



Musichi (Substituted by Patrick Olasia Musichi) v Juma (Environment & Land Case 157 of 2012) [2025] KEELC 527 (KLR) (12 February 2025) (Judgment)

Neutral citation: [2025] KEELC 527 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 157 OF 2012
DO OHUNGO, J
FEBRUARY 12, 2025**

BETWEEN

ELGEN WINNIE MUSICHI (SUBSTITUTED BY PATRICK OLASIA MUSICHI) PLAINTIFF

AND

WILSON OCHIENG JUMA DEFENDANT

JUDGMENT

1. Litigation in this matter commenced on 3rd July 2012, when Elgen Winnie Musichi (Elgen) filed Plaintiff dated 3rd July 2012. The Plaintiff underwent several amendments, resting with Further Amended Plaintiff amended on 20th September 2022. Elgen passed away on 4th September 2021 and was substituted by her son Patrick Olasia Musichi (Patrick).
2. Patrick averred in the Further Amended Plaintiff that the Defendant is a grandson of and the proposed administrator of the estate of Peter Oloo Oganga (deceased) who was the original owner of land parcel number Butsotso/Shikoti/295 which was later subdivided into new parcels including Butsotso/Shikoti/12407 further subdivided to create Butsotso/Shikoti/15728. That Elgen purchased a portion of land measuring 1 acre from the deceased in 1981, took immediate possession thereof and fully paid the purchase price. That on the ground, Elgen occupied parcel number Butsotso/Shikoti/12407 which was further subdivided to create Butsotso/Shikoti/15728.
3. Patrick further averred that the deceased passed away prior to effecting transfer of the purchased portion to Elgen. He therefore sought judgment against the Defendant for:
 - a. An order for specific performance of the agreement entered into between the portion purchased by the Plaintiff from the original title known as Butsotso/Shikoti/295 measuring one Acre now sub divided to create new titles including title number Butsotso/Shikoti/12407 or any other subsequent title further sub divided as long as it fall on the physical ground



where the Plaintiff bought failure to comply by the defendant the Deputy Registrar of this Honourable court be empowered to effect transfer of the said portion of land measuring one 1 Acre to the Plaintiff by executing all relevant documents and forms on behalf of the Defendant.

- b. That an order of a permanent injunction do issue restraining the defendant, his servants, agents, or anybody or authority from trespassing on, selling, disposing of, evicting the plaintiff from or in any other manner interfering with the plaintiff's quite possession and enjoyment of the parcel of land known as Butsotso/Shikoti/12407 or any other subsequent title further sub divided creating title number Butsotso/Shikoti/15728 on suit land occupied by the plaintiff created from the original title number Butsotso/Shikoti/295.
 - c. A mandatory order injunction compelling the defendant to transfer the parcel of land known as Butsotso/Shikoti/12407 or any other subsequent title further sub divided creating title number Butsotso/Shikoti/15728 to the Plaintiff.
 - d. Costs of this suit.
 - e. Any other relief that this Honourable Court may deem fit to grant.
4. The Defendant filed Amended Statement of Defence through which he admitted being the deceased's grandson but denied Patrick's allegations of a sale. He averred that he was not the administrator of the deceased's estate and gave notice of a preliminary objection to the effect that the suit was time barred.
 5. At the hearing, Patrick testified as the sole witness in respect of the Plaintiff's case and adopted his witness statement dated 20th September 2022. He produced copies of the documents listed as item numbers 1 to 5 in the Plaintiff's further list of documents dated 20th September 2022 as well as copies of the documents listed as item numbers 1 to 9 in the Plaintiff's further list of documents dated 26th May 2023. He stated that Elgen took steps to obtain title including appearing before the Land Control Board and making payments. That the seller passed away before transferring the land and that the seller's son who was the father to the Defendant also passed away before transferring the land.
 6. Patrick further testified that the land can be identified as B in the mutation form and that he was claiming specific performance in respect of parcel Butsotso/Shikoti/15728 which was the current parcel number of the land Elgen purchased and whose current registered owner was the Defendant. He added that when this suit was filed in 2012, the initial Defendant was Peter Oloo Were who had died in 1996 and that the mistake which was later rectified through amendment. That the current Defendant was sued because the Plaintiff determined from the mutation that the land that Elgen was entitled to stands on Butsotso/Shikoti/15728.
 7. The Plaintiff's case was then closed.
 8. Wilson Fred Ochieng testified as the sole witness in respect of the Defence case and adopted his witness statement dated 5th November 2019. He produced copies of the documents listed as item numbers 1 to 4 in the Defendant's list of documents dated 5th November 2019 and copies of the documents listed as item numbers 1 and 2 in the Defendant's Further list of documents dated 28th August 2023. He stated that he never knew Elgen and never transacted with her.
 9. Wilson went on to testify that the deceased was his grandfather and the registered owner of Butsotso/Shikoti/295 which was sub-divided into several new parcels in 1988, including Butsotso/Shikoti/15728. That as of the date of his testimony, he was the registered owner of Butsotso/Shikoti/15728. He also stated that he did not enter into any agreement with the Plaintiff and was not aware of the agreements that were produced by the Plaintiff.



10. Defence case was then closed, after which parties filed and exchanged written submissions. The Plaintiff filed submissions dated 20th July 2024 while the Defendant filed submissions dated 4th March 2024.
11. I have considered the parties' pleadings, evidence and submissions. The issues that arise for determination are whether the suit is barred under the *Limitation of Actions Act*, whether the Defendant has locus standi to be sued on behalf of the estate of Peter Oloo Oganga (deceased), and whether the reliefs sought are available.
12. The Plaintiff's case as pleaded is that Elgen purchased a 1 acre portion of land parcel number Butso/ Shikoti/295 from Peter Oloo Oganga (deceased) in 1981. This case, which was filed on 3rd July 2012, is a claim for specific performance aimed at enforcing the said sale agreement. It is an action founded on contract which pursuant to Section 4 (1) of the *Limitation of Actions Act* may not be brought after the end of six years from the date on which the cause of action accrued. The suit should have been filed by 1987. Having been filed on 3rd July 2012, some 31 years after accrual of the cause of action, it is statute barred and the Court lacks jurisdiction to consider it.
13. Even if I had not held that the claim is statute barred, it would still have failed on account of locus standi. The agreement that is sought to be enforced was entered into between Elgen and Peter Oloo Oganga (deceased). At the time of filing of this suit, Peter Oloo Oganga was deceased. In such circumstances, the suit could only be validly filed against a personal representative of Peter Oloo Oganga (deceased).
14. The Court of Appeal stated 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.
15. The Plaintiff stated at paragraph 4 of his Further Amended Plaintiff that the Defendant is a grandson and "proposed legal representative" of the estate of Peter Oloo Oganga (deceased). The Plaintiff did not adduce any evidence to show that the Defendant was a personal representative of the deceased. On his part, the Defendant testified that he was not a personal representative of the deceased. The suit against the Defendant is a nullity for want of locus standi.
16. In view of the foregoing discourse, I strike out the Plaintiff's suit with costs to the Defendant.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 12TH DAY OF FEBRUARY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Osango for the Plaintiff

No appearance for the Defendant

Court Assistant: B Kerubo

