



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC NO. 350 OF 2017

ISAAC ISIAHO SHIHEMI ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

JOSINA MADEGWA::::::::::::::::::::::::::::::::::::::::: DEFENDANT

RULING

The defendant/respondent filed a preliminary objection to the application and suit date filed and dated 20th September, 2017 on the following grounds:-

1. THAT the defendant/respondent is not the administrator of the estate of Madegwa Matunda.
2. THAT the plaintiff/applicant has filed the suit in the land and environment court instead of allowing the defendant/respondent to succeed the estates of the deceased first.
3. THAT it is well within the knowledge of the plaintiff/applicant that the defendant/respondent has no locus standi at the moment and the land registrar and district surveyor have no authority to carry out survey on a deceased persons estates without letters of administration first.
4. THAT the application herein be dismissed with costs.

The respondent in his oral submissions states he only knows Madegwa and not the respondent.

A Preliminary Objection, as stated in the case of **Mukisa Biscuit Manufacturing Company Ltd vs West End Distributors Ltd (1969) E.A 696**,

“..... 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”

In the same case, Sir Charles Newbold said:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion”.

Locus standi, is defined in **Black’s Law Dictionary 9th Edition** as the right to bring an action or to be heard in a given forum. Therefore the issue of locus standi and/or legal capacity raises points of law and is therefore a proper one to raise it as a Preliminary Objection and should be raised at the earliest

opportunity as was held in the case of **Mumo Matemu vs Trusted Society of Human Rights Alliance & Others 2014 e K.L.R.** The issue of the plaintiff's locus standi to file this suit is therefore properly raised as a Preliminary Objection.

The defendant stated that the plaintiff/applicant has filed the suit in the land and environment court instead of allowing the defendant/respondent to succeed the estates of the deceased first. That it is well within the knowledge of the plaintiff/applicant that the defendant/respondent has no locus standi at the moment and the land registrar and district surveyor have no authority to carry out survey on a deceased persons estates without letters of administration first.

As was held in the case of **Otieno vs Ougo 1986-1989 E.A.L.R 486:**

“..... an administrator is not entitled to bring any, action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception”.

Evidently, the plaintiff herein also does not have the locus standi to file this suit on his behalf together with a joint owner who is deceased. From the pleadings Land Parcel No. Kakamega/ Shamakhokho/474 is jointly owned by the plaintiff and one Madegwa Matunda now deceased. Ultimately therefore, the defendant's Preliminary Objection questioning the plaintiff's locus standi/legal capacity has merit and is hereby upheld. The application and suit are struck out with no orders as to costs. Parties are advised to obtain letters of administration before filing the matter.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 7TH DAY OF FEBRUARY 2018.

N.A. MATHEKA

JUDGE