



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MIGORI

CASE NO. 52 OF 2017

(Formerly Kisii ELC CASE NO. 162 OF 2016)

GEORGE ORANGO ORAGO.....PLAINTIFF

VERSUS

JOHN WARINGA ADEDE.....DEFENDANT

RULING

1. The Defendant namely John Waringa Adede who appears in persons, filed a Notice of Preliminary Objection dated 22nd March 2017. It reads:

TAKE NOTICE that the defendant shall prior to the Hearing of the main suit raise preliminary objection that this suit be dismissed on ground that the defendant does not have locus standi to file defence and is bad in law and fatally defective because the defendant is not the owner of LR NO. KANYAMKAGO/KAJUJU/51.

2. The Notice of Preliminary Objection was served on M/s Oguttu Mboya counsel for the Plaintiff namely George Orago on 3/4/2017. The court fixed it for hearing on 21/6/17. There is no written response to the preliminary objection.

3. The Defendant is not present in court to argue it. Ms. Mireri counsel instructed by M/s Oguttu – Mboya has applied for its dismissal with costs.

4. In Mukisa Biscuits Co. Ltd Vs. West End Distributors (1969) EA 60 & at page 701, it was noted that :

“It is settled that a preliminary objection raises a pure point of law which is argued on the assumption that all the fact pleaded by the other side are correct and that it cannot be raised if any facts has to be ascertained”(Emphasis laid)

5. The Preliminary objection has raised a pure point of law in respect of locus standi of the plaintiff to file this suit. The **Concise Oxford English Dictionary 12th Edition** edited by Angus Stevenson and Maurice Waite, defines the terms “Locus Standi as:

“ The right or capacity to bring an action or to appear in court”

6. The plaintiff has pleaded in his plaint dated 30th May 2016 that he is the registered owner of land parcel no. **Kanyamkago/Kajulu/2002**. The facts pleaded therein have to be ascertained at the hearing of the suit.

7. The preliminary objection has not be argued. I find it is foundationless, strangely it refers to the defendant in lieu of the plaintiff counsel has applied for its dismissal.

8. I accordingly dismiss it with costs in the cause.

9. The plaintiff counsel has informed the court that the parties have complied with **Order 11 Civil Procedure Rule 2010**. Therefore, hearing of the suit fixed for 24/10/2017. The defendant to be served accordingly.

G.M.A. ONGONDO

JUDGE

DELIVERED, SIGNED and DATED in open court at MIGORI this 21st day of JUNE 2017.

G. M. A. ONGONDO

JUDGE

In the presence of:

Ms. Mireri instructed by Oguttu Mboya counsel for the plaintiff

No. appearance for Defendant

Mr. Tom Otieno-Court assistant

G. M. A. ONGONDO

JUDGE