



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYAHURURU

ELC NO. 288 OF 2017 (FORMERLY NAKURU 467 OF 2016)

NJORA MURONYO.....PLAINTIFF

VERSUS

WILSON KIAMA GACHUNJI.....1st DEFENDANT

JOHN KANYARATI GACHUNJI.....2nd DEFENDANT

(Being administrators of the estate of ASTON GACHUNJI KANYARATI–deceased)

JUDGEMENT

1. Vide a Complaint dated the 31st October 2016 and amended on the 25th January 2019, the Plaintiff herein sought for the following orders;
 - i. A declaration that the consent to transfer and subsequent transfer of 10 acres out of all that parcel of land being title No. Nyandarua/Ngorika/ 381 was fraudulent and to that extend null and void;
 - ii. An order of immediate cancellation of transfer of 10 acres out of all that parcel of land being title No. Nyandarua/Ngorika/ 381 in favour of Ashton Gathunji Kanyarati (deceased);
 - iii. A declaration that the Plaintiff is the sole owner of all that parcel of land being Nyandarua/Ngorika/ 381;
 - iv. An order of permanent injunction restraining the Defendants by themselves, their servants, agents and or whomsoever in any means howsoever from continuing trespassing, encroaching, sub-dividing, alienating and/or disposing off and in any other way interfering with the parcel of land being Nyandarua/Ngorika/ 381;
 - v. Cost and interest of the suit;
 - vi. Any other relief that this honorable Court may deem fit and just to grant.
2. In response, the Defendants herein filed their statement of defence on the 11th March 2019, wherein they denied the allegations contained in the Plaintiff's Complaint stating that upon purchase of the suit land by the Deceased Aston Kanyarati from the Plaintiff in 1989, his assignees or beneficiaries had been in occupation and possession of the same since then and therefore the present suit was time barred and ought to be dismissed with costs to them.
3. Subsequently after both parties had complied with the provisions of Order 11 of the Civil Procedure Rules, the matter was set down for hearing.

The Plaintiff's case

4. The Plaintiff who was aged 99 years old testified as Pw 1 to the effect that during a year he could not remember, the deceased Mr. Kanyarati, who was his neighbor and the Defendants's father, had given him a loan of Ksh. 40,000/- wherein parties had agreed that in default of the payment, he would give Mr. Kanyarati 10 acres of his land.
5. That he had the first paid Mr. Kanyarati Ksh 30,000/= with the assistance of Maina his son although he could not remember how much Maina had contributed. The Plaintiff was categorical that he had refunded the whole Ksh.40,000/= to Mr. Kanyarati during his life time.

