



REPUBLIC OF KENYA

IN THE NATIONAL ENVIRONMENT TRIBUNAL AT NAIROBI

TRIBUNAL APPEAL NO. 5 OF 2020

PL (SUING AS THE NEXT FRIEND

AND FATHER OF THE DECEASED

MINOR, L OLE K).....APPELLANT

-VERSUS-

KENYA WILDLIFE SERVICE.....RESPONDENT

RULING ON PRELIMINARY OBJECTION

1. The Respondent herein has raised a preliminary objection at Paragraph 2 of its Reply to the Grounds of Appeal dated 3rd March, 2020; which is in reply to and in opposition of the Notice and Grounds of Appeal dated 29th January, 2020. The grounds of the preliminary objection as stated at Paragraph 2 of the Respondent's Reply to the Grounds of Appeal are summarised below:

- a. The Appellant has not formally demonstrated the capacity in which he is suing the Respondent as required under Section 25(1) of the Wildlife Conservation and Management Act, 2013;
- b. The Respondent has no locus standi and is not the proper person to be sued in the Appeal because it merely acts as a Secretary to the Wildlife Conservation and Compensation Committee; and
- c. That the Appeal is statute barred by dint of Section 25(6) of the Wildlife Conservation and Management Act, 2013 as it was filed outside of the thirty (30) days period from the notification of the impugned decision.

2. The Respondent contended that that preliminary point of law should be determined in priority to the substantive appeal as it touched on this Tribunal's jurisdiction to hear and determine the appeal. Having noted that the preliminary objection was distinctly set out within the Respondent's Reply to the Grounds of Appeal and thus capable of being determined without the need for a separate Notice of Preliminary Objection, on 3rd March, 2020 the Tribunal directed that the preliminary objection be canvassed by way of written submissions.

3. The Appellant filed written submissions dated 2nd June, 2020 in opposition of the preliminary objection; drawn and filed by the law firm of Nairi & Company Advocates. On its part, the Respondent supported its preliminary objection by way of written submissions dated 17th March, 2020 and a written submissions in rejoinder dated 29th June, 2021; both of which were drawn and filed by the law firm of Lutta & Company Advocates. The parties' respective written submissions were supported by list and bundles of authorities placing on record the authorities upon which they sought to rely.

4. From the parties' submissions in the context of the preliminary objection raised by the Respondent within the text of its Reply to

the Grounds of Appeal, it emerges that the preliminary issues for determination by this Tribunal are as follows:

- a. Whether the Appellant has the requisite *locus standi* to bring forth the Appeal herein;
- b. Whether the Appeal is time barred;
- c. Whether the Respondent is the proper party to be sued; and
- d. Costs.

Whether the Appellant has *locus standi* to bring forth the Appeal herein

5. The Respondent contends that the Appellant has no *locus standi* in this matter as he has not produced Letters of Administration *Ad Litem*. The Respondent relied on the judgment of the **Hon. Mr. Justice Anthony Mrima** in *Migori High Court Civil Appeal 119 of 2015; Julian Adoyo Ongunga & Jared Odhiambo Abano v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Faniel Evans Amudavi, Deceased)* and the ruling of the **Hon. Mr. Justice John Mutungi** in *Kisii ELC Case NO. 167 of 2016; Isaya Masira Momanyi v Daniel Omwoyo & another* ; in which decisions both learned judges stated that a party cannot commence a civil suit on behalf of the estate of a deceased persons without letters of administration and any suit so initiated is null and void *ab initio*.

6. On his part, the Appellant contends that he has the requisite *locus standi* to bring forth the present Appeal. While the Appellant does not deny that he does not have or has not produced Letters of Administration *Ad Litem*, the Appellant contends that he satisfies the requirements of Section 25(1) of the Wildlife Conservation and Management Act, 2013 as he is a ‘successor’ of the deceased minor. The Appellant also contends that the issue should have been raised by the Respondent at the Committee stage and that it is in the interest of justice that the Appellant be allowed to argue his case substantively.

7. Section 25(1) of the Wildlife Conservation and Management Act, 2013 is reproduced below:

25. Compensation for personal injury or death or damage to property

(1) Where any person suffers any bodily injury or is killed by any wildlife listed under the Third Schedule, the person injured, or in the case of a deceased person, the personal representative or successor or assign, may launch a claim to the County Wildlife Conservation and Compensation Committee within the jurisdiction established under this Act.

8. Pursuant to Section 25(1), the persons who can bring a claim on behalf of a deceased are the personal representative, successor, or assigns of that deceased person.

9. The Law of Succession Act (Cap.160) defines a personal representative under Section 3(1) to mean the executor or administrator, as the case may be, of a deceased person. Section 82 of the Law of Succession Act provides that one of the powers of the personal representative is to enforce by suit causes of action that arise out of his death. Section 54 of the Law of Succession Act and the Fifth Schedule of the Act provide for the Grant of Letters of Administration in specific cases, with Paragraph 14 of the Fifth Schedule covering initiation, defence, and continuation of court cases.

10. A successor or assign is also permitted to file a suit. While the term successor is not defined in either the Law of Succession Act or in the Interpretation and General Provisions Act [Cap.2] Black’s Law Dictionary defines successor as “*one who succeeds to the rights or the place of another.*” An assign is a person to whom a right of liability is legally transferred or who is appointed in law to act for another.

11. The Appellant claims to be the successor of the deceased minor by virtue of being his father. However, in the absence of a succession cause it is difficult to determine whether he is the sole successor or if there other dependents. Indeed, it is not a function of this Tribunal to determine who is or isn't a successor of a deceased person and that is the mandate of other courts of competent jurisdiction. Nothing has been placed before this Tribunal to show that the Appellant is a successor of the deceased minor. For those reasons, the filing of a succession cause is imperative to assist in determining heirs and to avoid competing conflicts in the event of an award, in addition to satisfying the requirements of Section 25(1) of the Act.

12. Accordingly, this preliminary objection succeeds to the extent that the appellant has no locus standi to file this Appeal and the Tribunal is thus not clothed with the jurisdiction to hear and determine the same. We will not comment on the merits of the appeal or the claim itself as the personal representative or successor identified in a succession cause may still pursue relief for compensation at an appropriate time and at an appropriate forum.

13. Having determined that the Appellant does not have the requisite *locus standi*, the Tribunal will not delve into the remaining issues for determination.

FINDING

14. The Appeal dated 29th January 2020 is struck out for lack of locus standi on the part of the Appellant and for want of jurisdiction on the part of the Tribunal.

15. Each party shall pay their own costs.

DATED AND DELIVERED AT NAIROBI, THIS 3RD DAY OF SEPTEMBER 2021.

Mohammed Balala.....Chairperson

Christine Kipsang.....Vice Chairperson

Bahati Mwamuye.....Member

Waithaka Ngaruiya.....Member

Kariuki Muigua.....Member

Due to the ongoing COVID-19 pandemic, and the containment measures and guidelines in force to mitigate its spread, this Ruling was delivered by electronic means.



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)