



**Hussein v Gedi; Adan (Interested Party) (Environment & Land Case E009 of 2024) [2025] KEELC 931 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 931 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT GARISSA  
ENVIRONMENT & LAND CASE E009 OF 2024  
JM MUTUNGI, J  
FEBRUARY 26, 2025**

**BETWEEN**

**AHMED MAALIM HUSSEIN ..... PLAINTIFF**

**AND**

**MOHAMUD ABDI GEDI ..... DEFENDANT**

**AND**

**ABDI MOHAMED ADAN ..... INTERESTED PARTY**

**RULING**

1. The Plaintiff instituted the present suit by way of a Complaint dated 30<sup>th</sup> April 2024. He prayed for Judgment against the Defendant for orders:-
  - a. That a permanent order of injunction do issue restraining the Defendant by himself, his servants, agents carrying out themselves as Makaror Farm Group, proxies and/or persons exercising authority from him from alienating, dealing developing, fencing, disposing, trespassing and/or in any other manner interfering with all the parcels of land known as plots Number R3746 where Fongore Well sits.
  - b. A declaration that ownership of Plot Number R3746 vests with Rer Ibrahim Clan.
  - c. Cost of the suit.
  - d. Any further interest as this Honourable Court might grant.
2. Simultaneously with the Complaint the Plaintiff filed a Notice of Motion application of even date where he prayed for the following orders:-
  1. This application be certified as urgent and heard ex-parte in the first instance.



2. That pending hearing and determination of the main suit, an order of temporary injunction be and hereby issued restraining the Respondent by himself, his servants, agents carrying out themselves as New Makaror Farm Group, proxies and/or persons exercising authority from him from alienating, dealing, developing, fencing, disposing, trespassing and/or in any other manner interfering with all the parcels of land known as plot number and R3746.
3. Status quo be maintained.
4. Costs of this application be provided for.
3. The Plaintiff's case is that he was an elder of the Rer Ibrahim Clan who he claimed owned one of the nine Wells located in land parcels Plot Nos. R2913 and R3746. He stated that the Re Ibrahim well known as Fongore has been used by the clan for many years dating back to the pre independence period.
4. The Plaintiff further averred that the Defendant who belongs to the New Makaror Farm Group have laid claim to all the nine wells including the Fongore Well in respect of which the Wajir County Council had in August 2008 issued to the Rer Ibrahim clan ownership documents for an area of 600ft by 600ft where the well sits. The Plaintiff further averred the matter has been adjudicated upon by the Local Administration and the Area Chief determined that the well belonged to the Rer Ibrahim clan though the Assistant County Commissioner vide a letter dated 24<sup>th</sup> July 2023 had incredibly held the determination of the Chief and the elders to be null and void. The Plaintiff however maintained the Rer Ibrahim Clan were the rightful owners of Fongore Well and prays that the Court declares so and in the meantime pending the determination of the suit prays that the Plaintiff be restrained from in any manner dealing with the disputed well.
5. The Defendant upon being served with suit papers filed grounds of opposition to the suit and a Notice of Preliminary Objection to the Notice of Motion and the suit dated 4<sup>th</sup> June 2024. The Defendant vide the Notice of Motion inter alia set out the following grounds:-
  1. The Plaintiff/Applicant lacks locus standi to lodge the application and the suit as he is not the registered owner of the suit property.
  2. The Plaintiff/Applicant has sued the wrong party in this cause as the remedies the Plaintiff/Applicant is seeking cannot lie against the Defendant under Order 1 Rule 9 Civil Procedure Rules.
  3. The suit property is registered in the name of New Makaror Farm Group and not the Defendant in his personal capacity.
  4. The Applicant's claim against the Defendant is to that extent incompetent, bad in law, fatally defective and otherwise an abuse of the Court.
  5. Granting the orders sought herein would totally prejudice the Defendant who has been irregularly brought to this Court on the basis of innuendos cannot obey by the Court orders since the suit property is registered in the name of New Makaror Farm Group which is an entity on its own and not the Defendant in his personal capacity.
  6. The Applicant's application should be dismissed forthwith, and costs awarded to the Defendant in the instant suit.
6. In the grounds of opposition the Defendant contended there was misjoinder of parties as the interested party had been wrongly joined in the suit. The Defendant contended the Interested Party had no interest in the subject matter of the suit and was not a member of the Defendant's Group/Clan.



