



REPUBLIC OF KENYA



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**Githinji v Equity Bank (K) Limited & 4 others (Civil Case E003 of 2023)
[2024] KEHC 15348 (KLR) (Environment and Land) (4 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15348 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
ENVIRONMENT AND LAND
CIVIL CASE E003 OF 2023
CM KARIUKI, J
DECEMBER 4, 2024**

BETWEEN

ELSEY MUKAMI GITHINJI PLAINTIFF

AND

EQUITY BANK (K) LIMITED 1ST RESPONDENT

DIGIT AUCTIONEERS 2ND RESPONDENT

INTEGRA AUCTIONEERING (K) COMPANY 3RD RESPONDENT

MAYA AGRARIAN HOLDINGS LIMITED 4TH RESPONDENT

LAND REGISTRAR NYANDARUA 5TH RESPONDENT

RULING

1. The background in the instant matter is that the 1st respondent Equity Bank Advanced the respondent Maya Agrarian Holdings (K) Limited Ksh.14 million guaranteed by the Evelyn Wanjugu Kimathi (plaintiff's mother) who is registered owner of Nyandarua/Njabini/9794, 3408 and 6334 in Nyandarua which were offered as the security creating legal charges. The registered owner executed the said charges voluntarily. There were no requirements of spouse consent as she was unmarried.
2. Subsequently there was default in repayments prompting 1st respondent Equity Bank to invoke rights and power of sale over the charged properties.
3. The process was commenced via issuance of 3 months' Notice demanding payment of arrears.
4. Subsequently Statutory Notice was issued under section 96(2) and 3 *Land Act* 2013 to the guarantor as the borrower failed to pay debts as notified and demanded.



5. After valuation the properties were advertised for sale.
6. This prompted the institution of the instant suit contemporaneously with the Notice of Motion undated by received in court on 28/2/2024.
7. The Motion sought to stop sale of the charged Properties. The pLaint seeks permanent injunction to step sale inter alia plus discharge of the suit properties.
8. To counter the motion aforesaid, the respondent filed a replying affidavit dated 6/5/2024 and a preliminary objection dated 16/5/2024.
9. The core objections issues are are:
 - a. The suit is fatally defective as applicant/plaintiff has Locus standi to bring instant suit as she is not registered owner of the suit –properties nor is she the Chargor.
 - b. There is no privity of contract between her and the 1st Respondent the Chargee
10. Thus, court is urged to dismiss the suit.
11. The parties were directed to canvass the preliminary objection via submissions but respondent side complied as at the time of preparing this ruling..
12. 1st Respondent Submission
13. The respondent submits that, the preliminary objection was defined by the Court of Appeal in the case of Mukisa Biscuit Manufacturing Ltd, -VRS- West End Distributors Ltd. Civil Appeal No.9 of 1969 (1969) EA 696 where the Court held that:

“A preliminary objection consists of a point of law which has been pleaded, or which arises from a clear implication cut of pleadings, and which if argued as a preliminary point may dispose of the suit.”

"A preliminary objection is in the nature of what used to be called demurrer. It raises a pure point of law, which is argued on the assumption that all the facts pleaded are correct. It cannot be raised if any fact has to be ascertained or of What is sought is the exercise of judicial discretion."
14. He Submits that the 1st Respondent's Preliminary Objection is purely on a point of law Which arises out of the pleadings herein.

a. Locus Standi

15. 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. Locus standi is so important that in its absence, party has no 'oasis to claim anything in before the Court.
16. As it has been rightly put by the 1st respondent herein the Chargor is one Evelyn Wanjugu Kimathi who is also the registered proprietor of Nyandarua/ Njabini/ 6334 Nyandarua/Njabini 6334. The Applicant herein is one Elsey Mukami Githinji who is a stranger to the 1st Respondent alleged daughter of the chargor.
17. The cause of action herein arises out of a Charge between the 1st Respondent and Wanjugu Kimathi. The property advertised for sale belongs to the Chargor. Therefore; the Applicant has no locus standi to bring this suit to Court.



18. In the case of Law Society of Vs of Lands & Others, Nakuru High Court Civil Case No.464 of 2000. it was stated as follows: -

“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”. Further in 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 a person has no Locus Standi means that he has no right to appear or be in such and such proceedings”

19. The Applicant claims that she has beneficial interest of her parent’s property. However, there is no evidence that the Chargor is deceased and further, there is no evidence that the chargor has executed power of Attorney authorizing the applicant to bring this suit.

