



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Buses v Choge (Civil Appeal E010 of 2024)
[2026] KEELC 89 (KLR) (21 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 89 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
CIVIL APPEAL E010 OF 2024
GMA ONGONDO, J
JANUARY 21, 2026**

BETWEEN

PAULINA BUSES APPELLANT

AND

JENNIFER JELAGAT CHOGE RESPONDENT

(Being an appeal from the ruling delivered on 29th August 2024 by Honourable B. Bartoo (PM) in Kabiyet MCELC/E005/2024; Paulina Buses vs. Jenifer Jelagat Choge)

JUDGMENT

1. The instant appeal stems from the ruling of the Trial Court delivered on 29th August 2024 (The impugned ruling) where the learned Magistrate determined the Defendant’s preliminary objection dated 15th March 2024 thus;

‘I therefore hold that the Preliminary Objection is merited, the same is allowed and suit is hereby struck out with costs to the Defendant.’

2. Notably, the preliminary objection sought to have the Plaintiff’s entire suit struck out with costs on the grounds that; -
 - i. That the trial Court lacked jurisdiction to entertain both plaint and Notice of Motion dated 28th February, 2024.
 - ii. The suit was bad in law and incurably defective as it offends the mandatory provisions of Section 3 (3) of the *Law of Contract Act* and Section 38(1) of the *Land Act*, 2012.
 - iii. The Plaintiff lacked the locus standi to commence and pursue the suit and the entire Plaintiff’s proceedings are totally defective.



3. It must be borne in mind that the Plaintiff who is the appellant herein sued the Respondent who was the Defendant in the initial suit by way of a plaint dated 28th February 2024 for;
 - a) Declaration that the Plaintiff and her assigns have legitimate claim over 9.5 acres of Nandi/Ndalat/281 (The suit land) which preceded the Estate of Taprongei w/o Mutwol and do transfer the interest to the Respondents herein being 9.5 acres and that 9.5 acres thereof be ceded to the Plaintiff failure which the Deputy Registrar do assent necessary documents to facilitate the transfer of 9.5 acres for the Plaintiff.
 - b) Permanent injunction be issued against the Defendant/Respondent, their heirs any such claiming under her from trespassing, claiming and/or in anyway interfering with the Plaintiff's quite possession over the suit land.
 - c) That costs of the suit be borne to the Defendant.
4. The Respondent denied the Appellant's claim in her statement of defence dated 13th May 2024 and at paragraphs 6 and 7 and stated that she shall at earliest opportunity raise a preliminary objection to have the suit against her struck out for the appellant lacked locus standi to institute the suit which offends the provisions of Section 38 (1) of the Land Act, 2012 and Section 3 (3) of the Law of Contract Act as stated at paragraph 2 hereinabove.
5. So, the trial Court's decision provoked this appeal lodged by way of memorandum of appeal dated 19th September 2024 through Rotuk and Company Advocates on the following grounds;
 - a. That, the learned Magistrate erred in law and fact by declaration that Appellant did not have any locus to institute the suit.
 - b. That, the learned Magistrate erred in law and fact by finding the Appellant did not establish any legal right capable of being instituted in court.
 - c. That the learned Magistrate erred in facts and law by dismissing the Appellant's suit at the preliminary stage.
 - d. That the learned Magistrate erred in fact and law by ignoring that the Appellant is in actual occupation of the suit land.
 - e. That the learned Magistrate erred in law and fact while exercising her judicial authority by failing to hear the Appellant on merit and in so doing condemned the Appellant unheard.
 - f. That the learned Magistrate erred in law and fact in failing to appreciate that to deny the subject hearing should be the last resort in court.
 - g. That the decision of the learned Judge as a whole was erroneous and contrary to the ends of justice.
6. It is thus, the appellant's prayer that the ruling of the Honourable Court delivered on 29th August 2024 be reviewed and/or set aside and in its place be substituted by a ruling reinstating the Plaintiff's suit No. MCELC No. E005 of 2024 – Kabiyet Senior Principal Magistrate's Court.
7. In the submissions dated 10th November 2025, learned Counsel for the appellant referred to the seven grounds of appeal, the orders sought herein, the parties' respective pleadings and identified three issues which include; whether the dismissal of the suit on a preliminary objection denied the appellant the right to be heard on merits. In analyzing the issues, the appellant submitted in part, that her claim was not on behalf of the estate but on her own right as a co-purchaser, she demonstrated undisputed



occupation of the suit land for more than three decades and that the trial Court struck out the suit on a technicality without considering the evidence hence, the Court elevated procedural form over substantive justice.