6. He testified that when parties had entered into the said agreement, the same had been orally and that they had not signed anywhere. He was also categorical that he neither sold his land to the Defendants, signed any land sale agreement with them, nor attended a Land Control Board to execute any transfer documents transferring his land to Mr. Kanyarati
7. He also confirmed that he lived in Ngorika, his land parcel was No. 83 and but had never seen the title to the same. He also confirmed that he had not sub-divided his land to the Kanyaratis and that he had filed the present case because he wanted back his 10 acres of land which one Njeri, a wife to Kanyarati and their daughter Wambui were in occupation of after they had transferred it to themselves. He however could not remember when they had taken possession of the same.
8. In cross-examination, the Plaintiff testified that he had sued Wilson Kiama Gachunji now deceased and John Kanyarati because they were the legal representatives of Ashton Gachunji Kanyarati. That Njeri was also deceased while Wambui, who was Aston's daughter was the one in occupation of the suit land and that although it was true that she had been in occupation of the suit land for about 8 years, yet it had not been true that she had been in occupation since the year 1989.
9. He also reiterated his earlier evidence that plot No. 83 had neither been subdivided into two plots nor had he ever seen the said subdivisions or titles. That Wambui occupied 10 acres of his land where she lived with her family and had also buried some people on the land.
10. He testified that he could not have sued Wambui because there was a balance in the money he had been given as a loan, and that the two persons he had sued did not live on the suit land but were his neighbors. He also testified that he had been summoned by the Land Registrar to rectify a boundary and not that he had a wrong title deed.
11. He also confirmed to the fact that he had taken possession of his land after the country got its independence and that the loan he took had not been for sale of land, but to educate his children. He further confirmed that he had nothing to show that he had re-paid it but that he had a witness who had accompanied him when he went to re-pay the loan.
12. When re-examined, the Plaintiff testified that he had not been summoned to the Nyandarua Lands office because of a land boundary issue and further that he never had any boundary dispute with the Kanyarati's. He was categorical that the Kshs.40,000/= he had been given was a loan to educate his children and which loan he had repaid in full with the help of his son.
13. The Plaintiff's witness, PW2 Wilson Maina Kiambati whom the Court noted had been sitting in Court throughout while the Plaintiff testified, testified that he was the Plaintiff's son and had recorded and signed a statement dated 25th January 2019 to which he sought to adopt as his evidence.
14. That he had not been a party to the said borrowing/loan agreement because at the time he had been a minor, but he acknowledged that the Plaintiff had borrowed money. That at the time he had passed his exams, his mother had passed on and he had had no fees to go to secondary school.
15. That the Plaintiff was passionate about his children and his land as he talked about passing it on to his beneficiaries and generations.
16. He testified that the Plaintiff had borrowed Ksh.40,000/= from Mr. Ashton Kanyarati with a promise to repay the same and in default he would give him 10 acres of his land. That when he had just started working, the Plaintiff had informed him that he had paid part of the loan but had a balance of Ksh.12,000/= and so to protect his father against the possibility of losing his land, he had looked for the money from his employer to help out the Plaintiff.
17. That on the 19th April 1996 he had asked his friend James Wakaba, who was currently out of the county, to accompany him to Mr. Kanyarati's home in Nairobi. There he had found Mzee Kanyarati in the company of his son one Muhindi who had been summoned as a witness to the transaction. That he had inquired from Mzee Kanyarati whether there was anything outstanding in the agreement they had with the Plaintiff where Mzee Kanyarati had confirmed to him that the balance the Plaintiff had was Ksh.12,000/=. That he had paid the balance after which Mzee Kanyarati had requested for a written agreement which had been signed by all parties present including Mzee Kanyarati, himself, his friend James Wakaba and Mr. Muhindi. That they had prepared two copies of the agreement but that he had forgotten the original copy in his office.
18. That he had left Mzee Kanyarati's house knowing that his father's land had been safe guarded and the relationship between the two elders had been taken care of. That to the best of his knowledge, being the main assistant to his father, he had finished his obligations on the monetary agreement he had. He produced the acknowledgment agreement dated 19th April 1996 as Pf Exhibit 1.
19. His further testimony was that the Plaintiff had informed him that he had not signed any documents at the lands office affecting the transfer of his land which measured 25 acres.
20. He testified that although there were documents from their local chief dated the 6th July 2010 in regard to a Succession Cause to the estate of the deceased Kanyarati and his family members, he was not sure whether they got the letters of administration or not.
21. That, the Plaintiff had sued Wilson and John Gachunji as administrators of their father's estate so that they could vacate from the Plaintiff's land.
22. He confirmed that the Kanyarati family got onto the Plaintiff's land after the original transaction with the Plaintiff, wherein they were currently in occupation. It was his testimony that he neither knew the precise time they had moved the Plaintiff's land nor how they got onto the said land.

23. In cross-examination, PW2 testified that indeed a member of the Kanyarati family called Wambui was in occupation of the Plaintiff's land although he did not know precisely or when she had taken possession of the same. He denied having knowledge that the suit land had been subdivided into two plots being No. 381 and 382.

24. He confirmed that he did not have the letters of administration to show that the Defendants were representatives of the deceased's estate and that since he could not remember Wilson he wouldn't know if indeed he or John Kanyarati resided on the land because he did not know where they lived.

25. When referred to Pf Exhibit 1, the witness stated that the same related to a land transaction between the Plaintiff and Mr. Kanyarati. That it did not mention the time the land transaction had taken place and neither did it state what the land transaction was all about. That it further did not state that Mr. Kanyarati had received the money but only that the witness had given him money.

26. He also testified that the Plaintiff was employed and had a source of income and sought for Mr. Kanyarati's signature to be authenticated. The Plaintiff thus closed its case.

Defence Case:

27. The 1st Defendants, Wilson Kiama Gachunji testified as DW1 to the effect that Aston Gachunji Kanyarati was his father who was now deceased. That he had seen the Plaintiff for the first time in Court. He denied being an administrator to his father's estate and testified that there had been no Succession Cause filed in Court in regard to his father's estate.

28. He confirmed that his step sister Nancy Wambui and her children were in occupation of the suit land where they had been living since the year 1990, land which she had been given by the deceased Mr. Kanyarati. He also testified that he did not know from whom his father had bought the land but all he remembered was that in the year 1990, his father had gathered the family around wherein he had informed them that he had bought the land to which he had proceeded to give it to his (Defendants's) sister.

