



**Adero (Suing on her own behalf of the Estate of Joseph Okech Gari (Deceased) v Onjema & 4 others (Environment and Land Case Civil Suit E004 of 2023) [2024] KEELC 4496 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4496 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIRONMENT AND LAND CASE CIVIL SUIT E004 OF 2023  
AY KOROSS, J  
JUNE 6, 2024**

**BETWEEN**

**SIPROSA ADERO (SUING ON HER OWN BEHALF OF THE ESTATE OF JOSEPH OKECH GARI (DECEASED)) ..... PLAINTIFF**

**AND**

**AGNES NYAMBARA ONJEMA ..... 1<sup>ST</sup> DEFENDANT  
EVERYNNES JOYCE KAWANGO ..... 2<sup>ND</sup> DEFENDANT  
GIFT NOELLE WANGO KAWANGO ..... 3<sup>RD</sup> DEFENDANT  
ANGELINE AKINYI ADUDA ..... 4<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL SUED ON BEHALF OF THE LAND REGISTRAR-  
BONDO ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The subject matter for this court’s determination is the 1<sup>st</sup> defendant’s notice of preliminary objection (PO) dated 8/11/2023. It is noteworthy the PO was on an application dated 13/10/2023 and on the main suit.
2. The motion is spent and upon segregating the grounds in respect of the motion and on the plaint, this court has gleaned from the said PO and paragraph 1 of the 1<sup>st</sup> defendant’s defence dated 31/10/2023 that the ground of objection is on the issue of the plaintiff’s *locus standi*. The ground of objection in the defence is framed thus: -
  - a. The plaintiff is not a proper party to this suit and lacks locus standi to present this suit before the honourable court.



3. Thus, the 1<sup>st</sup> defendant urged this court to strike out the suit with costs to her.
4. The court directed parties to canvass the PO by brief written submissions. The 1<sup>st</sup> defendant's law firm on record Ms. Brian & Brian A. Advocates filed written submissions dated 31/01/2024, the plaintiff's law firm on record Ms. Ben Aduol Nyanga & Co. Advocates filed theirs dated 21/02/2024, Mr. Odongo who appears for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants informed the court on 13/3/2024 that his clients will not file any submissions while the 5<sup>th</sup> defendant who is represented by the office of the Hon. Attorney General did not file theirs.
5. The 1<sup>st</sup> defendant's submissions identified 2 issues as arising for determination; whether the plaintiff had locus standi to institute suit against the 1<sup>st</sup> defendant and, the costs of the suit. On the other hand, the plaintiff identified the singular issue for determination as whether the PO had merit.
6. Upon identifying and considering the issues for determination, this ruling shall later on in its analysis and determination, consider each of the counsel's arguments on the particular issue and also bear in mind the judicial precedents that they have both relied upon to buttress their respective arguments.
7. Accordingly, having carefully considered the PO, the plaintiff and 1<sup>st</sup> defendant's rival submissions together with authorities relied upon, it is the considered view of this court the following issues which shall be dealt with consecutively commend themselves for determination: -
  - a. Whether the PO has met the legal threshold.
  - b. If (a) is in the affirmative, whether this court has jurisdiction to entertain this suit.
  - c. What orders should this court issue including an order as to costs?

**a. Whether the PO has met the legal threshold.**

8. The decision of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd.* (1969) EA 696 has long settled the tests that a PO has to meet and, in this decision, the court held 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... 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 has to be ascertained or if what is sought is the exercise of judicial discretion.”
9. From this decision, it is deduced that for a PO to succeed, it must meet 3 tests which are, it raises a pure point of law, on the assumption that all the facts pleaded by the other side are correct, and it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. In addition, the PO should be capable of disposing of a suit.
10. Although the plaintiff's counsel identified this issue, he did not address this court on whether the threshold had been met.
11. Instead, in agreeing with the 1<sup>st</sup> defendant's counsel that the issue of *locus standi* would render a suit void ab initio and relied on the decision of *Ibrahim v Hassan & Charles Kimenyi Macharia* (2019) eKLR where the court stated that if a court lacked *locus standi* such an issue must be settled preliminarily, counsel stated the plaintiff had locus standi.



12. Counsel for the plaintiff submitted that by Section 66 of the [Law of Succession Act](#) and Rule 45 of the [Probate and Administration Rules](#), the plaintiff was issued a limited grant of letters of administration on Joseph Okech Gari's estate (Joseph) in Bondo Succ. Cause No. E028 of 2023 on 24/08/2023 and that this document was contained in the plaintiff's bundle of documents that were already filed in court.
13. In other words, even if the 1<sup>st</sup> defendant's PO had met the 1<sup>st</sup> threshold, he had failed to meet the other tests as the facts were disputed and had to be ascertained.
14. Taking a contrary view, the 1<sup>st</sup> defendant's counsel was insistent the plaintiff had neither obtained a limited grant nor a full grant on Joseph's estate and relied on the case of [In re Estate of James George Maruti \(Deceased\)](#) [2021] eKLR where the court stated thus: -

“The issue raised in the Preliminary Objection is that if the applicant has not obtained either the grant or limited grant does she have locus to file, maintain and prosecute this application? The term Locus Standi literally means a place of standing. It means a right to appear in court to file, prosecutor, or appear or be heard in any proceedings. To say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings (See [Alfred Njau & 5 Others – V- City Council of Nairobi](#) 1983 eKLR.]

How does a party acquire locus in a respect of an estate of the deceased? A party intending to deal with the property of the deceased can do so by obtaining

- (a) full grant to enable him take care of the entire adminsitraiotn (sic) of the estate or
- (b) a Limited grant which is limited to an execution of a specific purpose in relation to the estate.”

15. I agree with both counsels that locus standi goes into the root of the court's jurisdiction and if a party is found to lack *locus standi*, it means she cannot be heard regardless of whether or not she has a case worth listening to and therefore, *locus standi* can preliminarily dispose off a suit. Put another way, it is a pure point of law. See [Daykio Plantations Limited v National Bank of Kenya Limited & 2 others](#) [2019] eKLR.
16. However, the other tests had to be fulfilled by the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant's objection has raised matters of facts that have to be ascertained or have been disputed.
17. An observation of paragraph 1 of the plaint shows the plaintiff has averred she has locus standi while this is denied by the 1<sup>st</sup> defendant in his defence and in addition, the plaintiff insists she has tendered evidence before this court proving she has *locus standi*.
18. These contested positions are blurred with factual particulars and are matters that warrant calling for the adduction of evidence by the parties to refute each other's positions and prove their respective stand. Consequently, I find the PO has not met the legal threshold and a determination of the 2<sup>nd</sup> issue is unnecessary. On the 3<sup>rd</sup> issue, the PO is hereby dismissed with costs being in the cause. Matter to be mentioned before the deputy registrar for pretrial directions on 7/08/2024.

Orders accordingly.

**DELIVERED AND DATED AT SIAYA THIS 6<sup>TH</sup> DAY OF JUNE 2024.**

**HON. A. Y. KOROSS**



## **JUDGE**

6/6/2024

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

In the Presence of:

Miss. Ochieng for the plaintiff

Mr. Awuonda for 1<sup>st</sup> defendant

Mr. Odongo for 2<sup>nd</sup> and 3<sup>rd</sup> defendants

N/A for 4<sup>th</sup> defendant

N/A for 5<sup>th</sup> defendant

Court assistant: Ishmael Orwa

