



Case Number:	Environment and Land Case 259 of 2016
Date Delivered:	16 Dec 2020
Case Class:	Civil
Court:	Environment and Land Court at Kakamega
Case Action:	Judgment
Judge:	Nelly Awori Matheka
Citation:	BOM of Vikutsa Primary School v Moses Abwoba & 5 others [2020] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Kakamega
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application struck out with no orders as to costs
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 259 OF 2016

THE CHAIRMAN B.O.M OF VIKUTSA PRIMARY SCHOOL.....PLAINTIFF

VERSUS

MOSES ABWOBA

SABETI MUDEKU

DAVID AMUHANDA

LUKA MUDEGU

DANIEL LUVA MUDEKU

BENSON TIGU MUDEKU.....DEFENDANTS

JUDGEMENT

This is the application of the Chairman, Board of a Management of Vikutsa Primary School who claim to have acquired 11 acres of land comprised on land parcel No. Kakamega/Ileho/726 by way of adverse possession. The application is for the ownership of a portion measuring 11 acres of a piece of land known as Kakamega/Ileho/726 claimed by the applicants and for the award of the following orders:-

1. An order that the respondents right over a portion measuring 11 acres of land known as Kakamega/Ileho/726 got extinguished by adverse possession.
2. An order that upon expiry of 12 years since 1973 when the applicants were in and still in occupation of a portion measuring 11 acres of a piece of land known as Kakamega/Ileho/726.
3. An order under section 38 of the Limitation of Actions Act Cap 22 Laws of Kenya that the applicant be registered as owner of the said portion measuring 11 acres of a piece of land known as Kakamega/Ileho/726.
4. An order that the respondents do execute all transfer documents in favour of the applicant to permit registration failure of which the Deputy Registrar of this honourable court be allowed to execute any such documents on behalf of the applicants.
5. An order that the respondents be condemned to pay costs of the suit.
6. Such further order or relief the honourable court may deem fit to grant.

PW1 Peter Marema testified that in 1973 he was a Sunday school teacher when the said Zedekiah Amuhanda donated 11 acres of the suit land to start a school. He was a member of the school committee then and in 1974 Zedekiah Amuhanda showed them the land. That PW2 was also present. The school has been there ever since and has about 500 students. PW2 William Asalikha corroborated the plaintiff's evidence.

The respondents oppose the claim and the orders sought. The grounds are that the respondents except for Moses Abwoba were registered joint proprietors of the suit land on 18th December, 2013, DEx1 is the certificate of confirmation of grant. This was pursuant to the order of Kakamega High Court in suit succession cause No. 483 of 2010. Moses Abwoba is not listed as a beneficiary on the grant nor hence improperly enjoined to this suit. That by summons for revocation of the grant dated 25th February, 2014, the plaintiff sought to reverse the registration of the respondents as proprietors of the land in dispute and the reasons advanced were that, the school had been given 11 acres by the original owner which they were claiming. That on the 23rd January, 2014 even before filing the summons for the revocation of the grant, the area Assistant County Commissioner and Education Officer had heard the plaintiffs claim of 11 acres but were not convinced when the plaintiff failed to produce evidence to prove their claim arguing that their offices were broken into in the year 2009 and the documents stolen. That at a subsequent meeting with the respondents held on the 10th February, 2014 under the chairmanship of the area village elder, the respondents agreed to donate 1 ¼ acres of land to the school and if there was only need for more land, they would sale to the school another five acres after valuation. That the plaintiff defiled all the foregoing efforts in settling the dispute and pushed on with the litigation in succession cause No. 483 of 2010 which ended in the judgment of this court delivered on 7th December, 2016 dismissing the plaintiffs claim to the land in dispute for reasons that the plaintiff had not proved their claim and that they lacked locus standi to prosecute the claim. That it is the same Peter Marema who appeared as the applicant for the plaintiff in the present suit thereby resurfacing as the plaintiff even when the court found he had no locus standi to claim the suit land either by himself or through the school and which decision of the court he has not appealed. That a claim to 11 acres of the land by the plaintiff is not only fraudulent but totally unsupported. The land was registered in the name of Zedekiah Amuhanda in 1976 and he was issued with a title that year DEx2. If the school had a portion in the title by 1974 as they claim, they would not have let the deceased obtain title and only come up with the claim in the year 2014. That it is in the minutes of the Assistant County Commissioner that the school started encroachment to the suit land when the deceased owner was alive and he wrote a protest. That the deceased died in the year 1987 and from that date the plaintiff cannot claim to have been in continuous and peaceful occupation of deceased's land. That for reasons explained this suit is brought in total abuse of the courts process and is meant to defeat the full effect of the judgment of this court in succession cause No. 483 of 2010 which ruled that the plaintiff had no locus standi to claim the suit land and hence they pray that the claim be dismissed with costs.

This court has considered the evidence and the submissions therein. The defendant raised an issue of locus standi in their defence which this court needs to determine before getting into the merits and demerits of the case. *Locus standi* is defined in *Black's Law Dictionary, 9th Edition at page 1026 as-*

"The right to bring an action or to be heard in a given forum".

The Court in *Alfred Njau & 5 others vs. City Council of Nairobi (1983) eKLR* stated as follows;

"The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt's Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding."

Therefore, *locus standi* is a point of law that touches on jurisdiction of the Court and that it should be resolved at the earliest opportunity. In the case of **Mumo Matemu vs Trusted Society of Human Rights Alliances & 5 Others (2014) eKLR**, the Court held that;

"It is proper to note that the evaluation of locus ought to be based upon the constitutional consideration of capacity (Articles 3, 22 and 258, the nature of the suit and the enforceability of the orders sought. These considerations inform the enforcement mechanisms and coherent clarity of the following inquiries. Who will the orders be enforced against" Who bears the costs of litigation if at all" Who represent the parties in Court."

The defence stated that this suit is brought in total abuse of the courts process and is meant to defeat the full effect of the judgment of this court in succession cause No. 483 of 2010 which ruled that the plaintiff had no locus standi to claim the suit land and hence they pray that the claim be dismissed with costs. That it is the same Peter Marema who appears as the applicant for the plaintiff in the present suit who was the claimant in the succession case which the court found he had no locus standi to claim the suit land either by himself or through the school and which decision of the court he has not appealed. PW1 the said Peter Marema testified that in 1973 he was a Sunday school teacher when the said Zedekiah Amuhanda donated 11 acres of the suit land to start a school. He was a member of the school committee then and in 1974 Zedekiah Amuhanda showed them the land. He swore the affidavit in support of the current applicant. I find that he has currently no position in the plaintiff's school. He is neither the Chairman nor the Head Teacher of the school. None of the members of the board of management of the plaintiff's school were

called to testify. One wonders if they have any interest in this case. The succession cause No. 483 of 2010 which ended in the judgment of this court delivered on 7th December, 2016 dismissing the plaintiff's claim to the land in dispute for reasons that the plaintiff had not proved their claim and that they lacked locus standi to prosecute the claim and which decision of the court he has not appealed. The plaintiff instead chose to file this suit. I find that Peter Marema has no locus standi to claim the suit land either by himself or through the school. Having found so there will be no need to go into the merit or demerits of this case. I find that this case is not merited and I strike it out with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 16TH DECEMBER 2020.

N.A. MATHEKA

JUDGE



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