



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

THIKA LAW COURTS

ELC CASE NO.772 OF 2017

ELIZABETH WANGARI NGUGI.....PLAINTIFF/APPLICANT

-VERSUS-

MAGDALINE NJERI GICHEHA.....DEFENDANT/RESPONDENT

RULING

The Plaintiff/Applicant herein **Elizabeth Wangari Ngugi** filed a **Plaint** on **4th October 2017** and sought for Judgement against the Defendant on the following terms:-

- a) A permanent order restraining Defendant, her agents or servants from further harassing the Plaintiff using Juja CID's Officer and from trespassing on the suit parcel, Corner Plot No.17A 35X70 ft out of LR.No.10821/87.***
- b) Costs of this suit.***
- c) Any other order this Honourable court may deem fit to grant.***

In her claim, the Plaintiff alleged that she is the beneficial owner of the suit property **LR.No.Corner Plot No.17A 35 X 70 ft out of LR.No.10821/87** having taken the share of her deceased husband **George Ngugi Njungei**. She further alleged that the Defendant has laid claim over the suit property and recently the Plaintiff was summoned by **Juja Police Station** to clear the issue over the Defendant's claim. It was also alleged that the suit property was initially owned by their deceased father-in-law **Njungei Kimunyu**, but it later passed on to her as the legal administrator of the

Estate of her deceased husband (**George Ngugi Njungei**). She also alleged that the Defendant has been interfering with the said plot and thus this suit.

Simultaneous to the **Plaint**, the Plaintiff also filed **Notice of Motion** application seeking for temporary injunction to restrain the Defendant, her servants and/or agents from harassing her and preventing the Plaintiff from developing the said **Corner Plot No.17A 35 X 70ft out of LR.No.10821/8,7** situated at **Juja**.

However, the said **Notice of Motion** application was opposed by the Defendant/Respondent who filed the **Replying Affidavit** on **6th December 2017** and averred that the **LR.No.19821/15 (Original 10821/87)**, does not belong to the Plaintiff nor her deceased husband as alleged. She alleged that the said suit property belonged to their father-in-law and it is part of his estate which is pending distribution in

Nairobi Succession Cause No.103 of 1992. She also averred that the Plaintiff has encroached on her homestead and she began the said harassment upon the demise of the Defendant's husband.

Further, the Defendant filed a **Notice of Preliminary Objection** on **31st October 2017**, and urged the Court to dismiss the entire suit with costs on the following grounds:-

1) That the Plaintiff has no *locus standi* to bring this suit as the purported property is an undefined portion of LR.No.10821/87 (Original No.10821/15) which belongs to the estate of the late Njungei Kamunyū in which she alongside the Defendant, is beneficiary and is pending distribution in Nairobi Succession Cause No.103 of 1992 particulars of which she is well seized of.

2) That the suit, application and all prayers sought are baseless comprised of falsehood, devoid of merit and an abuse of the court process.

3) That all the prayers sought are incapable of being granted.

Following the raising of the **Preliminary Objection**, the Plaintiff **withdrew** the **Notice of Motion** application vide the **Notice of Withdrawal** of application dated **16th February 2018**. However the Defendant did not withdraw her **Notice of Preliminary Objection** and thus this Ruling.

The question now for determination is whether the **Preliminary Objection** herein is merited.

A **Preliminary Objection** was described in the **Mukisa Biscuits & Co. Ltd....Vs...West End Distributors Ltd (1969) EA 696** to mean-

“...So far as I am aware, a Preliminary Objection 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. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

Does the above **Preliminary Objection** as raised by the Defendant herein fit the description of a **Preliminary Objection**?

The Defendant has averred that the Plaintiff herein has no *locus standi* to bring this suit. The *locus standi* means ‘**capacity to bring a suit**’. It is therefore clear that *locus standi* is the right to appear in court or to be heard in court or other proceedings. Literally, it means a place of standing. If a person has no *locus standi*, it means he cannot be heard even on whether or not he has a case worth listening to. (**See Jowitts Dictionary of English Law Volume 2 (200 Ed)**). See also the case of **LSK...Vs...Commissioner of Lands & Others, Nakuru High Court, Civil Case NO.464 of 2000**, where the Court held that:

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

Therefore it is clear that capacity to sue is a pure point of law and if one is found not to have capacity, then the suit will not stand and the said objection is capable of bringing the matter to an end. See the case of **Oraro...Vs...Mbaja (2005) 1 KLR/41**, the Court held that-

“A Preliminary Objection consists of a point of law which has been pleaded or which arise by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”.

Further, the Defendant has alleged that the prayers sought herein are baseless and are an abuse of the court process. If the suit is found to be an abuse of the court process, the same can be struck out as provided by **Order 2 Rule 15** and thus bringing the suit to an end. Therefore, the points raised by the

Defendant in her **Notice of Preliminary Objection** are points of law which are capable of disposing off the matter and thus a **Preliminary Objection** as described by the **Mukisa Biscuits Case (Supra)**.

Is the **Preliminary Objection** merited?

The Defendant has alleged that the Plaintiff has no capacity to file this suit over **LR.No.10821/87** as the same belongs to the estate of the **late Njungei Kamunyu**, which estate is pending distribution vide **Succession Cause No.103 of 1992**. If the said estate has not been fully distributed, where did the Plaintiff obtain the description of land parcel **No.17A 35X70 ft out of the LR.No.10821/87?** The said land parcel has no title nor no evidence was attached to show and confirm that the Plaintiff is the beneficial owner of this plot **17A 34X70 ft out of LR.No.10821/87**. Indeed **LR.No.10821/87** is not owned by the Plaintiff and it is subject of a **Succession Cause No.103 of 1993**. If the Plaintiff herein has any claim over the said estate, she ought to have filed her concern or claim in the Succession Case. The suit property **LR.No.10821/15 (Original 10821/87)** not being in the name of the Plaintiff then she indeed has no capacity to bring this suit.

Further the Plaintiff is very much aware of the existence of **Succession Cause No.103 of 1992** in regard to the estate of the late **Njungei Kamunyu** wherein the Plaintiff is a beneficiary. If indeed she was dissatisfied with the Defendant's activities over the said parcel of land, she should have filed the said claim in **Succession Cause No.103 of 1992**. The Court finds this suit is an abuse of the court process which suit should not be allowed to stand.

For the above reasons, the Court finds the Defendant's **Notice of Preliminary Objection** dated **31st October 2017** is merited. The said Preliminary Objection is upheld and the suit herein is dismissed entirely with costs to the Defendant for reasons that the Plaintiff has no capacity to bring this claim over undistributed estate wherein the Succession Cause is still pending in court and thus the suit is an abuse of the court process.

It is so ordered.

Dated, Signed and Delivered at Thika this 19th day of June 2018.

L. GACHERU

JUDGE

In the presence of

Mr. Waweru holding brief for Mr. Kimani for Plaintiff/Applicant

Mr. Kinyua holding brief for Mr. Njoroge for Defendant/Respondent

Lucy - Court clerk.

L. GACHERU

JUDGE

Court – Ruling read in open court in the presence of the above stated advocates.

L. GACHERU

JUDGE

19/6/2018