



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC CASE NO. 93 OF 2015**

**ROSE MUHENGE KALEVERA.....PLAINTIFF**

**VERSUS**

**PATRICK SEVEN SAVATIA.....1<sup>ST</sup> DEFENDANT**

**EGGREY NATSE SAVATIA.....2<sup>ND</sup> DEFENDANT**

**STANLEY SORE SAVATIA.....3<sup>RD</sup> DEFENDANT**

**MAXWELL KHANYESI SAVATIA.....4<sup>TH</sup> DEFENDANT**

**RULING**

This suit is instituted by the plaintiff on behalf of the estate of her late husband one Laban Madegwa Savatia who passed away in the year 1998. The defendants who are the plaintiff's brother in-laws have gone ahead to distribute her late father in-law's estate unfairly leaving out the plaintiff and her children. As of date of filing this suit, no succession proceedings have been undertaken for the estate of the deceased to be distributed justly and fairly. The foregoing notwithstanding the defendants have transferred and or secured the transfer of the said parcel being Land Parcel Number KAKAMEGA/CHPTUL/637 in their names and obtained title deeds. The transfer of the land and issue of titles in the defendants' names were fraudulent according to the plaint.

The defendants raised a preliminary objection on a point of law that the plaintiff Rose Muhenge Kalevera has no legal capacity or locus standi to institute the matter as she has not obtained any letters of administration on the estate of the deceased as per paragraph 3 and 4 of their defence. The plaintiff in response admits she has not taken out any letters of administration on the estate of the deceased one Laban Madegwa Savatia who passed away in the year 1998 and maintains that she was his wife.

A Preliminary Objection, as stated in the case of **Mukisa Biscuit Manufacturing Company 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 9<sup>th</sup> 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 issue 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 as a Preliminary Objection.

Counsel for the defendant has pleaded that the plaintiff has filed this suit on behalf of the Estate of late Laban Madegwa Savatia it is clear from the plaintiff paragraph 6 that the plaintiff has in fact filed this suit in her capacity as the legal representative of the Estate of her deceased husband one Laban Madegwa Savatia and she has not obtained either a limited or full grant of letters of administration as per her own admission. The plaintiff had filed this suit as the legal representative of the Estate of her deceased husband Laban Madegwa Savatia before obtaining grant of letters of administration, hence she lacks 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”.*

Evidently, the plaintiff herein does not have the locus standi to file this suit. Ultimately therefore, the defendant’s Preliminary Objection questioning the plaintiff’s locus standi/legal capacity has merit and is hereby upheld. This suit is struck out with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 16<sup>TH</sup> DAY  
NOVEMBER 2017**

**N.A. MATHEKA**

**JUDGE**