



**Republic v County Government of Kirinyaga & 2 others; Githinji
 (Exparte Applicant) (Miscellaneous Judicial Review 5 of 2023)
 [2024] KEELC 6946 (KLR) (24 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6946 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
 MISCELLANEOUS JUDICIAL REVIEW 5 OF 2023**

JM MUTUNGI, J

OCTOBER 24, 2024

**IN THE MATTER OF AN APPLICATION BY JEMIMAH WANGITHI GITHINJI FOR
 JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

AND

IN THE MATTER OF PLOT NO. 1 GATHAMBI

AND

**IN THE MATTER OF MINUTES, NO; L/H/UD/20/2021
 OF COUNTY GOVERNMENT DISPUTE RESOLUTION**

COMMITTEE HELD ON 6TH MARCH 2020 AT THE COUNTY HEADQUARTERS

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY GOVERNMENT OF KIRINYAGA 1ST RESPONDENT

COUNTY SURVEYOR DEPARTMENT OF LANDS 2ND RESPONDENT

CHAIRMAN DISPUTE RESOLUTION COMMITTEE 3RD RESPONDENT

AND

JEMIMAH WANGITHI GITHINJI EXPARTE APPLICANT

JUDGMENT

1. The Ex-parte Applicant commenced these Judicial Review proceedings by way of an Ex-parte Notice of Motion dated 16th February, 2023 seeking leave to file Judicial Review proceedings against the



Respondents. The Court granted the leave, and the ex parte Applicant filed the substantive Motion dated 2nd March 2023, praying for the following reliefs:

1. That the Honourable court be pleased to grant a writ of mandamus, prohibition and certiorari orders to remove into the High Court and quash the minute no. L/H/UD/20/2021 resolution that plot number 1 Gathambi belongs to Jason Karuiru, Josphian G. Githinji, Kamuta Miano and Karanja Mwangi and that Karanja Mwangi to acquire $\frac{1}{4}$ share of developed portion and the subsequent subdivision of plot number 1 Gathambi.
2. The costs of this application.
2. The Motion is predicated on the grounds outlined in the application and the Supporting Affidavit of Jemimah Wangithi Githinji. The Applicant stated that she was the daughter of Jason Karuiru Kagoiya (deceased) and the rightful owner of plot number 1 Gathambi (“the suit plot”) for which she has been paying land rates. She averred that she was granted the authority to pursue this matter by the Administrator of her deceased father’s estate. She stated she received a copy of a meeting extract dated 6/03/2020, which distributed the suit property to four individuals. She stated that she was not informed of the Dispute Resolution Committee meeting and that she did not participate in the said meeting and did not know, the individuals mentioned in the extract. The Applicant stated she learnt of the intention to subdivide the suit plot through a letter dated 2/2/2023 from the Respondents. She averred that she has solely developed the suit plot and thus sought to have the decision/minutes that distributed the suit plot without her involvement nullified on account of procedural irregularities.
3. The Respondents raised a Preliminary Objection dated 11th April 2023 on the following grounds:-
 1. That the Ex-parte Applicant is not an appointed executor under any will or an appointed administrator ad colligenda bona, and has not been granted and/or filed Grant of Letters of Administration ad litem, and therefore has no locus standi to file and/or prosecute these proceedings with respect to the suit property jointly co-owned by Jason Karuiru, Josphian G. Githinji, Kamuta Miano and Karanja Mwangi.
 2. That the Ex-parte Applicant’s Notice of Motion applications dated 2nd March 2023 and 31st March 2023 are fatally defective as they relate to a land ownership dispute whose remedy does not lie in Judicial Review proceedings.
 3. That the proceedings herein are frivolous, premature and an abuse of the due process of this Court.
 4. In response, the Ex-parte Applicant submitted a statement of grounds of opposition to the Preliminary Objection. She contended that the Preliminary Objection lacked merit and was legally unfounded. She reiterated that plot number 1 Gathambi was solely owned by her deceased father. She affirmed that the Administrator of the deceased estate was G. Nahashon Muriithi. She contended that she had been allocated the suit plot by the family pending the finalization of the succession cause and further maintained that her application did not relate to the ownership of the plot, but rather to the flawed procedure followed by the Respondents in determining who was entitled to the same.
 5. The Respondents filed their Replying Affidavit to the Notice of Motion dated 16th October, 2023 where they deponed the ex-parte applicant had been summoned multiple times to attend before the County Dispute Resolution Committee but refused to participate in the proceedings. They explained that the County Dispute Resolution Committee proceeded to hear the dispute relating to the subject matter, gathered evidence, and examined relevant



records before they made their decision. On 6th March 2020, the Committee resolved that the subject property belonged to Jason Karuiru, Josphian G. Githinji, Kamuta Miano, and Karanja Mwangi, who have been the rightful owners since 12th July 1965. The Respondents further added that the Applicant was the daughter of one of the owners, Jason Karuiru, who is deceased, and that she provided conflicting Certificates of Confirmation of Grant from two different succession causes. The Respondents argued that unless someone was appointed as a Personal Representative or Administrator through the succession process, they cannot claim ownership of the deceased person's properties. Therefore, the Respondents urged that the Applicant's application be dismissed with costs.

