Mwambewa v Mwambeo (Environment and Land Case E002 of 2024)
[2025] KEELC 5793 (KLR) (Environment and Land) (30 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5793 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

ENVIRONMENT AND LAND

ENVIRONMENT AND LAND CASE E002 OF 2024

EK WABWOTO, J

JULY 30, 2025

BETWEEN

JEFFERSON MWAVISWA MWAMBEWA ..... PLAINTIFF

AND

PETER MWAMBANGA MWAMBEO ..... DEFENDANT

RULING

1. The salient issue in this ruling is whether the Plaintiff's suit should be struck out for want of locus standi.

2. The Defendant moved this court vide his application dated 16th June 2025 seeking to have the suit struck out. The said application was supported by the affidavit sworn by the Defendant on 16th June 2025. The Defendant also field written submissions dated 10th July 2025 in support of the application.

3. It was contended that the Plaintiff herein did not have the locus standi to institute this suit as he has filed it in his individual capacity instead of bringing it as a personal representative of the estate of Joseck Mwambeo Mwaviswa (Deceased), hence a blatant violation of Section 82(a) of the *Law of Succession Act*.

4. It was contended that at paragraph 6 of the Replying Affidavit, the Plaintiff admits to filing this suit for the benefit of the deceased but is mute on whether he had first taken out the requisite grant of letters of administration in the name of safeguarding the interest of the said estate.

5. It was further contended that the Plaintiff lack of locus standi not only reveals the incompetency of this suit but is akin to lack of jurisdiction which this court is restrained to down its tools and take no further step and strike out the suit with costs.

6. The Plaintiff on the other hand filed a Replying Affidavit sworn on 17th June 2025 and written submissions dated 15th July 2025 in opposition to the application. It was the Plaintiff's case that the suit parcel belonged to their father Joseck Mwambeo Mwaviswa (Deceased) and this suit had been instituted to challenge the transfer of the same to the Defendant without their consent. It was averred that the same is now registered in the name of the Defendant and his interest is because he is a beneficiary of the estate of the deceased and that no succession proceedings had been filed prior to the transmission of the suit parcel and thus he has locus to institute the suit.

7. It was also averred that he need not obtain any letters of administration since the suit parcel is registered in the names of the Defendant and further he has not intermeddled with the property in any way. The court was urged to dismiss the suit with costs.

8. As earlier stated the salient issue for consideration herein is whether the Plaintiff's suit ought to be struck out for want of locus standi.

9. Locus standi is defined in Black's Law Dictionary, 9th Edition (page 1026) as "the right to bring an action or to be heard in a given forum". In the case of Alfred Njau and Others ..Vs.. City Council of Nairobi (1982) KAR 229, the Court 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".

10. A claim that one has no locus standi therefore challenges a party's right to be heard before a court and if a determination is made in the affirmative then this issue has the capability of disposing of the suit. A claim that a party lacks locus standi therefore is a pure point of law and one that needs to be raised and determined at the earliest.

11. In the instant case, it is evident that the suit has been filed against the Defendant because the suit property is currently registered in the names of the Defendant. The Plaintiff has equally demonstrated his stake and interest in the suit parcel for the reasons that prior to its registration and or transfer to the Defendant, the same was in the names of their father who is now deceased and in the circumstances this court is satisfied that the Plaintiff has locus to institute and sustain the case.

12. In view of the foregoing, it is the finding of this court that the Defendant's application dated 16th June 2025 is unmerited and the same is hereby dismissed.

13. In respect to costs, the court has perused the record of the court and notes that the matter had initially been referred to court annexed mediation where no agreement was reached between the parties and the same was referred back to this court for hearing and determination, however when the matter had been set down for hearing, the Defendant filed the instant application and as such the Plaintiff is deserving of costs incurred in defending the said application.

14. In conclusion, the following orders are hereby issued in respect to the application dated 16th June 2025;

    a. The application is hereby dismissed.

    b. Costs of the application payable to the Plaintiff/Respondent assessed at Ksh 15,000/-

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 30TH DAY OF JULY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Mwazighe for the Plaintiff/Respondent.

Ms. Onge'ta h/b for Mr. Omwenga the Defendant/Applicant.

Court Assistant: Mary Ngoira.