Additionally, the Defendant swore a Replying Affidavit dated 13<sup>th</sup> June 2024, in opposition to the Plaintiff's application dated 30<sup>th</sup> April 2024. The Defendant averred that he was a member of the New Makaror Farm Group which was a duly registered Association under the Societies Act, Cap 108 of Laws of Kenya and asserted he could not therefore be sued in his personal capacity as any Court orders made against him as a person could not affect and/or bind the Group as it was an entity on its own. The Defendant deponed that the disputed Well was owned by the New Makaror Farm Group which has owned and occupied the land from the 1960's. The Defendant averred that it was only after 2010 that a group allied with the Plaintiff started claiming part of the land where the Well sits but the dispute was resolved by the elders and all was well until 2018 when a group of men from the Rerow Mahamed Clan violently invaded the land led by one Salat Muhumed Issack who however withdrew their claims following talks.

7. Following the withdrawal of the claims other members of the Rerow Mahamud Clan still continued to harass the members of the New Makaror Farm Group. The dispute was referred to Tribunal Land Committee vide case No. 188 of 2018 and the Tribunal determined that the land belonged to the New Makaror Farm Group as per the Tribunal Judgment of 23<sup>rd</sup> February 2023 which decision was reaffirmed by the Assistant County Commissioner, Wajir Central Division after investigations vide the letter dated 24<sup>th</sup> July, 2023.
8. On 23<sup>rd</sup> July 2024 the Plaintiff conceded that the Interested Party was wrongly joined in the proceedings and the Court accordingly ordered that the said Interested party's name be struck out from the proceedings. The Court further directed the parties to urge both the application by the Plaintiff for injunctive relief and the Preliminary Objection by the Defendant together by way of Written Submissions.
9. The Plaintiff filed his submissions dated 19<sup>th</sup> August 2024 and the Defendant filed his submissions dated 30<sup>th</sup> September 2024.
10. The twin issues to determine in this matter, is firstly, whether the Plaintiff had the Locus standi and/or legal capacity to institute the suit and whether the Defendant could properly be sued as a representative of the New Makaror Farm Group. Secondly, whether the Plaintiff is entitled to an order of injunction that he prays for.
11. The issue whether or not a party has locus standi is a pure point of law and satisfies the criteria of what should be raised as a Preliminary Objection as established by the Court of Appeal in the Case of Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd (1969) EA 696 where Newbold, P, stated thus:-

“ A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of Law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of Judicial discretion ---“.

Law JA in the same case also stated thus:-

“ 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.”



12. Locus standi goes to the jurisdiction of the Court to entertain the suit as it relates to the capacity of a party to sustain a suit. If a party lacks capacity, any suit commenced by such a party and/or against such a party is incompetent and null and void and cannot be sustained by the Court. The Defendant in the instant suit asserts that the property the subject of the suit is registered in the name of New Makaror Farm Group and not in his name and that the New Makaror Farm Group ought to have been the proper Defendant.

Order 1 Rule 8 of the Civil Procedure Rules makes provision as to how a representative suit may be commenced and/or defended. It provides as follows:-

Order 1 Rule 8 -One person may sue or defend on behalf of all in same interest.

- (1) Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as of all in same representing all or as representing all except one or more of them.
- (2) The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.
- (3) Any person on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) may apply to the court to be made a party to such suit.

13. Order 1 Rule 9 further provides no suit shall be defeated by reason of misjoinder or non joinder and enjoins the Court to deal with the matter in controversy so far as regards the rights and interests of the parties actually before it, which denotes that there must in any event have been competent parties before the Court in the first place. If the party who instituted the suit lacked capacity to do so, the suit would be incompetent and therefore null and void.

