



**Lepaati (Suing as the Next of Kin of Saidinga Lepaati Deceased) v Kenya Wildlife Service & another (Tribunal Appeal 012 of 2022) [2023] KENET 476 (KLR) (23 August 2023) (Ruling)**

Neutral citation: [2023] KENET 476 (KLR)

**REPUBLIC OF KENYA**  
**IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI**  
**TRIBUNAL APPEAL 012 OF 2022**  
**EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI**  
**MUIGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS**  
**AUGUST 23, 2023**

**BETWEEN**

**NTALIA SAIDINGA LEPAATI (SUING AS THE NEXT OF KIN OF SAIDINGA LEPAATI DECEASED) ..... APPELLANT**

**AND**

**KENYA WILDLIFE SERVICE ..... 1<sup>ST</sup> RESPONDENT**  
**MINISTERIAL WILDLIFE CONSERVATION AND COMPENSATION**  
**COMMITTEE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Background**

1. The Appellant moved this Tribunal by way of a Notice of Appeal dated March 18, 2022 and filed on even date under Rule 4 of the [National Environment Tribunal Procedure Rules](#).
2. The appeal emanates from a decision rendered by the 1<sup>st</sup> Respondent rejecting a claim for compensation instituted by the Appellant on behalf of the Estate of Saidinga Lepaati. The deceased is alleged to have died due to injuries sustained from a hyena attack.



3. The 1<sup>st</sup> Respondent entered appearance and filed a Reply to Grounds of Appeal dated March 31, 2022. At Para 3 of the 1<sup>st</sup> Respondent's Reply to Grounds of Appeal is a preliminary objection styled thus:

The Respondent shall, on or before the full hearing of the Appeal, raise a preliminary objection for consideration by this Honourable Tribunal for the reason that:-

The Appellant herein has not demonstrated, as provided for by the [Law of Succession Act](#), Cap 160, that they are the rightful administrator to the Estate of the deceased and therefore lacks locus standi.

4. When parties appeared before us on July 26, 2022, we directed that the Preliminary Objection be canvassed by way of written submissions. As of the time of writing this Ruling, the only submissions forming part of our record are those filed by the 1<sup>st</sup> Respondent.

### Issues for determination

5. Having considered the Appellant's appeal, the 1<sup>st</sup> Respondent's Preliminary Objection, the 1<sup>st</sup> Respondent's written submissions and all other documents filed by the parties, we find that the only issue that presents itself for determination is whether the Appellant had the locus standi to institute the instant appeal.

### Whether the Appellant had the locus standi to institute the instant appeal.

6. *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd.* (1969) EA 696 is a locus classicus on preliminary objections. For a preliminary objection to succeed, it must raise a pure point of law. In [Joseph Muriuki Kithinji v Peterson Ileri Mwaniki & 3 others](#) [2021] eKLR, Justice Kaniaru observed that 'a claim that a party lacks *locus standi*, therefore, is a pure point of law and one that needs to be raised and determined at the earliest.'
7. The question of locus standi goes to the heart of the Tribunal's jurisdiction. In [Apex Finance International Limited and Another v Kenya Anti-Corruption Commission](#) [2012]eKLR, Justice Emukule cited with approval *Goodwill and Trust Investment Ltd and Another v Witt and Bush Ltd* Nigerian SC 266/2005 where the Nigerian Supreme Court observed as follows:

"It is trite law that to be competent and have jurisdiction over a matter; proper parties must be identified before the action can succeed, the parties to it must be shown to be proper parties whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the suit in limine. When proper parties are not before the court the court lacks jurisdiction to hear the suit, and, "where the court purports to exercise jurisdiction which it does not have, the proceedings before it, and its judgment will amount to a nullity no matter how well reasoned."

8. The 1<sup>st</sup> Respondent contends that the instant appeal is incompetent in the absence of a grant ad litem. In support of this position, the 1<sup>st</sup> Respondent placed reliance on sections 3(1) and 82(a) of the [Law of Succession Act](#). Further reliance was placed on *Troustik Union International & Another v Jane Mbeyu & Another* (2008) IKLR ( G& F) 730, In the Matter of the Estate of Robert Kinyua Mwangi- Succession Cause. No. 292 of 2015 at Kerugoya and [Julian Adogo Ongunga v Francis Kiberenge Abano](#) CA No. 119 of 2015.
9. Part of the Appellant's bundle of documents is a certificate of death issued in the name of Saidinga Lepaati. The instrument that would then confer a legal right on the Appellant to file the instant appeal



on behalf of the Estate of Saidinga Lepaati is a limited Grant of Letters of Administration. In *Virginia Wangari Ndindi v Ann Ngima Mari & another* [2017] eKLR, lady Justice Gitari observed ‘that a Limited Grant of Letters of Administration Ad Litem is usually used when the estate of a deceased person is required to be represented in court proceedings.’

10. The Appellant filed a letter from the chief dated March 10, 2022 wherein the chief confirms that the deceased was married to the Appellant under customary law. This is not sufficient, as Justice Chitembwe pointed out in *Hawo Shanko v Mohamed Uta Shanko* [2018] eKLR

“...if any relationship with the deceased does exist whether son, daughter, wife, widow is not sufficient. That relationship does not give the locus standi to any relative to obtain suit before obtaining limited grants. One’s relationship to the deceased does not clothe such a party with the locus standi. It is the Limited Grant which does.”

11. In the same decision, Justice Chitembwe explains the need for parties to obtain a limited grant prior to instituting a suit on behalf of the Estate of a deceased person as follows:

“.....The general consensus is that a party lacks the Locus standi to file a suit before obtaining a grant limited for that purpose. This legal position is quite reasonable in that if the Plaintiff or Applicant has not been formally authorized by the Court by way of a grant limited for that purpose, then it will be difficult to control the flow of Court cases by those entitled to benefit from the estate. If each beneficiary is allowed to file a suit touching on a deceased’s estate without first obtaining a limited grant, then several suits will be filed by the beneficiaries. It is the Limited grant which gives the plaintiff the locus to stand before the Court and argue the case. It does not matter whether the suit involves a claim of intermeddling of the estate or the preservation of the same. One has to first obtain a limited grant that will give him/her the authority to file the suit....

12. It is, therefore, evident that the Appellant lacked locus standi to institute the instant appeal, to decide otherwise will amount to a desecration of a long line of judicial precedent.

## Order

13. The preliminary objection raised by the 1<sup>st</sup> Respondent is hereby upheld, and the Tribunal strikes out the Appeal dated March 18, 2022.
14. Each party shall bear their own costs.

**DATED AND DELIVERED AT NAIROBI, THIS 23<sup>RD</sup> DAY OF AUGUST 2023.**

**EMMANUEL MUMIA.....CHAIRMAN**

**WINNIE TSUMA.....VICE-CHAIR**

**KARIUKI MUIGUA.....MEMBER**

**DUNCAN KURIA.....MEMBER**

**RONALD ALLAMANO.....MEMBER**

