



**Registered Trustees of Kenya Railways Staff Retirement Benefits Scheme & another  
v Higher Education Loans Management Board & 2 others (Environment and Land  
Case Civil Suit 59 of 2014) [2025] KEELC 4876 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4876 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 59 OF 2014  
OA ANGOTE, J  
JUNE 26, 2025**

**BETWEEN**

**THE REGISTERED TRUSTEES OF KENYA RAILWAYS STAFF RETIREMENT  
BENEFITS SCHEME ..... 1<sup>ST</sup> PLAINTIFF  
KENYA RAILWAYS CORPORATION ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**HIGHER EDUCATION LOANS MANAGEMENT BOARD ..... 1<sup>ST</sup> DEFENDANT  
THE CHIEF LANDS REGISTRAR ..... 2<sup>ND</sup> DEFENDANT  
THE DIRECTOR OF SURVEY ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Vide a Notice of Motion dated 23<sup>rd</sup> January, 2025 brought pursuant to the provisions of Article 50 of *the Constitution*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 9 Rule 9, Order 45 and Order 51 Rule 1 of the Civil Procedure Rules, 2010, the 1<sup>st</sup> Plaintiff/Applicant seeks the following reliefs:
  - i. That leave be granted to the firm of Akide and Company Advocates to come on record for and on behalf of the 1<sup>st</sup> Plaintiff/Applicant.
  - ii. That the costs of this application be in the cause.
2. The Motion is based on the grounds on the face thereof and supported by the Affidavit of Isaac Sila, the CEO/Trust Secretary of the 1<sup>st</sup> Plaintiff/Applicant. He deponed that judgment in this matter was entered on 6<sup>th</sup> February, 2024 at which time the 1<sup>st</sup> Plaintiff did not have legal representation.



3. After the judgment, he deponed, the 1<sup>st</sup> Defendant filed a Notice of Appeal and a Motion seeking a stay of execution pending hearing and determination of the appeal and that on 19<sup>th</sup> November, 2024, the 1<sup>st</sup> Defendant filed a Motion seeking to have the 2<sup>nd</sup> Plaintiff's Managing Director and Corporation Secretary cited for contempt of court orders issued on the 20<sup>th</sup> May, 2024.
4. Mr Sila deponed that the 1<sup>st</sup> Plaintiff remains a party to these proceedings and as such, it desires to participate in the Motions filed by the 1<sup>st</sup> Defendant. In exercising its right to legal representation, he deposed, it has issued instructions to the firm of Akide and Company Advocates to represent it in the matter and the interests of justice dictate that the Motion be granted.
5. In response to the Motion, the 1<sup>st</sup> Defendant filed Grounds of Opposition dated the 27<sup>th</sup> January, 2025 and averred that:
  - i. The Motion Application dated 23<sup>rd</sup> January, 2025 is premised on a misapprehension of the law and the facts as to whether the purported 1<sup>st</sup> Plaintiff is still a party to these proceedings.
  - ii. The court record discloses that the said purported 1<sup>st</sup> Plaintiff's suit was dismissed on the 8<sup>th</sup> November, 2022; the said purported Plaintiff no longer has any standing to assert a right or to take liability in the current proceedings. The said purported Plaintiff has no dog in the fight.
  - iii. The purported Plaintiff has lodged an Appeal in the Court of Appeal arising from the dismissal of its suit; there is before the Court of Appeal, Nairobi Court of Appeal Civil Application No E434 of 2023 that is pending hearing and determination, arising from the said dismissal orders.
  - iv. The totality of the facts indeed disclose that orders sought vide the Application within the context of the circumstances as untenable, and an abuse of the process of the Honourable Court.
6. The 2<sup>nd</sup> Plaintiff indicated that they were not participating in the Motion.