29. When cross-examined, the witness confirmed that his father had 19 children from 3 houses wherein he was a member of the 1st house and that his mother was called Josphine Gathoni. His father's 2nd wife was known as Eunice Njeri while the 3rd wife was called Grace Wanja.

30. That the larger family owned a piece of land in Ngorika measuring almost 100 acres which was owned by his mother. That the current suit was in relation to 10 acres of land. That he had come to learn later that his father had bought 12 acres of land from the Plaintiff but that he did not know the details of the sale agreement.

31. He also confirmed that his father was deceased and that the family had not filed any succession proceedings because before his father died, there were properties that he had subdivided.

32. He also testified that in the month of January 2018 his father's 1st family, had gone to Kirinyaga Law Court on issues concerning some properties and which case was still ongoing. That in that case, Joseph Kanyarati Gachunji, was an administrator. He was however not sure whether members of the other two families had filed a Succession Cause and although he could see his name as an administrator in the present case, he was unaware of issues touching his father's properties in Nyandarua.

33. The next defence witness, John Kanyarati Gachunji testified that he lived in Naivasha and was involved in farming. That Wilson was his step brother and that he knew the Plaintiff as his father's friend.

34. He also denied being an administrator of his father's estate, but confirmed that there were only executors and not administrators to his father's estate because his father had a will and therefore died testate. That neither he nor the 1st Defendants were executors.

35. That he was aware of Ngorika Parcel No. 381 which measured about 12 acres land upon which his sister had lived since the year 1989.

36. That he had been informed by his parents that they were purchasing a piece of land from the Plaintiff. That initially his parents had purchased 12 acres wherein after they had purchased 2 acres. That was the current position of parcel No. 381 whose original number was 83 until its subdivision which gave rise to plot No. 381 and 382 and wherein title deeds had been issued.

37. He testified that on the 8th June 1989, when his father got the title deed to parcel No.382, he had been asked to go and check the records wherein from that the map they had discovered that parcel No. 381 was the land upon which his sister was occupying whereas parcel No. 382 was the Plaintiff's land.

38. That they had then informed the Land Registrar of the anomaly to which the titles had been rectified on the 2nd August 2004 wherein his sister Nancy Wambui had been registered as the proprietor of parcel No.381. He produced the title deed to parcel No 381 as Df exh 1.

39. The witness testified that there had been an issue arising from the exchange of title numbers where a letter dated the 24th October 2000 was written to the Plaintiff through the Chief of Ngorika Location. The 2nd letter dated 21st July 2004 was also addressed to his father and Plaintiff. He produced the letters as Df exhibit 2 (a) (b). That later on the 2nd August 2004, after the rectification, a title deed had been issued which title he produced as Df exhibit 3.

40. In cross-examination, the witness re-confirmed that his father had died testate and neither he nor the 1st Defendants were either

administrators or executors. That the executors to their father's estate were Dr. Gikonyo and Mr. William Gachengo via the Succession and Probate case that had been filed in the Nairobi High Court around the year 2011 or 2012. He however could not remember the case number.

41. He also confirmed that he had no documents to confirm as evidence that there had been executors to his father's estate as he had not been given the same.

42. When referred to his statement, the witness testified that he was not involved in the sale of the suit land but that his father had given him the documents they had executed with the Plaintiff. That he had neither the sale agreement nor was he a signatory to the sale agreement, but that the first land had been sold for Ksh.40,000/= whereas the second one had been bought for Kshs.5,000/= per acre. The 3rd sale had been for Kshs.6,000/= per acre.

43. The witness stated that his father passed away in the year 2010 and that he could not comment on whether or not the Plaintiff had sold land to his father or whether or not there had been a transfer. That he did not have the documents with him in Court although if given time, he could avail them.

44. On being referred to the letter dated the 6th July 2010, he stated that it contained the names of his father's three houses. That his father had a will. That the Ngorika family, he being one of them, had gone to their local Chief to get the chief's letter which contained all the names of his mother's children so that they could give it to the executors. Pursuant to the closure of the Defence case, parties filed their respective submissions to which I shall summarize as follows:

The Plaintiff's Submissions.

45. The Plaintiff's submission, was that through his suit, he sought to establish his ownership rights of 10 acres curved out of parcel of land being No. Nyandarua/Ngorika/ 381 herein referred to as the suit land. That for proper adjudication of the matter after evidence had been tendered, they had framed their issues for Determination as follows;

i. Is this suit time barred?

ii. Have the Defendants been properly sued in this suit?

iii. Have the Defendants established Aston Gachunji Kanyarati (deceased) (sic) ownership of 10 Acres curved out of the suit property?

