



REPUBLIC OF KENYA



KENYA LAW
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**Apeta v Longorinyang (Environment and Land Appeal 19 of 2022)
[2024] KEELC 64 (KLR) (23 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 64 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND APPEAL 19 OF 2022
FO NYAGAKA, J
JANUARY 23, 2024**

BETWEEN

LONGORINYANG LOROT APETA APPELLANT

AND

TECLA LONGORINYANG RESPONDENT

*(Being an appeal from the Ruling of B.O. Ondego (SPM_ delivered on
11/10/2022, in Kapenguria Chief Magistrate's Court ELC Case No. 21 of 2022)*

JUDGMENT

Background

1. Through a Complaint and Notice of Motion Application both dated 12/05/2022, Tecla Longorinyang, the Respondent herein sought to stop Longorinyang Apeta, the Appellant herein, from disposing off land Parcel No. West Pokot/Keringet A/633 (hereinafter 'The suit land').
2. The Respondent pleaded that she was the wife of the Appellant and that the Appellant was in the process of secretly selling suit land despite the fact that it is their only source of livelihood and is the place where their matrimonial home sits.
3. In the Notice of Motion Application, the Respondent prayed for the following interim reliefs:
 - a. ...spent
 - b. That the honourable Court be pleased to issue an Order restraining the Defendant his servants and or agents from alienating, selling, disposing of easy changing or in other way from interfering with land parcel No. West pokot/Keringet A/633 situated at Keringet within West Pokot County.
 - c. That Pending inter partes hearing pray (sic) No. 2 be granted in the interim



- d. Costs of the suit.
4. The Appellant challenged the Respondent's case through a Preliminary Objection and Replying Affidavit dated 30/05/2022 and 30/06/2022 respectively. In the Preliminary Objection, it was his case that the Respondent herein lacked locus standi to institute the suit since the land belongs to his deceased father, one Abeta Kalikwon, and that she (the Respondent) had not obtained letters of administration to the estate.
5. In the replying Affidavit, the Respondent reiterated that the suit land belonged to his deceased father and he was in the process of processing the Grant of Letters of Administration. He stated that his wife, the Respondent herein, did not have right of inheritance under the Law of Succession Act.
6. In his Ruling of 11/10/2022, the Trial Magistrate found that the disputants were man and wife in a legal union and that the suit land is where their matrimonial home was situated. However, the trial Court disagreed with the invitation that the Respondent did not have *locus standi*. He found that the issue needed to be looked into deeply and could only be determined after the full hearing.
7. The learned trial magistrate observed that there was an issue of overriding interests of the Respondent herein over the property which needed to be ascertained at the hearing and as such restrained the Appellant from disposing the land.

The Appeal

8. Disgruntled by the Ruling of the Trial Court, the Appellant lodged the instant appeal. In the Memorandum of Appeal dated 09/11/2022, he cited the following grounds of appeal:
 1. That the learned trial magistrate erred in law and in fact by dismissing the Preliminary Objection dated 30th May 2022 raised by the Appellant by failing to take into consideration that the Respondent had no *locus standi* to institute a suit over the estate of the late Abeta Kalikwon without letters of administration.
 2. That the learned trial magistrate erred in law and in fact by failing to take into account the fact that the Respondent does not fall within the hierarchy of dependants over the estate of Abeta Kalikwon as envisaged in section 29 of the Law of Succession Act Cap 160 laws of Kenya.
 3. That the learned trial magistrate erred in fact by failing to take into account that the suit property land parcel West Pokot/EKringet A/633 is registered in the name of the Appellant's father herein the late Abeta Kalikwon whose estate the succession cause on pending for confirmation in Court.
 4. That the learned trial magistrate erred in fact by disregarding and by failing to appreciate the Defendant's Replying Affidavit dated 30th may 2022 thus arriving at an erroneous decision by issuing an injunctive order in favour of the Respondent.
9. The Appellant urged appeal through written submissions dated 15/05/2023. He argued that as per the provisions of Section 54 of the Law Succession Act as read with form 14 of the 5th schedule to the Act, it was mandatory for Letters of Administration to be taken out where an estate of a deceased person is to be distributed. He submitted that the Trial Magistrate never delved into the merits of the Preliminary Objection since the Respondent herein moved the Court without evidence of Letters of Administration.
10. His position was that the trial Court erred in finding that the Respondent herein had an overriding interest. He relied on the case of Civil Appeal No. 119 of 2015, Julian Adoyo Ongunda & Jared



