

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC NO 2 OF 2014

EVERLYNE MASIONGO YESWA

GLADYS JUMBA YESWA.....PLAINTIFFS/RESPONDENTS

VERSUS

PAUL DISI YESWA.....DEFENDANT/APPLICANT

RULING

This application is brought pursuant to Section 1A, 1B & 3A of the Civil Procedure Act Cap 21 laws of Kenya Order 2 rule 15 and Order 1 Rule 1 of the Civil Procedure Rules 2010 seeking the following orders;

1. That the suit herein be struck out and or dismissed with costs for disclosing no reasonable cause of action.
2. That in the alternative, the suit herein be struck out and or dismissed with costs for being frivolous and vexatious and/or an abuse of the due process of the court.
3. That costs be awarded to the applicant

The applicant submitted that, the plaintiffs who are his sisters in law have sued him over land parcel No. Butso/ Shikoti/526. That it is within his knowledge that indeed the title No. BUTSOTSO/SHIKOTI/526 did exist at one point as it was land registered in the name of his late father FRANCIS YESWA. That it is further within his knowledge that in or about 1998 the said title ceased to exist upon partition to create new title numbers. BUTSOTSO/SHIKOTI/5469 and BUTSOTSO/SHIKOTI/5470 (annexed are marked PDY I is copy of the Certificate of Search conducted on 13.3.2014). That several other titles have since been created out of the said parcel and none of whom has been made a party to the suit herein (attached and marked "PDY 2" is a copy of certificate of official search dated 13.3.2014 conducted in respect of LR BUTSOTSO/SHIKOTI/5469 showing BUTSOTSO/SHIKOTI/7572 TO 7574). That the Court cannot make orders that would affect titles whose registered proprietors are not parties to the suit herein in which case such orders shall at best be orders in vain. That from a reading of paragraphs 6,7,8,9 and 10 of the Complaint and further from a reading of the witness statements of the plaintiff's witnesses the plaintiffs have instituted the suit herein on behalf of their respective late husbands and of father in law. That to the best of his knowledge, information and belief, the plaintiffs are neither the legal representatives of the estate of their late father in law nor of their husbands. That plaintiffs have by reasons of the matters pleaded above no locus standi to institute the suit herein and the same should be struck out. That the suit herein is not only frivolous and or vexatious but is also an abuse of the due process of the Court in view of the fact that the plaintiffs are seeking to restrain or block activities that have already taken place namely sub division and creation of new titles which have already changed hands.

The plaintiffs/respondents were served but failed to attend court or file any papers in opposition. This court has considered the application and the submissions herein. The application is based on the affidavit of Paul Disi Yeswa the respondent. The grounds are that, the plaintiffs lack the locus standi to institute the suit herein as they are not the legal representatives of the estate of the late Francis Yeswa nor their respective deceased husband's SIMON MASIONGO YESWA and ERICK JUMBA YESWA. That the subject matter of this being LR No. BUTSOTSO/SHIKOTI/526 does not exist the same having been closed on partition in or about the year 1998. That several titles been created out of the original title No. BUTSOTSO/SHIKOTI/526 which have been registered in the names of third parties who are not enjoined to this suit and any orders made touching the said titles will be orders in vain.

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 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 at this early stage.

That from a reading of paragraphs 6, 7, 8, 9 and 10 of the Complaint and further from a reading of the witness statements of the plaintiff's witnesses the plaintiffs have instituted the suit herein on behalf of their respective late husbands and of their father in law. From the records the plaintiffs are neither the legal representatives of the estate of their late father in law nor of their husbands.

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 plaintiffs herein also does not have the locus standi to file this suit on his behalf of their deceased husbands. Should the plaintiff have locus it would appear that, several other titles have since been created out of the said parcel and none of whom has been made a

party to the suit herein (attached and marked "PDY 2" is a copy of certificate of official search dated 13.3.2014 conducted in respect of LR BUTSOTSO/SHIKOTI/5469 showing BUTSOTSO/SHIKOTI/7572 TO 7574). That the Court cannot make orders that would affect titles whose registered proprietors are not parties to the suit herein in which case such orders shall at best be orders in vain. The plaintiffs have sued over land parcel No. Butsotso/Shikoti/526. The title No. BUTSOTSO/SHIKOTI/526 does not exist and they would have to enjoin the other parties going forward. However, as for now I find that the respondents do not have the locus standi to prosecute this matter. The application has merit and I strike out this suit with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 17TH DAY OF MAY 2018.

N. A. MATHEKA

JUDGE