20. Submit that the Applicant lacks the locus standi to maintain this suit.

b. Privity of contract

21. There is no privity of contract between the plaintiff/applicant and he 1s Respondent.

22. On the issue of privity of contract, the Court of Appeal in City Council of Nairobi vs Wilfred Kamau Githua T/A Githua Associates & another (2016) eKLR page 10 the court observed at Halsbury’s Laws of England . 4th edition Volume 9(1) Paragraph 478 states.

“ The general rule. The doctrine of privity of contract is that, as a general rule, at common law a contract cannot confer rights or impose obligations on strangers to it; that is persons who are not parties to it. The parties to a contract are those persons who reach agreement.....”

23. From the Charge dated 10th Mav, 2021, (please see annexure SW2 in the Replying Affidavit by the 1st Respondent dated 6th May 2024) it is clear that the same is between the Chargor, Evelyn Kimathi and Maya Agrarian Holdings Limited, the Borrower, to Equity Bank (K) Limited the Bank. The same does not confer rights to the Applicant as an Applicant is a stranger to it.

24. The terms of the Charge only binds the parties to it and the Applicant cannot claim to be aggrieved by the 1st Respondent’s act of realizing its security under the terms of the Charge.

25. Respondent prays that the Preliminary Objection be allowed.

26. The facts vide replying affidavit by the charge have not been controverted or rebutted thus taken as admitted specially that:

a. The Applicant has Locus standi to institute suit as she neither the Chargor nor registered owner of suit properties but a daughter of the chargor.

b. She is not privity to the contract.

27. The court will therefore determine whether the two objections or any of them if established warrants disposal of the entire suit.

c. Issues analysis and determination; After going through the pleadings herein I find the two ground in the PO are the issues to be determined; namely; whether the suit is fatally defective as applicant/plaintiff has Locus standi to bring instant suit as she is not registered owner of the suit –properties nor is she the Chargor.



- d. Whether there is privity of contract between her and the 1st Respondent the Chargee
 - e. And who gets the costs hereof?
28. Under the armpit of the principles laid down in the Mukisa Biscuits Manufacturing Co. Ltd. -vs- West End Distributors Ltd (1969) EA 696, the court held that: “a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as preliminary point may dispose of the suit ---- it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion -----”

c. Locus Standi

29. 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. Locus standi is so important that in its absence, party has no 'oasis to claim anything in before the Court.
30. As it has been rightly put by the 1st respondent herein the Chargor is one Evelyn Wanjugu Kimathi who is also the registered proprietor of Nyandarua/ Njabini/ 6334 Nyandarua/Njabini 6334. The Applicant herein is one Elsey Mukami Githinji who is a stranger to the 1st Respondent alleged daughter of the chargor.
31. The cause of action herein arises out of a Charge between the 1st Respondent and Wanjugu Kimathi. The property advertised for sale belongs to the Chargor. Therefore; the Applicant has no locus standi to bring this suit to Court.
32. In the case of Law Society of Vs of Lands & Others, Nakuru High Court Civil Case No.464 of 2000. it was stated as follows: -
- “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”. Further in 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 a person has no Locus Standi means that he has no right to appear or be in such and such proceedings”
33. The Applicant claims that she has beneficial interest of her parent's property. However, there is no evidence that the Chargor is deceased and further, there is no evidence that the chargor has executed power of Attorney authorizing the applicant to bring this suit.
34. It was submitted that the Applicant lacks the locus standi to maintain this suit.

d. Privity of contract

35. There is no privity of contract between the plaintiff/applicant and the 1st Respondent.
36. On the issue of privity of contract, the Court of Appeal in City Council of Nairobi vs Wilfred Kamau Githua T/A Githua Associates & another (2016) eKLR page 10 the court observed at Halsbury's Laws of England . 4th edition Volume 9(1) Paragraph 478 states.
- “ The general rule. The doctrine of privity of contract is that, as a general rule, at common law a contract cannot confer rights or impose obligations on strangers to it; that is persons who are not parties to it. The parties to a contract are those persons who reach agreement.....”



- 37. From the Charge dated 10th May, 2021, (please see annexure SW2 in the Replying Affidavit by the 1st Respondent dated 6th May 2024) it is clear that the same is between the Chargor, Evelyn Kimathi and Maya Agrarian Holdings Limited, the Borrower, to Equity Bank (K) Limited the Bank. The same does not confer rights to the Applicant as an Applicant is a stranger to it.
- 38. The terms of the Charge only bind the parties to it and the Applicant cannot claim to be aggrieved by the 1st Respondent's act of realizing its security under the terms of the Charge.
- 39. Thus the court finds that the Preliminary Objection is meritorious and thus make the orders;
 - i. The suit and the motion herein are misconceived and incompetent thus the same are struck out with costs to the respondent number one (1).

RULING DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 4TH DAY OF DECEMBER 2024

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CHARLES KARIUKI
JUDGE