Odhiambo Abano to buttress the centrality of his stand on *locus standi*. In conclusion, he submitted that the Trial Magistrate misdirected himself and as such the appeal ought to succeed.

The Respondent's Case

11. The Respondent challenged the Appeal through written submissions dated 19/05/2023. She argued that she instituted the suit in the Trial Court in order to protect her beneficial interest over her matrimonial home. To that end, reference was made to Article 45 of *the Constitution*, Section 6 and 8(2) of the *Matrimonial Property Act* as well as the provision of the *Land Act* to emphasize equal rights over matrimonial property. She urged that the Appeal was without merit and ought to be dismissed with costs.

Issues

12. The only issue for determination is whether the Appeal is merited.

Analysis and Determination

13. This being the first appeal, this Court's role is well settled. In the Case of Okemo -vs- Republic (1977) EALR 32 and in *Mark Oiruri Mose -vs- R (2013)* eKLR it was stated that the first appellate court is duty bound to revisit the evidence tendered before the trial court, re-evaluate and re-analyse it and come to its own independent conclusions. But this being an appeal resulting from the exercise of discretion, this Court is alive to the fact that it must not substitute its reason with that of the trial court.
14. The instant Appeal is premised on the contention that the Trial Court misdirected itself by disallowing the Appellant's Preliminary Objection. At the heart of the Preliminary Objection was the claim that the Respondent did not have locus standi to institute the suit claiming entitlement to the suit land. I will therefore briefly look at concept of locus standi and its bar on litigants to access courts.
15. The term locus standi is defined by The *Black's Law Dictionary, 9th Edition* at page 1026 as follows: -

‘the right to bring an action or to be heard in a given forum’.
16. Locus standi has been the subject of discussion in various courts of superior jurisdiction. In reference to its earlier decision in *Alfred Njau & 5 others -vs- City Council of Nairobi [1983]* eKLR, The Court of Appeal in Mombasa Civil Appeal No. 75 of 2016, *Juletabi African Adventure Limited & Another -vs- Christopher Michael Lockley [2017]* eKLR described locus standi as follows:

“...The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt's Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding....”
17. In *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others [2013]* eKLR the Court of Appeal discussed the scope of Locus standi as envisioned by Article 22 and 258 of *the Constitution*. It observed as follows;

“It still remains to reiterate that the landscape of locus standi has been fundamentally transformed by the enactment of *the Constitution* in 2010 by the people themselves. In our view, the hitherto stringent locus standi requirements of consent of the Attorney General or demonstration of some special interest by a private citizen seeking to enforce a public right have been buried in the annals of history. Today, by dint of Articles 22 and 258 of *the Constitution*, any person can institute proceedings under the Bill of Rights, on behalf of



another person who cannot act in their own name, or as a member of, or in the interest of a group or class of persons, or in the public interest. Pursuant to Article 22 (3) aforesaid, the Chief Justice has made rules contained in Legal Notice No. 117 of 28th June 2013 – *The Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013—which, in view of its long title, we take the liberty to baptize, the “Mutunga Rules”, to inter alia, facilitate the application of the right of standing. Like Article 48, the overriding objective of those rules is to facilitate access to justice for all persons. The rules also reiterate that any person other than a person whose right or fundamental freedom under *the Constitution* is allegedly denied, violated or infringed or threatened has a right of standing and can institute proceedings as envisaged under Articles 22 (2) and 258 of *the Constitution*.