14. In the instant suit the Plaintiff describes himself as an elder and member of Rer Ibrahim Clan. The Plaintiff does not aver that he had the authority of the clan to institute the suit on behalf of the clan and the Verifying Affidavit likewise does not state that the Plaintiff was instituting a representative action on behalf of the clan. The Plaintiff in instituting the suit in his name did not demonstrate that he had any authority of the clan members to institute the suit on their behalf. In my understanding a clan would be synonymous to an association or society within the meaning ascribed to such organizations under the Society's Act, Cap 108 Laws of Kenya where a Society is defined to include – “any club, Company, Partnership or other Association of ten or more persons whatever its nature or object, established in Kenya.”

15. Under the Societies Act a Society may be represented in proceedings by a “representative” who in relation to a Society the Act defines as “a person who the Court is satisfied has been duly appointed in writing by the Society to represent it”. In my view in the instant suit, the Plaintiff ought to have obtained authority to represent the Clan Members from the Members and/or ought to have applied to the Court to be allowed to institute the suit on behalf the Rer Ibrahim under Order 1 Rule 8 of the Civil Procedure Rules. There is no demonstration that the Plaintiff was an appointed official of the clan and thus the Plaintiff lacked the capacity to bring the instant suit on behalf of the Rer Ibrahim Clan Members. An Organization, Association and/or Society can only sue and/or be sued through its elected and/or appointed officials and no one member can sue and/or be sued on behalf of the members. The person and/or persons suing and/or being sued have to be duly appointed representatives of the organization and/or association to have capacity to represent the organization and/or Association unless such person or persons have sought leave and have been permitted by the Court to act as representatives of the organization and/or Association.



16. The Plaintiff sued the Defendant, Mohamed Abdi Gedi, in his name and there was no indication he was being sued for and on behalf of New Makaror Farm Group which was a duly registered Association with the Department of Social Services, Wajir District. New Makaror Farm Group being a registered Association with officials could only be sued through its officials and no one person could be sued on its behalf. The Plaintiff could likewise have sued all the 38 members who he claimed formed the group as Defendants, since it was his intention that they should all be bound by any decision the Court was to make.
17. Additionally under Order 1 Rule 13 of the CPR where there are more than one Plaintiff or more than one Defendant any one or more of them may be authorized by the others to appear plead and/or act on their behalf in writing. Order 1 Rule 13 of the Civil Procedure Rules provides:-
13. (1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.
- (2) The authority shall be in writing signed by the party giving it and shall be filed in the case.
18. In the present matter the Plaintiff did not have any written authority of the other would have been Plaintiffs to plead and/or act on their behalf. There was clearly no compliance with the provisions of Order 1 Rule 13 of the Civil Procedure Rules and hence the Plaintiff could not properly represent the Members of the Rer Ibrahim Clan. The Plaintiff therefore lacked the Locus Standi and the capacity to institute and even if he had the locus and capacity to institute the suit, he instituted the suit against the wrong party and the suit was unsustainable. Mrima, J aptly captured the legal position where a party institutes a suit without a locus standi and/or capacity in the case of Julian Adoyo Ongunga & Another –vs- Francis Kiberenge Bendera (suing as Administraor of the Estate of Fanuel Evans Amudavi, Deceased) (2016) eKLR where he stated:-
- “Further the issue of locus standi is so cardinal in a Civil matter since it runs through the heart of the case. Simply put, a party without locus standi lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly so the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a Court acting without jurisdiction, it all amounts to null and void proceedings”.
19. In the premises it is my considered view that the Defendant’s Preliminary Objection was properly taken. The Plaintiff lacked the locus standi and/or capacity to institute the suit against the Defendant and the Defendant sued was not the proper party in the proceedings as the New Makaror Farm Group was a registered Association and the Defendant could not be sued on its behalf. The suit was misconceived and incompetent and the same is hereby ordered struck out with costs to the Defendant.
- Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 26<sup>TH</sup> DAY OF FEBRUARY 2015.**

**J. M. MUTUNGI**

**ELC - JUDGE**

