



**Ndungu & 6 others v Mwangi & 2 others; Nderi (Interested Party) (Environment & Land Case E042 of 2024) [2024] KEELC 13808 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13808 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E042 OF 2024  
MD MWANGI, J  
DECEMBER 5, 2024**

**BETWEEN**

**EUNICE MUTHONI NDUNGU ..... 1<sup>ST</sup> PLAINTIFF  
MARY WANJIKU NGURE ..... 2<sup>ND</sup> PLAINTIFF  
ALICE WANJIRU MWANGI ..... 3<sup>RD</sup> PLAINTIFF  
ESTHER WAIRIMU ..... 4<sup>TH</sup> PLAINTIFF  
JANE WAMBUI ..... 5<sup>TH</sup> PLAINTIFF  
MARGARET NGINA ..... 6<sup>TH</sup> PLAINTIFF  
MARY NGOIRI ..... 7<sup>TH</sup> PLAINTIFF**

**AND**

**JAMES IRUNGU MWANGI ..... 1<sup>ST</sup> DEFENDANT  
EQUITY BANK LIMITED ..... 2<sup>ND</sup> DEFENDANT  
THE DISTRICT LAND REGISTRAR - NAIROBI ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**PUALINE NJOKI NDERI ..... INTERESTED PARTY**

**RULING**

(In respect of the Preliminary Objection by the 3rd Defendant challenging the capacity and or locus standi of the Plaintiffs to institute the suit on behalf of the estate of the late Stephen Mwangi Kihara (deceased))



## Background

1. In its preliminary objection dated 18<sup>th</sup> July, 2024, the 3rd Defendant challenges the capacity and or locus standi of the Plaintiffs to institute this suit on behalf of the estate of the late Stephen Mwangi Kihara (deceased) since no grant of letters of administration has been issued to them, under Section 82 (a) of the *Law of Succession Act*.
2. In its submissions, the 3rd Defendant avers that the Plaintiffs have in their pleadings provided a Certificate of Confirmation of Grant which demonstrates that the administrators of the estate of Stephen Mwangi Kihara are James Irungu Mwangi, the 1st Defendant in the case, Margaret Nginge Mwangi, the 6th Plaintiff and Jane Wambui, the 5th Plaintiff. The 3rd Defendant therefore submits that the 1st, 2nd, 3rd and 4th Plaintiffs cannot institute a suit on behalf of the estate of the deceased since they are not administrators and or personal representatives of the estate.
3. The 3rd Defendant further points out that the verifying affidavit accompanying the plaint is signed by one of the Plaintiffs who is not a legal administrator in the estate of the deceased. She terms the suit as fatally defective and incompetent. She prays that it be struck out with costs to the Defendants.
4. The 1st Defendant supports the preliminary objection by the 3rd Defendant. He submits that under Section 82 of the *Law of Succession Act*, only a personal representative of a deceased person, has the legal capacity to institute a suit on behalf of the estate of the deceased person. The 1st Defendant too supports the assertion by the 3rd Defendant in respect to the incompetence of the Plaintiff having been accompanied by a verifying affidavit that was sworn by a party who has no legal capacity.

## Submissions by the Plaintiffs

5. The Plaintiffs in their submissions of 14<sup>th</sup> August 2024 admit the issue of the legal administration of the estate of Stephen Mwangi Kihara where they state as follows;

“By virtue of the letters of administration dated 10<sup>th</sup> September 2019, the 4th and 5th Plaintiffs together with the 1st Defendant were appointed as administrators of the estate of Stephen Mwangi Kihara, whereas the 2<sup>nd</sup>, 3<sup>rd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Plaintiffs are the beneficiaries of the estate.”
6. The Plaintiffs insist that the 4th and 5th Plaintiffs being administrators and suing together with the beneficiaries of the estate have locus standi.

## Determination

7. The Preliminary Objection by the 3rd Defendant raises weighty matters of law; bigger than what the 3<sup>rd</sup> Defendant has brought forth, as I will demonstrate shortly.
8. Locus standi as correctly stated in the case of *Daykio Plantations Ltd -vs- National Bank of Kenya Ltd & 2 others* (2019) eKLR, is the right to appear and be heard in a court of law. The consequences of lack of it is that;

“..... if a party is found to have no locus standi then it means that he or she cannot be heard even on whether he/she has a case worth listening to.”
9. Locus standi is an issue that alone can dispose of a suit. A party without locus standi as explicitly stated in the case of *Julian Adoyo Onguga & Another –vs- Francis Kibarengi Bondeva*, (2016) eKLR, lacks the right to institute and or maintain that suit even where a varied cause of action subsists.