46. On the first issue for determination, the Plaintiff after giving a historical background of the case, considered provisions of Section 7 and Section 9 of the Limitation of Actions Act to submit that the right of action only accrued as at the date of dispositions or discontinuance and further that where a deceased was on the date of his death in possession of the land, the right of action accrued at the date of the death.

47. That in the present case, none of the Defendants had confirmed when exactly the deceased took possession of the 10 acres therefrom. That the Plaintiff had testified that one Wambui who was in occupation of the land had not been in possession of the land for more than 10 years. The Defendants testified that they could not tell whether or not the Plaintiff had sold the land to their father or whether there had been a transfer. This confirmed the uncertainty of how the deceased acquired 10 acres of land out of the suit property and therefore it was not clear on when the time started running.

48. That since the Plaintiff alleged that the 10 acres were fraudulently acquired from his land as he had not sold the same to the deceased, and further that since he could not remember when the deceased's beneficiary entered into occupation of the same, and further since he had recently become aware of the deceased's fraudulent acquisition of the 10 acres out of the suit property, that time had begun to run from the year 2016 or thereabout when the Plaintiff filed his suit. Reliance was placed on the decided case in **Peter Riechi Okara vs Francis Nyamosi Mwanzia Kajjado ELC No. 967 of 2017** and **Mintina Ene Keton Koponi vs Francis Njakwe Gathiari & Another Kajjado ELC No. 557 of 2017**, to submit that where there had been allegations of fraud made, then a suit was not statute barred.

49. That in the present matter, the Plaintiff only discovered of the deceased's fraudulent acquisition of 10 acres of land out of the suit property long after the deceased's death and therefore time begun to run on the discovery of the fraud, which meant that the suit was not time barred and ought to be adjudicated upon its merits.

50. On the second issue for determination as to whether the Defendants had been properly sued, the Plaintiff submitted that although the Defendants alleged that they were not administrators/executors of the deceased's estate hence they had been wrongly sued in this matter, the Plaintiffs claim was against the deceased hereby on the basis of having fraudulently acquired the suit property. That the provisions of Order 1 Rule 3 of the Civil Procedure Rules were clear in this regard.

51. That although it had been established during the testimony by the parties that the Defendants were not administrators to the estate of the deceased who had died testate, there had been no production of a Will to confirm the allegation of the existence of executors of the same which confirmed that the Defendants were not being candid with the Court on the issue of administrator-ship of the deceased's estate having in mind that the suit had been instituted as an application at which stage the Defendants had not raised the issue of the existence of a will.

52. That the production of a letter from the chief where the deceased's family members had agreed that the Defendants be administrators of the deceased's estate was sufficient evidence that the Defendants had been properly sued. They relied on the provisions of Order 1 Rule 9 of the Civil Procedure Rules to submit that no suit ought to be defeated by reason of misjoinder or non-joinder of a party, to buttress their submissions.

53. On the 3rd issue for determination as to whether the Defendants had established that Aston Gachunji Kanyarati (deceased) (sic) ownership of 10 acres curved out of the suit property, the Plaintiffs submitted that there had been no doubt that the Plaintiff was the registered owner of parcel of land No. Nyandarua/Ngorika/381 measuring approximately 5.34 hectares as evidenced by a letter of allotment dated 29th October 1979 and a title deed issued to the Plaintiff on the 8th June 1989.

54. That pursuant to an agreement between the Plaintiff and the deceased Kanyarati, the Plaintiff had sought for a loan of Ksh 40,000/= and had promised that in default of payment, the deceased could take 10 acres out of the suit property. The deceased had subsequently duped him into executing a sale agreement instead of a credit agreement, wherein after the deceased's beneficiaries had encroached onto the Plaintiffs suit land on the allegation that the deceased had purchased 10 acres from the Plaintiff. It was the Plaintiff's case that there had been no sale agreement for his property or portion thereof and neither had there been any Land Control Board consent transferring his parcel of land to the deceased.

