru J. in the case of **Daykio Plantations Limited v. National Bank of Kenya Limited & 2 others [2019] eKLR**, while quoting the case of **Law Society of Kenya vs. Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000**, where the Court held that; -

“Locus Standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law” and the case of **Alfred Njau and 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”.

8. The judge in the **Daykio case** (supra) went on to hold that:

“It is therefore evident that **locus standi** is the right to appear and be heard in Court or other proceedings and literally, it means ‘**a place of standing**’. Therefore, if a party is found to have no **locus standi**, then it means he/she cannot be heard even on whether or not he has a case worth listening to. It is further evident that if this Court was to find that the Applicant has no **locus standi**, then the Applicant cannot be heard and that point alone may dispose of the suit.

9. In the case of **Quick Enterprises Ltd vs. Kenya Railways Corporation, Kisumu High Court Civil Case No.22 of 1999**, the Court held that: -

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the court having to resort to ascertaining the facts from elsewhere apart from looking at the pleadings alone”.

10. The Plaintiffs filed the present suit praying for judgement against the Defendant as below:

- a. That the Court declares the Plaintiffs to be the legal and beneficial owners of the parcels of land title number Samia/Budongo/2577 and Samia/Budongo/2578;
- b. That the Court issues orders barring the Defendant and/or his agents from trespassing and utilizing the suit property in any manner; and
- c. That the Court cancels any other purported titles to the suit property.

11. It is pleaded in paragraph 11 of the plaint that the two plaintiffs inherited their titles Samia/Budongo/2577 and Samia/Budongo/2578 curved curved from title no Samia/Budongo/99 which belonged to the estate of one COSMAS OGOMBE (deceased) with the Plaintiffs and the Defendant claiming to all be beneficiaries of the estate of the deceased. The Defendant has annexed a copy of the ruling which gave the order revoking the grant that authorized the subdivision of Ogombe’s estate. This renders the possession and ownership of the Suit Parcels back to the administrator of the estate of Ogombe appointed vide a grant issued in NBI HC Suc no 684 of 1986 until such time that any orders are issued varying it.

12. The revocation of the grant that allocated the plaintiffs title implies that the right to sustain a suit founded on those rights are deemed as taken away by the operation of the law. Whether there are objection proceedings going on in the succession court does not change the plaintiffs’ position where they did not provide this court staying execution of the order which revoked the grant in Busia Succession Cause 92 of 2015 on 4th February 2020. Thus the revocation of the grant took away the Plaintiffs capacity or to prosecute the suit. Their recourse can be pursued in a new claim after the pending objection proceedings in the succession cause are finalized.

13. For now, the application dated 15th October, 2020 succeeds and the current suit is struck out for want of **locus standi** to prosecute the suit. With regards to the issue of costs of the suit, each party shall bear their own costs since the intervening event was not the making of the plaintiffs herein. The defendant is awarded cost of this application because it was defended.

**DATED, SIGNED & DELIVERED VIA EMAIL AT BUSIA THIS 2ND DAY OF AUGUST, 2021.**

**A. OMOLLO**

**JUDGE**