10. Out rightly, in this case, it is not in dispute that the 1st, 2nd, 3<sup>rd</sup>, 4th and 7th Plaintiffs are not administrators of the estate of the deceased.
11. The 1st Defendant and the 3rd Defendants have in their submissions cited authorities by the Court of Appeal that are binding on this court.
12. In the case of Rajesh Pranjivan Chudasama – vs- Sailesh Pranjivan Chudasama (2014) eKLR, the Court of Appeal stated that;

“A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession.”
13. The Court of Appeal in the above case referred to an earlier decision in Otieno –vs- Ougo where it similarly held that;

“... An administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”
14. Guided by the above decisions, I find and hold that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 7<sup>th</sup> Plaintiffs have no locus standi to institute and or maintain this suit.
15. However, and as I pointed out earlier, the issue is bigger than just what has been raised by the 3<sup>rd</sup> Defendant.
16. There is a glaring legal question which cannot be ignored by the court. The Plaintiffs have categorically stated that the administrators of the estate by virtue of the letters of administration dated 10th September 2019 are the 4th and 5th Plaintiffs and the 1st Defendant. The legal question then that begs an answer is whether two out of three joint administrators of an estate of a deceased person have the capacity to file a suit on behalf of the estate excluding the 3rd administrator.
17. In the case of Simon Kamau Muhindi (suing as an administrator of the estate of Esther Nyokabi Muhindi) -v- Monica Wambui Ngugi & Ano (2014) eKLR, Musyoka J, held that the Plaintiff therein lacked the capacity to file suit on behalf of the estate in the absence of his co-administrator.
18. The Judge cited with approval the decision of Majanja J, in Misc. Civil Application No.103 B of 2013 – (Republic – vs- Nairobi City Council) where the Learned Judge had stated as follows;

“The capacity to agitate any suit on behalf of the estate of the deceased inheres in the administrators duly appointed by the court. They act jointly at all times. One administrator out of the others lacks the capacity to bind the estate or any of the administrators or file suit alone on behalf of the estate.”
19. I agree with the reasoning of Musyoka J and Majanja J. The 4<sup>th</sup> and the 5<sup>th</sup> Plaintiffs lack the capacity to institute a suit on behalf of the estate in the absence of the 1<sup>st</sup> Defendant. They are joint administrators and the law is clear that they must act jointly on behalf of the estate.
20. The issue of locus standi goes into the core of any civil suit. It is not a procedural technicality that can be cured by invoking the provisions of Article 159 or the overriding objective.
21. Consequently, I find and hold that the Plaintiffs in their totality lack the locus standi to institute and or maintain this suit. Where the court finds that the Plaintiffs lacks the locus standi then it means that



the Plaintiffs cannot be heard even on whether they have a case worth listening to. I am left with no choice but to strike out the Plaintiffs' suit.

22. The import of the above finding is that the Plaintiff's application dated 27.06.2024 collapses and fails too. There is no point in considering the 1<sup>st</sup> Defendants' application which was seeking the same orders as the 3<sup>rd</sup> Defendant's preliminary objection. That is the effect of a preliminary objection. The preliminary objection disposes of the suit without going into its merits.
23. On the issue of costs, Section 27 of the *Civil Procedure Act*, while allowing the court the discretion to award or not to award costs, provides that costs shall generally follow the cause. The Plaintiff's case having failed against the Defendants, I award the costs of the suit to the Defendants.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF DECEMBER, 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Getange for the Plaintiffs

Ms. Matunda for the 2<sup>nd</sup> Defendant

Ms. Munyoki h/b for Mr. Mwangi Ndegwa for the 1<sup>st</sup> Defendant

Mr. Mwambonu h/b for Ms. Kerubo for the 3<sup>rd</sup> Defendant

N/A by the Interested Party

Court Assistant: Joan

**M.D. MWANGI**

**JUDGE**