55. That although the Defendants's case was that the deceased had allegedly purchased 12 acres of land out of the suit land where he had duly paid and had subdivided the suit property. That he had then transferred 10 acres to himself wherein the parcel of land had been erroneously registered to the deceased as No. Nyandarua/Ngorika/ 382 in 1989. That the error had been subsequently corrected in the year 2004 when the deceased had been issued with a new title to wit No. Nyandarua/Ngorika/ 381, there had been a number of discrepancies that had arisen in the Defendants' pleadings and testimonies that confirmed that indeed the deceased had fraudulently acquired the suit property and which could be challenged pursuant to the provisions of Section 26(1) of the Land Registration Act. The said discrepancies included;

- i. That there was no proof of any sale agreement between the Plaintiff that the deceased or any payment thereto.
- ii. There was proof of granting of loan to the Plaintiff by the deceased which loan had been offset by PW2 as per the acknowledgement letter dated 19th of April 1996.
- iii. That by 1989, the deceased had not given the Plaintiff the loan and hence the issue of interchanging the titles was false and nonexistent. The fact that both titles to land parcel No. Nyandarua/Ngorika/381 and No. Nyandarua/Ngorika/ 382 had been issued in the same year of 1989 implied that the deceased and the Plaintiff being neighbors had each separate titles.
- iv. The rectification of the register as per the letter dated 21st July 2004 did not state that the deceased had purchased the suit property but merely that the ground occupation did not agree with the title deed and hence the active correction of the register.
- v. That both parcels of land according to the title deeds measured approximately 4.86 hectares which defeated the Defendants' allegation that the deceased had purchased 10 acres curved out of the suit property. There was no proof that the Plaintiff had appeared before any Land Control Board to be issue with a consent for the purpose of subdivision and transfer of the suit property to the deceased.
- vi. There was also no Will tendered as evidence.
- vii. Since the Plaintiff herein had the original title deed to parcel No. Nyandarua/Ngorika/381, it was deemed to be the end of the order in terms of priority in acquisition.

56. The Plaintiff's final submissions was that the Defendants had failed, pursuant to the provisions of Section 107 of the Evidence Act, to tender evidence to confirm that indeed the deceased had purchased 10 acres of the suit property. The Plaintiff thus sought that the Court do grant them the orders sought in their amended plaint in the interest of justice.

Defendants' Submission

57. In opposition of the Plaintiff's case, the Defendants herein submitted that at paragraph 2 of their defence dated 11th March 2019 in response to the Plaintiff's amended plaint dated 25th January 2019, that they were not the administrators of the estate of Ashton Gachunji Kanyarati (deceased).

58. That the issue of the capacity of the Defendants ought to be decided first as it would be determined whether there was need for the Court to delve into other issues in this case because should the Court find that the Defendants had no capacity to be sued then the Plaintiff's case would be incompetent abinitio and should be dismissed with costs.

59. That while the Defendants had been sued as administrators of the estate of Ashton Gachunji Kanyarati, under Section 3(1) of the Law of Succession Act, the same defined an administrator '*as a person to whom a grant of letters of administration had been made under the Act*'

60. That Sections 51 to 54 of the Law of Succession and the Probate and Administration Rules under the act provided the procedure to apply in obtaining grant of Letters of Administration.

61. That the Defendants defence and statements filed in Court and adopted as evidence clearly stated that they were not administrators of the estate of Ashton Gachunji Kanyarati (deceased)

62. That it was therefore upon the Plaintiffs to prove otherwise as provided for by the provisions of Section 107 of the Evidence Act which burden he had not discharged. No copy of a Grant of Letters of Administration or any evidence had been produced by the Plaintiff's to prove that indeed the Defendants were the administrators of the estate of the deceased.

63. That the capacity of the Defendants had not been proved and therefore they were strangers to the estate of the deceased wherein no judgment could be entered against them. The Defendants relied in the Court of Appeal decision in **Trouistik Union International & Another vs. Jane Mbevu & Another [1993] eKLR** to buttress their submissions.

64. The Defendants further relied on the case in **Virginia Edith Wambui Otieno vs Joash Ochieng Ougo & Another [1987] eKLR** to submit that the case filed against them was incompetent ab initio and should be dismissed with costs as an administrator could not be sued before he has taken out letters of administration which would then vest the deceased's estate in him.

65. That the Plaintiff herein being uncertain of the capacity of the Defendants ought to have taken out citation proceedings under Rule 21 to 24 of the Probate and Administration Rules before instituting the suit against them. The Defendants urged the Court to dismiss the Plaintiff's suit with costs to them.

Determination.

66. I have carefully considered the Plaintiff's claim against Defendants, the evidence adduced as well as the submissions, the law applicable and the authorities herein cited.