8. To buttress the submissions, learned counsel relied on Articles 50 (1) and 159 (2) (d) of *the Constitution* of Kenya 2010. Also, counsel cited *Mukisa Biscuits Manufacturing Company Ltd v West End Distributors* (1989) EA 696, *Stephen Boru Gitihia v Family Finance Building Society & 5 others* (2009) eKLR and *Ivita v Kyumbu* (1984) KLR 441. So, it was submitted that the trial Court erred in law and in fact by dismissing the suit without fair hearing.
9. By the submissions dated 26th November 2025, the Respondent through Monda and Company Advocates, termed the appeal unmeritorious and that the impugned ruling be upheld. In doing so, counsel gave the background including the original suit filed before the trial Court, the Respondent's statement of defence, the preliminary objection, the impugned ruling and the grounds of appeal.
10. This being the first appeal from the trial Court, I am duty bound to analyze and evaluate the evidence on record afresh and arrive at my own independent findings and inferences; see *Williamson Diamonds Limited v Brown* (1970) EA 1.
11. Moreover, an appellate court will not ordinarily interfere with the trial Court's decision unless the same has been founded on wrong principles of fact and or law or on no evidence at all or on a misapprehension of the evidence; see the case of *Mwangi and another v Wambugu* (1982) 2 KCA 100.
12. In the foregone, the issues for determination are as raised in the grounds of appeal and crystallize to whether the preliminary objection was legally valid and whether the appeal is tenable.
13. The first ground of the preliminary objection was that the trial court lacked jurisdiction to entertain the suit, *The Concise Oxford English Dictionary* 12th Edition at page 771, defines the term 'Jurisdiction' as follows;
The official power to make legal decision or judgments
14. In that regard, the trial court subscribed to the trite law that lack of jurisdictions renders a Court's jurisdiction void as opposed to being merely voidable; see *Republic v Karisa Chengo & 2 others* (2017) eKLR.
15. Furthermore, the learned trial magistrate was guided by the Court of Appeal decision in the case of *Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya Ltd)* (1989) KECA 48 that jurisdiction is everything and without it, a court cannot make one more step.
16. The issue of Locus standi was raised at paragraph 6 of the statement of defence further to the contents of paragraph 4 of the plaint. In the *Black's Law Dictionary* 10th Edition at page 1084, the term 'Locus standi' means;
"The right to bring an action or to be heard in a given forum."
17. In the case of *Alfred Njau and others v City Council of Nairobi* (1982-88) 1 KAR 229, the Court of Appeal observed;
".....locus standi is the right to appear or be heard in court or other proceedings....."



18. By the impugned ruling, the learned trial magistrate reasoned;
- “.....the Plaintiff lacked locus on account of having not demonstrated that she had been granted letters of administration to file suit on behalf of the estate of her late husband’.....The suit as it is fatally defective. There are myriads of authorities to support this legal substratum which include but not limited to ‘Otieno versus Ougo & Another (1986 – 1989) EARL 468; and in Rajesh Pranjiran Chudusama versus Sailes Pranjivan Chudasama (2014) eKLR....”
19. I take into account the term ‘Legal Representative’ as defined in section 2 of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya. Also, I am not unaware of the relevance of Order 24 rule 5, Order 31, Order 3 rule 7, Order 2 rule 15 of the Civil Procedure Rules 2010 herein.
20. Plainly, the Appellant did not obtain a grant of letters of administration in respect of the estate of the late husband, Benjamin Kiprotich Arap Buses who allegedly bought the suit land from one Arap Mutwol sometimes in 1968 as stated at paragraph 4 of the plaint; see Halsbury’s Laws of England 4th Edition Volume 39 paragraph 539, Trouistik Union International and another v Jane Mbeyu (1993) eKLR and Omari Kaburu v Industrial Credit and Development Corporation (2007) KLR. Therefore, the Appellant lacked locus standi to originate the suit at the trial Court.
21. In the impugned ruling, the learned trial Magistrate made reference to sections 38 (1) and 3 (3) (supra) as well as the parties’ respective pleadings and the annexures thereto. Further, she relied on the case of Patrick Tarzan Matu & another v Nassim Shariff Abdalla & 2 others (2009) eKLR that the Court could not entertain the claim in the circumstances.
22. The learned trial Magistrate bore in mind that the preliminary objection raised pure points as held in Mukisa Biscuits Manufacturing Limited v West End Distributors Limited (1969) EA 696 where the Learned Judges 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 a preliminary point may dispose of the suit. Examples are an objection that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration.” (Emphasis added).
23. In the premises, I am of the considered view that the learned trial Magistrate was guided by the record including the parties’ respective pleadings as well as the preliminary objection which contains pure points of law and applied the correct principles of law in arriving at the impugned ruling. I find the preliminary objection legally sustainable and proceed to uphold the well-reasoned impugned ruling accordingly.
24. Thus, the appeal is devoid of merit and the same is hereby dismissed.
25. By dint of the proviso to section 27 (1) of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya and the Supreme Court decision in the case of J S Ra & 3 others-v T S Rai & 4 others (2014) eKLR, costs of this appeal and the court below be borne by the Appellant.
26. It is so ordered

DATED AND DELIVERED AT KAPSABET THIS 21ST DAY OF JANUARY 2026

HON G M A ONGONDO

JUDGE



In the presence of; -

Mr. Kurgat learned counsel for the respondent

Walter, Court Assistant

