



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 144 OF 2015

ANASTACIA WANGUI MURIITHI.....PLAINTIFF

VERSUS

JEAN WAMARWA NYAMU.....DEFENDANT

RULING

ANASTACIA WANGUI MURIITHI the plaintiff herein describes herself as the wife of the late **DUNCAN MURIITHI NJAGI** who died on 7th March 2016 and with whom they had six children. The said **DUNCAN MURIITHI NJAGI** (deceased) was the owner of land parcel No. NGARIAMA/NGIRIAMBURU/4039 (the suit land) on which the plaintiff had placed a restriction in 2010 to protect her interests as the deceased showed intention of selling it. However, the plaintiff later learnt that the defendant had purchased the suit land through a fraudulent scheme particulars of which have been pleaded. The plaintiff therefore filed this suit seeking orders that the transfer of the suit land to the defendant be declared to have been irregular, unlawful and fraudulent and the cancellation of its registration in the names of the defendant so that it reverts into the names of the deceased as spousal consent was not obtained.

The defendant filed a defence denying any knowledge that the plaintiff was the wife of the deceased adding that the person introduced to her by the deceased as his wife was one **SUSAN WAWIRA MUCHIRI** who accompanied the deceased when the defendant purchased the suit land on 10th July 2013 at a consideration of Ksh. 1,800,000/=. The defendant further pleaded that this suit is incompetent and bad in law as the plaintiff lacks the locus standi to file these proceedings which should therefore be struck out.

The defendant then filed a Notice of Preliminary Objection on the grounds that this suit is incompetent and improperly before this Court since the plaintiff lacks the locus standi to file it.

That Preliminary Objection is the subject of this ruling and submissions on the same have been filed by **MAINA KAGIO** advocate for the plaintiff and **P.M. MUCHIRA** advocate for the defendant.

It is the submission by the defendant that since the suit land is registered in the names of the deceased, the plaintiff ought to have obtained letters of administration to his Estate in terms of the provisions of the **Law of Succession Act** before filing this suit and since she has not obtained the same, she lacks the locus standi to file this suit.

In response, the plaintiff submits that this suit is filed by the plaintiff in her own right as a spouse of the deceased and that her consent was necessary before the transfer of the suit land to the defendant as

required under **Section 93 (3) (4) of the Land Registration Act**. In any event, whether or not she has obtained letters of administration is a factual issue which does not fall under the purview of a Preliminary Objection.

A Preliminary Objection, as was held in the case of **MUKISA BISCUIT MANUFACTURING CO. 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. I have no doubt in my mind that an issue of locus standi raises points of law and is therefore a proper issue to be canvassed as a Preliminary Objection. In **MUMO MATEMU VS TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE & OTHERS 2014 e K.L.R.**, the Supreme Court stated that:

“The issue of locus standi raises a point of law that touches on the jurisdiction of the Court and it should be resolved at the earliest opportunity”

The issue of the plaintiff’s locus standi to file this suit is therefore properly raised as a Preliminary Objection. Whether or not it is merited is what I shall now consider.

Although counsel for the defendant has pleaded that the plaintiff has filed this suit on behalf of the Estate of her late husband **DUNCAN MURIITHI NJAGI**, it is clear from the plaint that the plaintiff has in fact filed this suit in her own capacity as a party who had interest in the suit land which she describes as her **“matrimonial home”**. Nowhere in the pleadings does she describe herself as suing in her capacity as the legal representative of the Estate of her deceased husband and therefore, she does not need to be clothed with the necessary locus standi by obtaining either a limited or full grant of letters of administration. If the plaintiff had filed this suit as the legal representative of the Estate of her deceased husband before obtaining grant of letters of administration, then she would lack the necessary locus standi. 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”.

Of course whether or not the plaintiff has any cause of action that will eventually succeed is a different matter to be determined at the trial. As was held in **ALFRED NJAU & OTHERS VS CITY COUNCIL OF NAIROBI 1982-88 1 K.A.R 229**:

“To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the Court but to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to”.

Clearly, the plaintiff herein has the necessary locus standi to file this suit. Her case, as I understand it, is that the suit land is matrimonial property which was transferred to the defendant fraudulently and without spousal consent. It is in that capacity that she has filed this suit. Whether or not she will succeed in her claim is another matter but her right to bring this suit is not in doubt.

Ultimately therefore, the defendant’s Preliminary Objection questioning the plaintiff’s locus standi is

devoid of merit and is hereby dismissed with costs.

B.N. OLAO

JUDGE

31ST MARCH, 2017

Ruling delivered, dated and signed in open Court this 31st day of March 2017

Plaintiff present

Defendant absent

Counsel absent.

B.N. OLAO

JUDGE

31ST MARCH, 2017