



REPUBLIC OF KENYA

IN THE NATIONAL ENVIRONMENT TRIBUNAL

NET APPEAL NO. 09 OF 2020

CATHERINE MUTHONI MWATHI..... APPELLANT

-VERSUS-

KENYA WILDLIFE SERVICE RESPONDENT

RULING ON PRELIMINARY OBJECTION

1. Before the Tribunal is the Respondent’s Notice of Preliminary Objection dated 30th June 2020. The Notice of Preliminary Objection filed by the Respondent premises that the Tribunal lacks jurisdiction to hear and determine the Appellant’s appeal for the reason that the Appellant lacks the requisite *locus standi* required under Sections 25(1) of the Wildlife Conservation and Management Act, 2013 [Act No. 47 of 2013, and hereinafter referred to as “the Act”] to sue or institute the present proceedings on behalf of the deceased’s estate.

2. The Parties filed and exchanged written submissions with respect to the Notice of Preliminary Objection. The Appellant opposed the Notice of Preliminary Objection through the Appellant’s Written Submissions dated 20th July 2020; while the Respondent supported its Notice of Preliminary Objection through the Respondent’s Written Submissions dated 30th June 2020 and the Respondent’s Supplementary Written Submissions in Response to the Appellant’s Written Submissions dated 4th August 2020.

3. Section 25(1) of the Wildlife Conservation and Management Act, 2013 reads as follows:

“ 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 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.”

4. From the parties’ submissions in the context of the preliminary objection raised by the Respondent, the following issues for determination emerge:

- a. Whether the Appellant has the requisite *locus standi* to bring forth the Appeal herein; and
- b. Who should bear 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 she 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 Fanuel 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 person without letters of administration and any suit so initiated is null and void *ab initio*.

6. On her part, the Appellant contends that she has the requisite locus standi to bring forth the present Appeal. While the Appellant does not deny that she does not have or has not produced Letters of Administration *Ad Litem*, the Appellant contends that Articles 22 and 48 of the Constitution of Kenya 2010, as read together with Article 159(2) require that justice shall be administered without undue regard to procedural technicalities. Although the Appellant does not have the Letter of Administration *ad litem*, she nevertheless argues that she has *locus standi* to bring forth the present appeal.

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

8. 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.

9. 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.

10. The Appellant's invocation of the constitutional right under Article 22 of the Constitution to institute proceedings where a constitutional right has allegedly been infringed has been advanced in the wrong forum. This Tribunal as a creature of statute derives its jurisdiction and mandate from the various Acts of Parliament that give it such jurisdiction and mandate. As a subordinate court, what is before us is a statutory cause and not a constitutional one.

11. In the absence of a succession cause it is difficult to determine whether she is the sole successor or if there are other dependents. Indeed, it is not a function of this Tribunal to determine who is or isn't a successor of a deceased person. 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. For this reason, 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.

Who should bear the costs"

13. Turning to the question of costs, whereas the Respondent's Preliminary Objection succeeds, the Tribunal does not find that the Appeal lodged was wholly unreasonable, vexatious, mischievous, or any of the other grounds that would require us to award costs as against the Appellant. The order that commends itself with regard to costs is for each party to bear their own costs.

ORDERS

i. The Appeal dated 26th February 2020 is struck out for lack of *locus standi* on the part of the Appellant and for the consequent want of jurisdiction on the part of the Tribunal.

ii. Each party shall bear their own costs.

DATED and DELIVERED online this 22ND day of NOVEMBER 2021.

Mohammed S. BalalaChairperson

Christine Mwikali 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 with the consent of the parties.



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