

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL SUIT NO. E070 OF 2023

**FATUMA ABUD FARAJ (as the Legal Representative of Estate of Salim
Juma Hakeem Kitendo (Deceased)).....**

PLAINTIFF

VERSUS

ABSA BANK KENYA PLC

DEFENDANT

JUDGMENT

1. This is a matter which was ripe for striking out at earliest opportunity possible as this would have saved on court's time that was spent in litigating the matter. The court only came to the realization of this fact while preparing to write the judgment in the matter.
2. Through the Complaint dated 28/08/2023, this suit was instituted by the Plaintiff, Fatuma Abud Faraj, who sued as the Legal Representative of the estate of the late Salim Juma Hakeem Kitendo (now deceased). The Plaintiff sought

declaratory orders and permanent injunction orders against the Defendant, arising from a loan facility advanced to the deceased.

3. Interim injunctive orders pending the hearing and determination of this suit were granted against the Defendant, through the ruling of this court dated 27/10/2023. In the course of preparing the judgment, I note that one of the issues raised for determination by the Defendant in the submissions dated 08/07/2025 is whether or not the Plaintiff had *locus standi* to institute the suit on her own without the co-administrator.
4. I also note that this issue was raised by the Defendant in its Replying Affidavit dated 19/09/2023, as noted in paragraph 2 of the Ruling dated 27/10/2023. This court inadvertently left out the issue of *locus standi* as one of the issues for determination, as listed in paragraph 4 of the said ruling. This oversight is highly regretted as the outcome of the ruling would have been different for reasons hereon below.
5. Nevertheless, a suit can be struck out at any stage of the proceedings. **Order 2, rule 15 (1)** of the **Civil Procedure Rules** provides as hereunder;

“(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

(a) it discloses no reasonable cause of action or defence in law; or

(b) it is scandalous, frivolous or vexatious; or

*(c) it may prejudice, embarrass or delay the fair trial of the action; or
(d) it is otherwise an abuse of the process of the court,
and may order the suit to be stayed or dismissed or judgment to be
entered accordingly, as the case may be.”*

6. It is not in dispute that the estate of the deceased has two (2) Legal Administrators, the deceased having died intestate. The Plaintiff and one Rose Faith Mwawasi, having been declared as the wives of the deceased were granted Letters of Administration jointly by this court in Mombasa High Court Succession Case No. 200 of 2015 vide the Judgment delivered on 25/03/2022.
7. The Defendant submits that the Plaintiff having brought the suit singularly and in the absence of the co-administrator had no *locus standi*. On *locus standi*, Mrima J in the case of *Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (suing as the administrator of the Estate of Fanuel Evans Amudavi, Deceased) 2016 eKLR*, stated as hereunder;

“... 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. Locus standi relates mainly to the legal capacity of a party. 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. It is also worth-noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.”

8. The superior courts have pronounced themselves on *locus standi* where an administrator files a suit alone in the absence of the co-administrators. Such suits have been found to be fatally defective and incurable. In the case of ***Migwi (Suing on His Own and Also on Behalf of the Estate of Migwi Mariga - Deceased) v Ngunjiri & another (Environment & Land Case E044 of 2023) [2024] KEELC 476 (KLR)***, MD Mwangi J in upholding a Preliminary Objection raised on *locus standi* and subsequently striking out the suit, had this to say;

“22. I agree with the holding of Majanja, J in Peter Kimani Nene v Nation Newspapers Ltd [2021], to the effect that where one or more administrator has been appointed, they must act jointly at all times. One administrator alone cannot bind the estate of the deceased or file suit alone on behalf of the estate of the deceased. I respectfully disagree with the decision in Esther Muthoni

Mwangi v Samuel Maina Njaria [2021] eKLR as cited by the Plaintiff.

23. Lack of locus standi is a fatal to the suit. It renders the suit a nullity. It is incurable.

24. That being the position, I have no choice but to strike out the Plaintiff's suit in its entirety with costs to the Defendants."

22. The Plaintiff having filed this suit without the co-administrator or obtaining authority from the said administrator, the suit is fatally defective and is hereby struck out.

23. On costs, this court having inadvertently failed to address the issue of *locus standi* when it was first raised, the Plaintiff shall not be condemned to pay costs. Each party is to bear its own costs.

24. Based on the above discourse, I make the following orders: -

a) The suit is hereby struck out

b) Each party to bear its own costs.

Orders accordingly.

Dated, signed and delivered at Mombasa this 19th day of March, 2026.

.....

HON. F. WANGARI

JUDGE OF THE HIGH COURT

In the presence of;

Mr. Mitei Advocate h/b for Mr. Yunis Advocate for the Plaintiff

N/A by the Defendant

Ms. Getrude, Court Assistant

Original