

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. 242 OF 2018

RIFT DAIRY PRODUCTS LIMITED:::::PLAINTIFF/1ST RESPONDENT

VERSUS

RICHARD MATERE LUSWETI:::::1ST DEFENDANT/2ND RESPONDENT

LAND REGISTRAR, NAIROBI (*Sued through*

THE HON. ATTORNEY GENERAL):::DEFENDANT/3RD RESPONDENT

AND

SYOKIMAU FARM LTD:::::INTENDED 3RD DEFENDANT/APPLICANT

RULING

The Application is 5th June 2025 and is brought under Order 1 Rule 10(2) and Order 40 Rules 1, 2 and 4(l) of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act, CAP 21 Laws of Kenya, Article 50 of the Constitution of Kenya seeking the following orders;

1. That the instant Application be certified as urgent and service thereof upon the Respondents be dispensed with in the first instance.
2. That this Honourable Court be pleased to grant leave to Syokimau Farm Limited to be enjoined in the instant suit as the 3rd Defendant.
3. That the Defence and Counter-Claim by Syokimau Farm Limited dated 24th April 2025 annexed hereto be deemed as duly filed upon payment of the attendant court filing fees.

4. That the Honourable Court be pleased to issue any other orders as befits the ends of justice in the circumstances of this case.
5. That costs for the instant Application be in the cause.

It is anchored on the annexed Supporting Affidavit of David Muthama Malonza and grounds that the Intended 3rd Defendant/Applicant is a limited liability company that was incorporated on 12th January 1965 as a land-buying company. Through the collective contributions of its members, the Intended 3rd Defendant/Applicant successfully acquired land formerly known as LR No. 12715, measuring approximately 4,000 acres. This land was subsequently subdivided and allocated to members via a balloting process, following a structured physical planning exercise. Among the sub-plots generated from the said subdivision was LR No. 12715/458 measuring two decimal naught two four (2.024) hectares as more particularly delineated in survey plan FR No. 185/15. According to the records maintained by the Intended 3rd Defendant/Applicant, the subject subplot known as Land Reference No. 12715/458 was allocated to a member of the Intended 3rd Defendant/Applicant identified as Musai Muindi, who was and still is the holder of share certificates numbered 6451 to 6460. However, the said Musai Muindi has, to date, been unable to procure a formal transfer of the property into his name due to outstanding payments on the allocated shares. As a result, the suit property has, at all material times, remained under the ownership and control of the Intended

3rd Defendant/Applicant, pending full compliance by the said Musai Muindi with his financial obligations.

It is therefore not true that the subject subplot LR No. 12715/458 was ever transferred from the Intended 3rd Defendant/Applicant to the Plaintiff, the 1st Defendant or to any other person whatsoever as claimed in the various pleadings filed by the Plaintiff and the 1st Defendant in the instant suit. Suffice it to state, save for parcels earmarked for public utility that were surrendered to Government, the rest of the subplots were allocated to members and the Intended 3rd Defendant/Applicant has never resolved to sell any sub-plot to persons who are complete strangers to the company. The Intended 3rd Defendant/Applicant having recently learnt about the present suit and the supposed registration of fraudulent certificates of title over its land, it has become necessary that the Intended 3rd Defendant/Applicant be enjoined into these proceedings as a substantive party to enable it file a Defence and a Counter-claim and therein enable it ventilate its rightful claim over the suit property. The suit property is a vacant parcel of land to which the Intended 3rd Defendant/Applicant has at all material times held uninterrupted physical possession thus rendering the participation of the Intended 3rd Defendant/Applicant in the present proceeding extremely necessary to enable the Court appreciate all the issues prior to rendering its verdict.

It is therefore only fair and just that this Application be determined urgently prior to the close of pleadings and therein allow the Intended 3rd

Defendant/Applicant to comply with the directions of the Court as may be issued before the matter is certified ready for hearing. That the participation of the Intended 3rd Defendant/Applicant as a substantive Defendant shall in the instant proceedings enable this Honourable Court to effectively and completely adjudicate upon and settle all issues involved in the instant suit. That this Application has been made at the earliest opportunity before close of pleadings and therefore no prejudice shall be suffered by any of the parties to this suit who will have adequate opportunity to respond to the pleadings annexed herewith if they so wish without being prejudiced. Unless the Honourable Court intervenes and grants the orders sought herein, the Intended 3rd Defendant/Applicant will suffer prejudice and irreparable harm as its constitutional right to property will stand infringed.

This court has considered the application and the submissions therein. The Respondent submits that the Applicant has no *locus standi* to institute this suit as it is subject to voluntary winding up proceedings initiated by a special resolution passed on the 26th July 2013 and published in the Kenya Gazette on the 8th August 2013 as notice No. 11485 pursuant to Section 241 of the Companies Act.

In the case of Alfred Njau & Others vs City Council of Nairobi (1982) KAR 229, the court held as follows;

“The term locus standi means a right to appear in court and conversely to say that a person has no locus standi means that the has no right to appear or be heard in such and such proceedings.”

Similarly, in the case of Law Society of Kenya vs Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000, the court held that;

“Locus standi signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in court of law.”

In the case of Mumo Matemo vs Trusted Society of Human Rights Alliance & 5 Others, the court stated that while the court should not sanction hurdles to access to justice by restricting the definition of locus standi, it should nevertheless not entertain litigation that is hypothetical, abstract or is an abuse of the judicial process.

Therefore, locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.

The Intended 3rd Defendant describes itself as limited liability Company incorporated on the 12th January 1965 as a land buying company under the Companies Act, Laws of Kenya which is undisputed.

The Applicant admits that the said gazette notice was published and exists. That both the Registrar of Companies as well as the Official receiver have declared

the said gazette notice irregular. That upon recently establishing the identity of the person behind the publication of the said notice the Applicant has instituted HCCOMM No. 421 of 2025 seeking a declaration that the gazette notice No. 11485 of 2013 is illegal, null and void.

In the case of Stantech Motors Limited vs Syokimau Farm Limited & 4 others (2024) KEELC 3263 (KLR) judgement delivered on the 3rd April 2024 and cited by the Respondents the court held that;

“The suit against Syokimau Farm Limited the 1st defendant is hereby dismissed with no order as to costs, as that entity does not exist, being a dead and buried company having been wound up in 2013 without appointment of liquidator or administrator or similar official, and there being no residual assets or accounts pending.”

I find that the Intended 3rd Defendant/Applicant being a Company under the Companies Act has no locus standi due to the said gazette notice No. 11485 which has not been voided. Having found so there would be no need to determine the other issue of joinder as the Applicant has no locus in the first place to bring this application. I find the application is unmerited and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 27TH DAY
OF JANUARY 2026.**

N.A. MATHEKA

JUDGE

ORIGINAL