6. The Applicant filled a Further Affidavit dated 10th July 2024, reiterating the content of her initial Affidavit. She stated that she had received two letters from the Chief summoning her. One letter was dated 11th April 2022, and concerned a meeting that had already taken place on 6th March 2020. The other letter was dated 27th November 2019, in which she had sent her siblings to represent her as her husband had recently passed away, and she was mourning him. Regarding her legal standing, she stated that a succession case was filed, and Letters of Administration were issued. The grant was confirmed, and her brother, who is the Administrator, gave her the authority to swear Affidavits in this case on his behalf. She insisted that she is a child and beneficiary of Jason Karuiru's estate, which was why the Chief was summoning her. The Applicant indicated she had been paying land rates as required by law.
7. On 2nd May 2023, the Court gave directions that the Preliminary Objection dated 11th April 2023 and the Notice of Motion be argued together. Parties were directed to canvass the Notice of Motion and the Preliminary Objection through written submissions.

Parties Submissions, Analysis and Determination

8. The Ex-parte Applicant, in her submissions dated 12th October 2023, argued that the Respondents unjustly divided the suit property without her knowledge, violating her right to a fair hearing. She contended she was entitled to the sole ownership of the suit plot. In regard to the Respondents' Preliminary Objection, the Applicant maintained she had the Administrator's authority to plead and act in the matter. The Applicant faulted the Respondents for dealing with issues relating to the deceased assets without involving the rightful family members or the estate's Administrator. The Applicant contended there was no proper service of the notice of the meeting of the County Dispute Resolution Committee at which the decision was made and maintained the process was flawed. She stated that no evidence was presented showing that she, her family, or the Administrator was informed about the dispute. She relied on the following authorities; Republic v Judicial Service Commission & 2 Others Ex-parte Erastus M. Githinji (2019)eKLR and Land Adjudication and Settlement Officers Maara Sub-County & 3 Others Ex-parte, M'nyiri Ragwa; Njeru Kirika (Interested Party) (2021) eKLR.
9. The Respondents, in submissions dated 4th July 2023, argued that the Applicant does not have the legal standing (*locus standi*) to initiate the case regarding the contested property, which is co-owned by Jason Karuiru, Josphian G. Githinji, Kamuta Miano, and Karanja Mwangi. The Respondents contended the Applicant has not demonstrated any legal authority, such as being an Executor or Administrator for the estate, to act on behalf of the deceased estate. The Respondents further argued that the Applicant's application for Judicial Review was inappropriate for a property ownership dispute rendering the application defective. The Respondents submitted Judicial Review was not concerned with private rights or the merits of the decision but with the propriety of the decision making process. The Respondents relied on the Case of Republic –vs- District Land Adjudication and Settlement Officer, Maara Sub- County & 3 Others; Exparte, M'nyiri Ragwa; Njeru Kirika (Interested Party) (2021)eKLR.



10. I have carefully considered the Exparte Applicant’s Notice of Motion, the Statutory Statement, Verifying Affidavit, and Replying Affidavits, and the Supplementary and further Affidavits as well as the submissions, made on behalf of the parties. The issues for determination are whether the Ex-parte Applicant has locus standi to institute and prosecute the current proceedings and whether there was procedural impropriety to warrant the grant of an Order of Mandamus that the exparte Applicant prays for.
11. It is trite that where discretion is donated to a particular body, the Courts should exercise restraint and not readily accede to invitations to interfere with such powers and discretion. In the *Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001* the Court of Appeal held:

“The Court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself such as whether there was or there was not sufficient evidence to support the decision...”
12. Courts have routinely held where there exists an alternative remedy to adjudicate a dispute such alternative must be adhered to before any resort is made to the Courts.
13. In the "Judicial Review Handbook, 6th Edition" by Michael Fordham, at page 5, he observes that Judicial Review stands as a pivotal mechanism within Administrative Law, serving to uphold the Judiciary's Constitutional duty to guard against the misuse of power by public authorities. This process is a crucial safeguard for the rule of Law, ensuring that the public interest is maintained. It monitors the adherence to limits and obligations set by Parliament, directs public bodies to act within legal boundaries, guarantees that these entities are answerable to the law and not exempt from it, and safeguards individual rights.
14. In the present case, the Ex-parte Applicant argues that her right to be heard was violated because she was the sole beneficial owner of the suit plot, in respect of which the Respondents made the impugned decision. The Applicant averred that the Respondents Disputes Resolution Committee held a meeting in her absence at which it was resolved that the plot in question should be subdivided into four portions between Jason Karuiru, Josphiah G. Githinji, Kamuta Miano, and Karanja Mwangi. The Applicant thus contended she was denied an opportunity to be heard and that violated her right to natural Justice. The respondents raised a preliminary objection, arguing that the ex-parte applicant lacked the necessary legal standing because the suit plot was partly owned by her father, Jason Karuiru (now deceased). They claimed that the Applicant lacked any capacity to institute the suit since as she had not obtained grant of Letters of Administration authorizing her to represent the deceased estate and to file the suit.

