



REPUBLIC OF KENYA



Njuguna & 2 others v Njihia & 14 others (Environment & Land Case 55 of 2021) [2024] KEELC 6286 (KLR) (19 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6286 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 55 OF 2021**

**BM EBOSO, J
SEPTEMBER 19, 2024**

BETWEEN

**FRANCIS KIBE NJUGUNA 1ST PLAINTIFF
GEOFFREY KANYIRI NJUGUNA 2ND PLAINTIFF
ROBERT WAGEMA NJUGUNA 3RD PLAINTIFF**

AND

**GRACE WAIRIMU NJIHIA 1ST DEFENDANT
REGINA NJOKI NJUE 2ND DEFENDANT
LYDIAH WANJIRU MWANGI 3RD DEFENDANT
LYDIAH WANGARI MWANGI 4TH DEFENDANT
HESBON MAKAMBI OCHEGO 5TH DEFENDANT
ADAMS LINCOLIN MOTUM 6TH DEFENDANT
LEAH CHELANG'AT NDIWA 7TH DEFENDANT
GODFREY KIPKIRUI KIGEN 8TH DEFENDANT
DAVID NDIRANGU KAROKI 9TH DEFENDANT
MIDRED AKINYI WACHIAYA 10TH DEFENDANT
BEATRICE WACEKE WAIRIMU 11TH DEFENDANT
GRACE WANGECHI MUTHEE 12TH DEFENDANT
CHRISTINE MURUGI KAMAU 13TH DEFENDANT
OMWENGA PETER MUSOTI 14TH DEFENDANT**



RULING

1. Falling for determination in this ruling is the preliminary objection dated 27/6/2023, brought by the 1st, 2nd and 3rd defendants. Through the preliminary objection, the three defendants urge the Court to reject this suit in limine on the following verbatim grounds:
 - i. That the plaintiffs in the instant suit have no locus standi and/or lack capacity to institute this suit as the suit property allegedly forms part of the estate of the plaintiffs' father, the late Njuguna Kerero Mbutia alias Mbutia Njuguna Kiriro, and succession proceedings have not been undertaken to confer any of the plaintiffs grant of letters of administration to institute a suit on behalf of the estate as required by the *Law of Succession Act*.
 - ii. That the suit is incompetent for having been filed before the plaintiffs obtained grant of letters of administration in respect of the estate of the late Njuguna Kerero Mbutia alias Mbutia Njuguna Kiriro and without there being a succession cause in existence.
 - iii. That the suit is an abuse of process of the court as the plaintiffs are strangers to the suit property and have no legal standing in law to file the present suit.
2. The preliminary objection was canvassed orally by Mr Samora in the virtual court on 16/7/2024. Counsel submitted that at the time of initiating the suit, the plaintiffs had not taken out a grant under the *Law of Succession Act*, hence they lacked the locus standi to initiate the suit on behalf of the estate of the late Njuguna Kerero Mbutia [hereinafter referred to as "the deceased"]. Counsel argued that it was the case of the plaintiffs that the suit land belonged to the deceased at the time of his death. Counsel cited Sections 45 and 82 of the *Law of Succession Act* and submitted that only the duly appointed legal representatives of the deceased would have the capacity to initiate proceedings on behalf of the estate of the deceased.
3. Mr Naibei, counsel for the 6th and 7th defendants, and Ms Wamuyu, counsel for the 11th defendant, supported the preliminary objection and associated themselves with the submissions tendered by Mr Samora.
4. Opposing the preliminary objection, Mr Kanyi Kiruchi, counsel for plaintiffs, submitted that the deceased died on 25/3/1997, adding that, at that point in time, his children [the plaintiffs] were unaware that a title relating to the suit land had been processed in the deceased's name. Counsel added that, following the death of the deceased, M/s Githunguri Constituency Ranching Company Ltd transferred the deceased's shares to the plaintiffs, contending that, having become shareholders in the company, the plaintiffs were cleared to obtain a title deed.
5. Counsel for the plaintiffs argued that the plaintiffs brought this suit in their own capacity as shareholders and owners of the suit land, adding that they did not require a grant under the *Law of Succession Act* to initiate this suit. Counsel further argued that the plaintiffs did not require a grant in order to transfer the deceased's shares to their names.
6. Mr Kanyi further argued that the preliminary objection did not meet the threshold of a pure point of law, adding that the Court would be expected to ascertain facts before disposing the point raised in the preliminary objection.



7. In a rejoinder, Mr Samora replied that the shares held in the land-buying company by the deceased were property of the deceased, adding that the plaintiffs required a grant under the *Law of Succession Act* in order to transfer those shares into their names or institute the present suit. Counsel argued that the question of locus standi was purely a point of law. In conclusion, counsel submitted that this suit was initiated by people who did not have locus standi. Counsel urged the court to reject the suit in limine.
8. The court has considered the gist of the preliminary objection and the rival submissions tendered on the preliminary objection. The two key issues that fall for determination are: (i) Whether the point raised in the notice of preliminary objection meets the threshold of a preliminary objection; and (ii) Whether this suit is fatally defective on the ground of want of locus standi. I will dispose the two issues sequentially in the above order.
9. Does the point raised in the notice of preliminary objection dated 27/6/2023 meet the threshold of a preliminary objection? The law on what can be properly canvassed as a preliminary objection is well settled. Law JA defined what constitutes a preliminary objection in the case of *Mukisa Biscuits Ltd v West End Distributors Ltd (1969) EA 696* as follows:-

“So far as I am aware, a preliminary objection consists of a point of Law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary objection 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.”