67. The Plaintiff's case is that he was the proprietor parcel of land No. 83 Ngorika settlement Scheme having been allotted the same way back in 1979. That sometime in a year and date he could not remember, he had taken a loan of ksh 40,000/= from his friend and neighbor Ashton Gachunji Kanyarati (deceased) to educate his children wherein he had entered into an oral agreement with Mr Kanyarati that should he default in repayment of the loan, he would give him 10 acres of his land.

68. That as time went by he had repaid his loan with the help of his son PW2 but had been astounded to find out later, after the death of Mr. Kanyarati, that his parcel of land No 83 had been illegally sub divided two plots being No. Nyandarua/Ngorika/ 381 and No. Nyandarua/Ngorika/ 382 and that plot No. Nyandarua/Ngorika/ 381 measuring 10 acres had been registered to Mr. Kanyarati and to which Plot, the deceased's beneficiaries had taken possession and occupation of thereon on allegation that he had sold the same to Mr. Kanyarati.

69. The Plaintiff then filed the present suit against the Defendants on the presumption that they were the administrators of the deceased's estate wherein he sought for the prayers enumerated herein above on the basis that at no time had he sold his land to the deceased but that the same had been obtained fraudulently without either a sale agreement or a consent from the Land Control Board.

70. That Defendants' case on the other hand was that although they knew that their father had bought the suit land from the Plaintiff and although they had no documents to support their claim, yet they had no capacity to be sued as they were not the administrators to their deceased father's estate. An issue that had they had raised earlier at paragraph 2 of their Defence dated the 11th March 2019.

71. I have given due consideration to the rival arguments, the law and the authorities herein cited, I find that the Defendants have raised a weighty issue on their locus standi in this suit and although the same were not raised independently as a preliminary objection, yet it attacks the jurisdiction of the Court. To me this is a cardinal ground which ought to be dealt with in the first instance as an issue for determination as its outcome will determine the outcome of the suit and/or any other grounds therein.

72. I find that it is not in contestation that the suit the suit property herein being No. Nyandarua/Ngorika/381 was registered to the deceased person Ashton Gachunji Kanyarati on the 2nd August 2004 and that the said deceased person was the father to both the Defendants herein.

73. That although the Plaintiff has sued both the Defendants in their representative capacity of the estate of Ashton Gachunji Kanyarati (deceased) yet he has not demonstrated that both or either of them were the legal representatives of the estate of Ashton Gachunji Kanyarati (deceased).

74. The Plaintiff has not produced any document to show that the ownership of the suit land had been transmitted to the Defendants herein, the effect to which the persons who ought to have been sued should have been the legal representatives of the estate of Ashton Gachunji Kanyarati (deceased)

75. There is further no evidence, as pointed out by the Defendants' Counsel that the Plaintiff had taken out any citation proceedings related to the estate of Ashton Gachunji Kanyarati (deceased). To this end, I find that the Defendants herein were non-suited to the Plaintiff's claim since they did not have any locus standi to be sued.

76. In **The Owners of the Motor Vessel "Lilian S" –vs- Caltex (Kenya) Ltd [1989] KLR 1**, the Court stated as follows:-

"...Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

77. The issue of locus standi was defined in the case of **Alfred Njau & 5 Others vs. City Council of Nairobi [1983] eKLR** to mean- "the right to appear in Court."

78. The Court of Appeal has authoritatively delivered itself on the issue of locus standi in the cases in **Virginia Edith Wamboi Otieno (supra), Morjaria v Abdalla [1984] KLR 490** and in **Trouistik Union International (supra) to wit that Locus standi** is a primary point of law almost similar to that of jurisdiction since the lack of capacity to sue or be sued renders the suit incompetent.

79. In **Alfred Njau & Others v City Council of Nairobi [1982-88] 1 KAR 229** the Court of Appeal gave meaning to the term locus-standi by stating:

“to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”

80. The Defendants have been sued as the legal representatives of the Estate of Ashton Gachunji Kanyarati (deceased) where no grant of representation has been applied for and or obtained. The issue of *locus standi* is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, 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. 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. The issue of *locus standi* becomes even more serious in a case like this on where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.

81. In the end I find that the Defendants in this matter lacked the requisite *locus standi* to be sued and therefore the proceedings herein are a nullity as they lack the legal leg to stand on. Having found that the issue of *locus standi* is a point of law which goes to the root of any suit and where its absence renders a suit fatally defective, I herein proceed to strike out the Plaintiff's suit with costs to the Defendants.

It is herein ordered

Dated and delivered at Nyahururu this 21st day of July 2020.

M.C. OUNDO

ENVIRONMENT & LAND – JUDG