### **Submissions**

7. The 1<sup>st</sup> Plaintiff/Applicant filed submissions on 7<sup>th</sup> April, 2025. Counsel submitted that pursuant to Section 34(3) of the *Civil Procedure Act*, where a question arises as to whether any person is or is not the representative of a party, such question shall be determined by the court. It was submitted that in dismissing the matter, the court did not dismiss the 1<sup>st</sup> Plaintiff as a party herein and that it can participate in execution and subsequent proceedings.
8. It was submitted that a reading of Section 34(3) aforesaid, as well as Order 7 Rule 3 and Order 12 Rule 6(1) of the Civil Procedure Rules recognizes that upon dismissal of a Plaintiff's suit for want of prosecution, he remains at liberty to defend a counterclaim or apply to reinstate the dismissed suit.
9. Counsel asserted that the perpetual stay of execution in favour of the 1<sup>st</sup> Defendant and the defective Notice of Appeal are of interest to the 1<sup>st</sup> Plaintiff as they are fashioned to deny it of the fruits of the judgment.
10. The 1<sup>st</sup> Defendant filed submissions on the 12<sup>th</sup> May, 2025. Counsel submitted that the 1<sup>st</sup> Plaintiff's reliance on Section 34(3) of the Civil Procedure Rules is misconceived as the same was intended to ensure that a party whose suit is dismissed cannot escape execution in the event of the award of costs and does not extend the life of the party in the proceedings. Reliance was placed on the case of *Suraya Sales Ltd & Another vs Oduor* [2023] KEHC 19424(KLR) and *Kuronya Auctioneers vs Maurice O Odhoch & Anor* [2003] KECA 4(KLR).



11. It was submitted that in any event, there are no remedies that the 1<sup>st</sup> Plaintiff is capable of seeking after the dismissal of its suit. Counsel urged that an Advocate can only act in proceedings for a party with locus standi which as explained in *Alfred Njau & 5 Others vs City Council of Nairobi* [1983] eKLR, refers to the right to appear in court. Counsel urged that as long as the dismissal order remains, there is no party for the Advocate to be granted leave to act and the Motion is dead on arrival.

### **Analysis and Determination**

12. Having considered the Motion, the sole issue that arises for determination is whether the firm of Akide & Company Advocates should be granted leave to come on record for the 1<sup>st</sup> Plaintiff?
13. It is trite that a party is entitled to be represented by an Advocate of their choice. However, in a matter where there is judgment and a party intend to change its advocate, it need leave of court. This is provided for under Order 9 Rule 9 of the Civil Procedure Rules thus:

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected by order of the court—

- a. upon an application with notice to all the parties; or
- b. upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

14. The rationale for this provision was explained by the Court of Appeal in the case of *Tobias M. Wafubwa vs Ben Butali* [2017] KECA 142 (KLR) thus:

“Once a judgment is entered, save for matters such as applications for review or execution or stay of execution inter alia, an appeal to an appellate court is not a continuation of proceedings in the lower court, but a commencement of new proceedings in another court, ... Parties should therefore have the right to choose whether to remain with the same Counsel or to engage other Counsel on appeal without being required to file a Notice of Change of Advocates or to obtain leave from the concerned court to be placed on record in substitution of the previous Advocate.”

15. It is indeed undisputed that judgment has been rendered in this matter. Further still, at the time of the judgment, the 1<sup>st</sup> Plaintiff was unrepresented by Counsel. As such, the prayer to come on record by the firm of Akide and Company Advocates falls within the parameters of Order 9 Rule 9 of the Civil Procedure Rules.
16. The 1<sup>st</sup> Defendant however asserts that the 1<sup>st</sup> Plaintiff has no locus in these proceedings and as such, the plea by Counsel to come on record for it is superfluous. Locus standi is defined by the Black’s Law Dictionary, 9<sup>th</sup> Edition as:

“The right to bring an action or to be heard in a given forum.”



17. The Court of Appeal in *James Teko Lopoyetum vs Rose Kasuku Watia & 4 Others* [2021] KECA 590 (KLR) reiterated its decision in *Alfred Njau & 5 Others vs City Council of Nairobi* [1983] eKLR where it held:

“The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt’s Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.”
18. It cannot be gainsaid that locus standi goes to the jurisdiction of the court. Where a party lacks the requisite locus standi, the suit is rendered fatally defective as the court cannot entertain proceedings instituted by one who has no legal right to appear before it.
19. As aforesaid, the 1<sup>st</sup> Defendant asserts that the 1<sup>st</sup> Plaintiff has no locus in these proceedings because its case was dismissed and an appeal against the same is pending before the Court of Appeal. Further, and in any event, it is alleged, there are no remedies that the 1<sup>st</sup> Plaintiff is capable of seeking after the dismissal of the suit.
20. In response, the 1<sup>st</sup> Plaintiff asserts that the dismissal of its suit is not the same as it being struck off the proceedings. It opines that it is still a party herein and wishes to participate in the post judgment proceedings and in particular to respond to the Motions by the 1<sup>st</sup> Defendant.
21. The court has considered the record. Indeed, on the 8<sup>th</sup> November, 2022, the 1<sup>st</sup> Plaintiff’s suit was dismissed for want of prosecution. The matter nonetheless proceeded for hearing where the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> Defendant’s cases were heard and closed. There was no participation by the 1<sup>st</sup> Plaintiff. Judgment was entered on the 6<sup>th</sup> February, 2024 in favour of the 2<sup>nd</sup> Plaintiff.
22. After the judgment was delivered, the 1<sup>st</sup> Defendant filed a Motion seeking for a stay of execution pending appeal on the 25<sup>th</sup> April, 2024. The Motion was un-opposed and subsequently allowed on the 13<sup>th</sup> June, 2024. On the 19<sup>th</sup> October, 2024, the 1<sup>st</sup> Defendant filed a Motion for contempt, the same was however withdrawn on the 18<sup>th</sup> March, 2025.
23. The 1<sup>st</sup> Plaintiff asks that its Counsel be allowed to come on record to enable it, through the aforesaid Counsel, respond to the Motions filed by the 1<sup>st</sup> Defendant. It is clear however that the referenced Motions are since spent, one having been allowed and another withdrawn.
24. Nonetheless, the court does not subscribe to the position that once a party’s suit is dismissed for want of prosecution, they lose locus in the matter. Such a proposition is unsupported by the law. Even prior to the delivery of final judgment, a party whose claim was dismissed is at liberty to file consequential motions such as seeking review and/or reinstatement and to cross-examine witnesses and where there is a counterclaim, in the instance of a Plaintiff, defend the same. Even the filing of an appeal against the dismissal does not take away the party’s locus.
25. In the specific context of post-judgment proceedings, the court finds that the 1<sup>st</sup> Defendant’s interpretation of Section 34(3) of the *Civil Procedure Act* is misconceived. The suggestion that a party whose suit has been dismissed has no standing to engage in proceedings after judgment fails to appreciate both the text and the purpose of the provision.
26. Section 34(1) confines questions relating to the execution, discharge, or satisfaction of a decree to the court that passed it, while the explanation under subsection (3) explicitly preserves the identity of parties, including those whose suits were dismissed for these purposes.



27. Further, in the particular circumstances of this case, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs are intricately connected. The 2<sup>nd</sup> Plaintiff is the sponsor of the 1<sup>st</sup> Plaintiff, which is a staff retirement benefits scheme for its employees, and the 2<sup>nd</sup> Plaintiff is obligated to make its share of pension contributions to the 1<sup>st</sup> Plaintiff. It was averred in the Plaint that as a consideration for pension payments that were due and payable to the 1<sup>st</sup> Plaintiff by the 2<sup>nd</sup> Plaintiff, the 2<sup>nd</sup> Plaintiff vested the suit property to the 1<sup>st</sup> Plaintiff.
28. The Plaintiffs jointly sought to protect the suit property alleging that it was illegally alienated to the 1<sup>st</sup> Defendant. Whereas judgment was ultimately entered in favour of the 2<sup>nd</sup> Plaintiff alone, the reliefs granted including permanent injunctive orders restraining the 1<sup>st</sup> Defendant from interfering with the suit property, cancellation of the 1<sup>st</sup> Defendant's title and revocation orders directed at the 2<sup>nd</sup> Defendant are directly rooted in the shared proprietary rights of the Plaintiffs.
29. Ultimately, it is the finding of the court that the 1<sup>st</sup> Plaintiff does not lack locus standi in these proceedings. Consequently, there is no reason why Counsel should not be granted leave to come on record as sought.
30. The Motion dated the January 23, 2025 is found to be merited in the following terms:
- i. Leave be and is hereby granted to the firm of Akide and Company Advocates to come on record for and on behalf of the 1<sup>st</sup> Plaintiff/Applicant.
  - ii. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 26<sup>TH</sup> DAY JUNE, 2025.**

**O. A. ANGOTE**

**JUDGE**

In The Presence Of;

Mr. Munyuki holding brief for Maruti for 1<sup>st</sup> Respondent

Ms Opechu holding brief for Akidi for Applicant

Court Assistant: Tracy