10. On his part, Sir Charles Newbold P rendered himself in the same cause as follows:

“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 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”

11. In the present objection, the objectors have raised the question of the locus standi of the plaintiffs. They have invited the Court to look at the pleadings placed before the Court by the plaintiffs; evaluate the grounds of objection in the context of the existing laws; and find that the plaintiffs did not have the locus standi to initiate this suit at the time they initiated it. Indeed, in their submissions, the objectors have not gone outside the plaintiffs’ pleadings and the law. To this extent, the court is persuaded that the question of the plaintiffs’ locus standi was properly raised and can be properly disposed on the basis of the plaintiffs’ pleadings and the law. It is therefore the finding of the Court that the point raised in the notice of preliminary objection dated 27/6/2023 properly meets the threshold of a preliminary objection.
12. Is this suit fatally defective on the ground of want of locus standi on the part of the plaintiffs? This suit was instituted by the plaintiffs on 19/5/2021 through a plaint dated 11/5/2021. The plaintiffs made the following averments at paragraphs 5, 6, 7 and 8 of the plaint:

“5. That the plaintiff’s deceased father one Njuguna Kerero Mbutia alias Mbutia Njuguna Kiriro was a fully paid up shareholder and the original allottee holding the suit plot by way of shares at the company through share certificate dated 25th March 1997.

6. That after the demise of their father the plaintiffs got the same transferred into the names of the plaintiffs and still holds the documents of ownership



from Githunguri Constituency Ranching Company Ltd [hereinafter called the company].

7. The sometimes in 2021, the plaintiffs discovered some disturbances on the land and on so doing started investigations by visiting, the company for clarification on what was happening on the land.
 8. That upon investigation, it emerged that the defendants have fraudulently gotten themselves registered as the owners of the suit parcel and caused the sub-division of Ruiru Kiu Block 2(Githunguri)2239 into 10 portions to wit Ruiru Kiu Block 2(Githunguri) 6950 – 6059 and are in the process of disposing the same to 3rd parties .
13. As part of their pleadings, the plaintiffs filed a witness statement signed by Francis Kibe Njuguna dated 11/5/2021, in which he stated as follows at paragraphs 3, 4, 5 and 6:
- “3. That our deceased father one Njuguna Kerero Mbuthia alias Mbuthia Njuguna Kiriro was a fully paid-up shareholder and the original allottee holding the suit plot by way of shares at the company through share certificate dated 25th March 1997.
 4. That after the demise of our father, we got the said land transferred into the names of Geoffrey Kanyiri Njuguna, Robert Wagemu Njuguna and myself and we still holds the documents of ownership from Githunguri Constituency Ranching Company Ltd [hereinafter called the company].
 5. That sometimes in 2021, we discovered some disturbances on the land and on so doing started investigations by visiting, the company for clarification on what was happening on the land.
 6. That upon investigation, it emerged that the defendants have fraudulently gotten themselves registered as the owners of the suit parcel and caused the sub-division of Ruiru Kiu Block 2(Githunguri)2239 into 10 portions to wit Ruiru Kiu Block 2(Githunguri) 6950 – 6059 and are in the process of disposing the same to 3rd parties .
14. In addition, as part of their pleadings, the plaintiffs presented a list and bundle of documents. Among them is a certified copy of the land register relating to the suit land. The land register shows that it was opened on 17/2/1997 in the name of the Government of Kenya and it was registered in the name of Njuguna Kiriro Mbuthia on 22/6/1992. The parcel register further shows that the land was transferred to the defendants on 6/11/2010.
15. It is clear from the above pleadings that it is the case of the plaintiffs that at the time of the demise of the deceased, the suit land belonged to the deceased. Indeed, counsel for the plaintiffs stated as much in his submissions.
16. Under Section 45 of the *Law of Succession Act*, no effective transfer of the deceased’s shares or land could be done in any way without a grant duly issued to his personal representatives. The import of this is that, if indeed the subsequent transfer of the suit land to the defendants was fraudulent, the legitimate registered proprietor of the land would be the deceased. Secondly, under Section 82 of the *Law of Succession Act*, no competent suit or proceedings could be initiated by the deceased’s children



to protect the deceased's interest in the land without the said children first obtaining a grant from a succession court under the Law of Succession Act.

17. It is not surprising that when the plaintiffs realized their folly, they initiated succession proceedings and obtained a limited grant dated 22/11/2023 in Ruiru SPMC Succession Cause No E093 of 2023. They subsequently brought an application dated 25/1/2024 seeking leave to further amend the amended plaint and redesignate themselves.
18. For the above reasons, this Court finds that the preliminary objection dated 27/6/2023 has merit and stands to be upheld. Consequently, this suit is struck out on the ground that it was initiated by people who lacked locus standi. For the avoidance of doubt, subject to the Law of Limitation, the personal representatives of the deceased will be at liberty to initiate a proper suit and ventilate the estate's claim.
19. In tandem with the provisions of Section 27 of the Civil Procedure Act, the plaintiffs will bear costs of the parties who entered appearances and participated in the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 19TH DAY OF SEPTEMBER 2024

B M EBOSO

JUDGE

In the Presence of: -

Mr Wachira for the plaintiffs

Court Assistant: Melita

