



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**CASE NO. 219 OF 2015**

**JOHN MAKOKHA MUKENYA .....PLAINTIFF**

**VERSUS**

**ROSELYNE MAYAKU SHIUNDU .....DEFENDANT**

**RULING**

The Defendant herein ROSELYNE MUYAKI SHIUNDU raised a Preliminary Objection in this suit dated 16<sup>th</sup> May 2016 on the following main grounds:

1. THAT this suit is an abuse of the due process of law.
2. THAT the Defendant herein lacks the locus standi to be sued.

The Defendant prays for the dismissal of this suit with costs. The defendant submitted that, the subject matter herein L.R. SOUTH WANGA/LUREKO/247 is registered in the names of the Defendant's late husband MATAYO SHIUNDU MUKENYA who died on 31<sup>st</sup> October 2007 as admitted and categorically stated by the plaintiff in the plaint herein. The defendant's said the late husband died before transferring any portion thereof to any person including the plaintiff and or the defendant herein. The defendant is not the legal representative of the estate intestate of the late MATAYO SHIUNDU MUKENYA as she has no Grant of letters of Administration intestate neither has she instituted any succession proceedings in respect thereof. The defendant thus has no capacity to be sued on behalf of the estate of the late MATAYO SHIUNDU MUKENYA the registered proprietor of L.R. SOUTH WANGA/LUREKO/2647. The defendant thus lacks locus standi to be sued and this suit against her must fail. In view of the following they submit that the plaintiff having known the legal capacity of the defendant herein and being aware that she is not the legal representative of the estate of the late MATAYO SHIUNDU MUKENYA and going forth to institute this suit against her is an outright abuse of the due process of court and a waste of the court's time and resources. They urged that the preliminary objection herein be allowed and that this suit be dismissed henceforth with costs to the defendant in view of the foregoing. The plaintiff has not opposed the objection.

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 9<sup>th</sup> Edition** as the right to bring an action or to be heard in a given forum. Therefore the issue issue of locus standi and/or legal capacity raises points of law and is therefore a proper 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 defendant's locus standi to be sued in this suit is therefore properly raised as a Preliminary Objection.

Counsel for the defendant has pleaded the subject matter herein L.R. SOUTH WANGA/LUREKO/2647 is registered in the names of the Defendant's late husband MATAYO SHIUNDU MUKENYA who died on 31<sup>st</sup> October 2007 as admitted and categorically stated by the plaintiff in the plaint herein. The defendant's said the late husband died before transferring any portion thereof of any person including the plaintiff and the defendant herein. The defendant is not the legal representative of the estate intestate of the late MATAYO SHIUNDU MUKENYA as she has no Grant of letters of Administration intestate neither has she instituted any succession proceedings in respect thereof. The defendant thus has no capacity to be sued on behalf of the estate of the late MATAYO SHIUNDU MUKENYA the registered proprietor of L.R. SOUTH WANGA/LUREKO/2647. The defendant thus lacks locus standi to be sued and this suit against her must fail. 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 defendant herein does not have the locus standi to be sued in this suit. Ultimately therefore, the defendant's Preliminary Objection questioning the locus standi/legal capacity has merit and is hereby upheld. This suit is struck out with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 6<sup>TH</sup> DAY OF FEBRUARY 2018.**

**N.A. MATHEKA**

**JUDGE**