Whether the Ex-parte Applicant has locus standi to institute and prosecute the current proceedings

15. Locus standi is defined in Black’s Law Dictionary, 9th Edition (page 1026) as

“the right to bring an action or to be heard in a given forum”. In the case of Alfred Njau and Others ..Vs.. City Council of Nairobi (1982) KAR 229, the Court held that:-

“the term Locus Standi means a right to appear in Court and conversely 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”.



16. In the Case of Alfred Njau & Others v City Council of Nairobi [1982-88] 1 KAR 229 the Court of Appeal gave meaning to the term locus-standi by stating:
- “.....to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”
17. A claim of no locus standi questions a party's right to be heard in court. If it is determined that the party does not have the right, the case could be dismissed. Therefore, the claim of lack of locus standi is a legal issue that goes to the jurisdiction of the Court to sustain the action and ordinarily should be raised and resolved at the earliest possible moment. In the instant case, the Respondents appropriately raised the issue of locus standi immediately they appointed Counsel to represent them.
18. Section 82(a) the *Law of Succession Act* provides as follows;
82. Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—
- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
19. Section 3(1) of the *Law of Succession Act* defines personal representative to mean the Executor or Administrator, as the case may be, of a deceased person. A personal Representative is appointed by the Court after filing the necessary application, as provided by Section 51 of the *Law of Succession Act*.
20. Section 79 of the said *Law of Succession Act* specifies the powers and duties of the Personal Representative as follows:
- “The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of the grant, and subject to any limitation imposed by the grant, all property of the deceased shall vest in him as personal representative.”
21. The Court of Appeal has authoritatively delivered itself on the issue of locus standi in the case of Trouistik Union International & Another v Jane Mbeyu & Another (2008) IKLR (G&F) 730 where it was held that;
- “To determine who may agitate by suit any cause of action vested in the deceased at the time of his death, one must turn to Section 82 (a) of the *Law of Succession Act*. That Section confers that power on personal representatives and on them alone”
22. In the present case, it is not in dispute that the Ex-parte Applicant who has invoked the aid of the Court to issue the Judicial Review writs against the Respondents is not someone to whom a Grant of Letters of Administration has been made under the *Law of Succession Act*. The Applicant asserts that the holder of the Grant of Letters of Administration to their late father's estate has authorized her to bring the case on behalf of the estate. The Applicant claims she is a Dependant of the deceased and that she has a beneficial interest and that the deceased personal representative has given her authority to bring the suit. A Grant of Letters of Administration cannot be assigned and/or delegated. Any change of the Administrator of a deceased estate must be sanctioned and authorized by the Court. If the Applicant intended to substitute her brother as the Administrator they should have gone back to the Court that issued the grant for substitution



23. In the present matter the Administrator of the estate of Jason Karuiru one G. Nahashon Muriithi purportedly nominated the Applicant to file the instant suit and to sign and swear any appropriate pleadings. The Administrator of the deceased estate having been appointed by the Court to carry out the functions of an Administrator of the deceased estate as spelt out under Section 82 of the *Law of Succession Act*, Cap 160 Laws of Kenya could not lawfully delegate and/assign his roles as such Administrator without the sanction and authority of the Court. An appointed Administrator of a deceased estate is accountable to the court that appointed him and cannot therefore delegate his roles and duties as such Administrator to another person. The purported letter of authority dated 15th February, 2023 is of no legal consequence and cannot clothe the Applicant with any authority to represent the deceased estate.
24. The question of locus standi goes to the root of a suit. Where a suit is instituted by a party who lacks capacity to institute a suit such a person is said to be without a locus standi. A suit instituted by a person who lacks capacity is a suit that is void and a nullity abinitio. The suit cannot be sustained as there is no valid suit before the Court. The suit is simply incompetent and would constitute an abuse of the Court process.
25. I am in the present matter satisfied the Exparte Applicant lacked any capacity to institute the suit. If the Administrator of the deceased estate was for any reason not able to execute his duties as an Administrator of the deceased estate, the Exparte Applicant should have applied to be substituted as the Administrator of the deceased estate. She did not do that and consequently the suit she instituted was incurably defective for want of legal capacity to sue. The suit is incompetent and I accordingly strike out the same. I order that the parties bear their own costs of the suit.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 24TH DAY OF OCTOBER 2024.

J. M. MUTUNGI

ELC – JUDGE