It may therefore now be taken as well established that where a legal wrong or injury is caused or threatened to a person or to a determinate class of persons by reason of violation of any constitutional or legal right, or any burden is imposed in contravention of any constitutional or legal provision, or without authority of law, and such person or determinate class of persons is, by reason of poverty, helplessness, disability or socio-economic disadvantage, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Articles 22 and 258 of *the Constitution*”.

18. Upon making the foregoing comprehensive remarks, the learned Court of Appeal Judges warned courts of creating impediments to access to justice by observing as hereunder:

“...this Court cannot fashion nor sanction an invitation to a judicial standard for locus standi that places hurdles on access to the Courts, except only when such litigation is hypothetical, abstract or is an abuse of the judicial process”.

19. As can be summed from the foregoing, *the Constitution* 2010 has widened the scope for any person to access court. Article 22 and 258 of *the Constitution* entitles every person to be heard by Court not only in instances where there is a constitutional infraction, but also when a legal right is infringed without the authority of the law.

20. Personal interest or stake in a matter is a gateway to courts. This was the finding of the Court in *Michael Osundwa Sakwa v Chief Justice and President of the Supreme Court of Kenya & Another [2016]* eKLR. In the case, the decision in Priscilla Nyokabi Kanyua vs. Attorney General & Interim Independent Electoral Commission Nairobi was referred where the following remarks were made:

“...In Kenya the Court has emphatically stated that what gives locus standi is a minimal personal interest and such interest gives a person standing even though it is quite clear that he would not be more affected than any other member of the population...”

21. Further, in *Kbelef Khalifa El-Busaidy -vs- Commissioner of Lands & 2 Others [2002]* eKLR, the court observed as follows;

“...for an individual to have a locus standi, he must have an interest either vested or contingent in the subject matter before the court, which interest must be a legal one. Such interest must be above that of other members of the public in general.”

22. Having elaborated on the concept of *locus standi*, I now re-evaluate the application of the trial court in the circumstances of the case.



23. It is evident from the pleadings that the Appellant herein does not contest being married to the Respondent. His only concern is that the Respondent, being his wife is not entitled to challenge anything he purposes to do with the land they reside on since it belongs to his deceased father. The Appellant pleaded that since the Respondent was not a beneficiary of the deceased's estate and does not have Letters of Administration, she has no locus standi in anything as pertains the suit land.
24. Placing side by side the Appellant's grounds in the Memorandum of Appeal against the principles operationalizing the principled of locus standi, it is clear that the Respondent was well within the law to seek court's protection pending the hearing and final determination of the suit.
25. The Appellant admits that he does not have Letters of Administration to the estate of the deceased. Similarly, the Respondent does not have the letters of Administration. That being the case, neither the Appellant nor the Respondent has a better entitlement to the deceased estate than the other. They both have equal beneficial interest in the land which is protected in equal measure by the law pending distribution of the estate of the deceased. The appellant cannot have a better beneficial interest than the Respondent over the parcel of land which does not belong to him but he and the Respondent are only individuals whose interests can only be determined by the "Succession Court", that is to say, the court that will handle the succession matter. Thus, to allow the appeal, in the circumstances of the case, is to prematurely disenfranchise the Respondent's beneficial interest in the land. They must first prosecute their respective cases before the lower Court.
26. In the circumstances, therefore, the Trial Court cannot be faulted in its assessment that the Respondent ought to be given audience and her concerns looked into deeply in the main suit. That finding is in keeping with the edicts of Article 22 and 258 of *the Constitution* as well as the various Courts' appreciation of the wide scope of locus standi.
27. In the premises, I find the Appeal be without merit and hereby dismiss it in its entirety with costs to the Respondent.
28. It's so Ordered.

JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 23RD DAY OF JANUARY, 2024.

**HON. DR. IUR FRED NYAGAKA
JUDGE, ELC, KITALE.**

