



Mudogo v County Commissioner Kakamega County & 2 others (Environment & Land Case E013 of 2023) [2025] KEELC 566 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELC 566 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E013 OF 2023
DO OHUNGO, J
FEBRUARY 13, 2025**

BETWEEN

KEVIN MUDOGO PLAINTIFF

AND

COUNTY COMMISSIONER KAKAMEGA COUNTY 1ST DEFENDANT

COUNTY GOVERNMENT OF KAKAMEGA 2ND DEFENDANT

KAKAMEGA SPORT CLUB 3RD DEFENDANT

RULING

1. The Plaintiff moved the Court through Plaintiff dated 7th October 2023 wherein he averred that he had been in actual occupation and possession of the parcel of land known as Kakamega Municipality/Block III/236 (the suit property) having inherited the lease from his late father. He further stated that the Defendants visited the suit property on 6th October 2023 and threatened to evict him claiming that the lease had expired.
2. The Plaintiff therefore prayed for judgment against the Defendants jointly and severally for:
 - a. An injunction restraining the Defendants, their agents and or servants from evicting or otherwise interfere with the Plaintiffs use and occupation of Plot No. Kakamega Municipality/Block III/236.
 - b. Costs of this suit, and interest thereon.
 - c. Any other alternative relief this Honourable Court will deem fit and just to grant.



3. The First and Third Defendants reacted to the suit by filing separate preliminary objections. The Third Defendant's Preliminary Objection is dated 31st October 2023 and is pleaded as follows:

Take notice that the 3rd Respondent herein shall at the first hearing hereof raise a preliminary objection on a point of law that:

1. That the Plaint, application and the entire suit herein are bad at law for being fundamentally defective and improperly instituted against the 3rd Respondent, an un - incorporated entity without legal personality of its own contrary to Article 22 of the *Constitution*, 2010, The *Societies Act*, Cap 108, the law of persons generally as well as judicial precedent and ought to be struck out and or dismissed with costs.
 2. That the Plaint. application and the entire suit herein are bad at law for being fundamentally defective and improperly instituted against the 3rd Respondent, who has no locus standi to stand and or sustain trial as presented and ought to be struck out and or dismissed with costs.
 3. That the Plaint, application and the entire suit herein are bad at law for being fundamentally defective and improperly instituted by the Plaintiff/ Applicant herein, who lacks the requisite locus standi to bring this action and ought to be struck out and or dismissed with costs.
 4. That the Honourable Court lacks the requisite jurisdiction to entertain, hear and or determine the suit herein and the same ought be struck out and or dismissed altogether.
 5. That the Plaint, application and entire suit herein are non - starters, an abuse of the due and court process as well as of law, defective in substance and improperly presented and ought to be struck out and or dismissed with costs.
4. On his part, the First Defendant filed Preliminary Objection dated 21st November 2023 which is pleaded as follows:

Take notice that the 1st defendants herein shall before the commencement of this suit, raise a Preliminary Objection that the plaintiff applicant herein has no authority to sue. Hesbon Mudogo is the legal administrator of the estate of Robert Mudogo hence the suit should be dismissed.

5. Both objections were heard together and were canvassed through written submissions. The Third Defendant filed submissions dated 7th March 2024. It argued that being an unincorporated association exempt from registration under the *Societies Act*, it lacks capacity to sue or be sued in its own name and that in the absence of locus standi, the claim against it must fail. It relied on several authorities which I have noted and urged the Court to dismiss the suit against it.
6. The Plaintiff filed submissions dated 15th June 2024 in which he contended that he is a layman and that the only place he can turn to for protection is this Court. That the matters he has raised in the suit are grave and ought to be heard on the merit instead of being dismissed on a technicality. He further argued that he has approached the Court with clean hands.
7. The First and Second Defendants did not file any submissions.



8. I have considered the objections, the pleadings and the submissions. The issues that arise for determination are whether the Plaintiff has the legal capacity to file this suit and whether the objections should be upheld.
9. The Plaintiff's case as pleaded revolves around his allegation that the Defendants threatened to evict him from the suit property. From the material that he supplied alongside the Plaint and the annexures to the supporting affidavit in respect of the application for interlocutory injunction that he filed at the commencement of the suit, it is manifest that he is not the registered proprietor of the suit property. The suit property is a leasehold interest registered in favour of Robert Mudogo, the Plaintiff's father. The Plaintiff averred that his said father passed away. Although he claimed that he inherited the suit property from his deceased father, there is nothing to confirm that claim. On 12th February 2024, the Plaintiff told the Court that he does not hold any letters of administration in respect of his deceased father's estate. Indeed, no letters of administration were availed.
10. The Court of Appeal sated in *Rugiri v Kinuthia & 3 others* [2024] KECA 1601 (KLR) thus:

Decided cases are in agreement that where a suit is filed relating to a deceased's estate without a grant of representation, the proceedings are null and void for want of locus standi. (See *Virginia Edith Wamboi vs. Joash Ochieng Ougo & Another* [1982-88] 1 KAR and *Trouistik Union International & Another vs. Jane Mbeyu & Another* Civil Appeal No. 145 of 1990). It follows, therefore, that for a party to have locus standi to institute or defend a case for and on behalf of a deceased person, he or she must first obtain a grant of letters of administration empowering him or her to administer the deceased's estate or a limited grant limited for the purpose of filing or defending the suit.
11. To the extent that the Plaintiff does not hold any letters of administration in respect of his deceased father's estate, he is not a personal representative of his deceased father's estate. He lacks locus standi to file the suit on behalf of the said estate.
12. I find merit in both preliminary objections, to the extent that they raise the issue of the Plaintiff's locus standi. The suit is a nullity. I uphold the objections and strike out the suit with costs to the Defendants.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 13TH DAY OF FEBRUARY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

No appearance for the Plaintiff

Mr Simiyu holding brief for Mr Nyauma for the 1st Defendant

Ms Onyango holding brief for Mr Macharia for the 2nd Defendant

Ms Mbetera holding brief for Mr Shifwoka for the 3rd Defendant

Court Assistant: B Kerubo

