



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC CIVIL SUIT NO. 26 OF 2018

MICHAEL PAUL
KISUMO.....PLAINTIFF

VERSUS

FRED MUASA KISUMO.....1ST
DEFENDANT

BERNARD KIIO KISUMO.....2ND
DEFENDANT

RULING

1. Before this court, the matter for determination concerns whether the plaintiff possesses the legal capacity to institute proceedings, an issue that arose when the plaintiff was scheduled to testify on 30/11/2023. The parties are closely related family members, with the plaintiff's mother, Theresiah Nzilani Kisumo (“Theresiah”), herein referred to as the defendant, allegedly being the brother of the plaintiff.

2. The properties subject to this dispute involve land parcel numbers **Mavoko Town Block 3/2653, Mavoko Town Block 3/2942, Mavoko Town Block 3/1112, and Mavoko Town Block 3/754 (“suit properties”)**. These properties are alleged to have originated from plot no. 723 Lukenya Ranching & Farming Co-op Society Ltd, which the plaintiff asserts were allegedly transferred fraudulently by Theresiah into her name, although they originally belonged to their father, Kisumo Mbithi.
3. The court directed the parties to address the issue through written submissions, and only the plaintiff submitted their submissions, which were filed by the law firm of **Ms D. M. Mutinda, Mwendwa & Co. Advocates**, dated 20th May 2025. In these submissions, the plaintiff, referencing case laws of **Fidelis Ndonge Makenzi & Another versus Geoffrey Misi Mutua & Another** and **Esther Makumbi Matundu v Mwang’a Kisyula [2019] eKLR**, argues that he possesses the capacity to institute legal proceedings, maintaining that, specifically, in his amended plaint dated 7th November 2023, he filed the suit in his personal capacity as the son of Kisumo Mbithi.
4. Following this, it is necessary to emphasise the pertinent law that governs the issue of *locus standi*, which is found in our statutes and includes *inter alia*:

Section 2 of the **Civil Procedure Act** has defined a 'legal representative' as: -

“a person who in law represents the estate of a deceased person, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.”

Whereas **Section 82** of the **Law of Succession Act** provides as follows: -

“Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers-

(a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;

(b)...

5. The issue of *locus standi* has been the subject of judicial pronouncements, and it is established law that a party who lacks the requisite capacity cannot initiate legal proceedings on behalf of a deceased person's estate. In the case of **Isaya Masira Momanyi v Daniel Omwoyo & another [2017] eKLR**, wherein *Mutungi J* stated as follows: -

“A party can thereof not commence a suit on behalf of the estate of a deceased person without letters of administration and thereafter obtain the letters of administration subsequently.”

Also in **Kipngetich Kalya Kones (Suing as the Administrator of the estate of Kipkalya Kiprono Kones (deceased) v Wilson Kiplangat Kones [2021] KEELC 241 (KLR)**, the court held:-

“26. The issue on locus standi is a primary point of law almost similar to that of jurisdiction and since the Plaintiff/Respondent was not an administrator to the deceased’s estate herein, he lacked the capacity to sue on behalf of the deceased’s estate which renders the suit incompetent. Indeed the Court of Appeal authoritatively delivered itself on the issue of locus standi in Virginia Edith Wamboi Otieno v Joash Ochieng Ougo & Another (1982-99) 1 KAR, Morjaria v Abdalla [1984] KLR 490 and in Trouistik Union International (supra) to the effect 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.”

6. In the circumstances of this case and having reviewed the record, the plaintiff, in his initial plaint dated 5 February 2018,

filed suit in his capacity as the legal representative of Kisumo Mbithi's estate. However, these pleadings have since been amended, and he has now filed suit in his personal capacity as the son of Kisumo Mbithi. The success of his claim in pursuing the suit in this personal capacity remains to be determined by the outcome of the substantive case. Therefore, this court finds that the plaintiff possesses the capacity to institute the suit in his personal capacity. The court will schedule a hearing date for the substantive case.

Orders accordingly.

Delivered and Dated at Machakos this 16th day of December, 2025.

**HON. A. Y. KOROSS
JUDGE
16.12.2025**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Miss Sibika holding brief for Mr. Musyimi for plaintiff/applicant.

N/A for defendants.

ORIGINAL