

- b) High Court Civil Suit No. 554 of 2018 be dismissed with costs.
- iii) Judgment in the counter claim be entered in favor of the applicants against the respondent as hereunder.
 - a) A declaration that the respondent is not a beneficiary of the Estate of the Late Kasule Paulo and consequently is not the rightful owner of the suit property.
 - b) An order directing the Commissioner Land Registration for cancelling and or deregistration of the respondent from the certificate of title for land comprised in Block 206 plot 764 Mengo, Mpererwe measuring approximately 88 decimals registered in the names of the respondent.
 - c) A permanent injunction restraining the respondent, his agents and or his successor in title from trespassing or interfering with the quiet enjoyment on the applicants' bibanja.
 - d) General and compensatory damages
- iv) Costs of this application be provided for.

This application was supported by an affidavit in support deposed by the 2nd applicant **Ngobi Emmanuel**, which was sworn on the 4th day of October 2023. The grounds of the application are laid out in the application and the affidavit in support of the application but briefly they are the following;

1. That the respondent filed High Court Civil Suit (HCCS) No. 554 of 2018 as a son and beneficiary of the Estate of the Late Kasule Paulo claiming that the applicants were trespassing onto his land.
2. The applicants filed a written statement of defence and counterclaim in HCCS No. 554 of 2018 against the respondent for the following reliefs;
 - i. A declaration that by virtue of possession which the applicants derive from the previous occupants dating as far as early 1980s without

disturbance or adverse claim by any person, they acquired title by possession.

- ii. An order directing the Commissioner Land Registration to cancel the certificate of title for land comprised in Block 206 plot 764 Mengo, Mpererwe measuring approximately 88 decimals registered in the name of the respondent.
- iii. A declaration that the applicants are bonafide occupants on the suit land and have since acquired title by possession.
- iv. A permanent injunction restraining the respondent, its agents and its successors in title from trespassing or interfering with the quiet enjoyment on the applicant's bibanja.
- v. General damages for trespass and quiet enjoyment.
- vi. Interest on (e) and (f) above from the date of Judgment until payment in full.

3. That the respondent in suing the Applicants in the capacity as the son and beneficiary of the estate of the Late Kasule Paulo whereas not.

4. That the respondent lacks locus standi to bring HCCS No. 554 of 2018 in the capacity as a son of the Late Kasule Paulo against the applicants.

5. The above allegations having been brought to the attention of court cannot be ignored or otherwise condoned by court that administers justice and preserves the rule of law.

The respondent filed an affidavit in reply deposed by the respondent **Rev. Buwembo Godfrey** wherein the contents of the application and the affidavit thereto were denied in total and briefly, the respondent deposed that this application shall interfere with the respondent's right to a fair hearing. He further deposed in paragraph 5 of his affidavit in reply that the Late Kasule Paulo was his

paternal uncle who left no surviving children whereby the respondent was appointed as his customary heir and was granted letters of administration which have never been cancelled or revoked. Subsequently, the applicants filed an affidavit in rejoinder sworn by the 2nd applicant and it was deponed that the respondent does not hold any known relationship with the Late Kasule Paulo and that the respondent adopts and shifts relations with the late as and when it suits him.

Background to this application

On the 19th day of July 2018, the respondent instituted a civil suit against the applicants by way of ordinary plaint vide Civil Suit No. 554 of 2018 seeking for a declaration that the plaintiff is the rightful owner of the land comprised at Block 206 plot 764 land at Mpererwe, Nammere Kampala District, a declaration that the defendants are trespassers on the suit land, an eviction order be issued, general damages and costs of the suit.

In the facts constituting the cause of action, the plaintiff (respondent) stated that he is a son to the late Kasule Paulo formerly of Mpererwe, Nammere Kampala, District who died intestate on 24th May 1993. The plaintiff further contended that the late Paulo Kasule had several properties to wit land at Mpererwe, Nammere Kampala District.

It was further pleaded that the estate of the late Paulo Kasule is administered by the plaintiff who was issued Letters of Administration (LOA) and following the grant, the plaintiff got registered onto the certificate of title for the suit land as the registered proprietor. The plaintiff went ahead to plead that sometime back, the defendants without any color of right and permission from him, trespassed onto the plaintiff's land.

The defendants (applicants) filed a joint written statement of defence and counterclaim wherein all the claims laid down by the plaintiff were denied and it was pleaded that all the defendants settled on the suit land at different intervals, however, they all derived their settlement from a one Kasozi Fredrick who bought
5 the suit land from a one Ssalongo who had bought from the late Kasule Paulo.

The defendants jointly pleaded that they are all resident on the suit land where they have resided since the 1980s up until 2018 when some defendants received court summons in respect to this suit.

In the written statement of defence, the defendants (applicants) pleaded that at the
10 commencement of the suit, they intended to raise preliminary points of law to the effect that the plaint discloses no cause of action against the defendants, that the plaintiff sued the 1st, 4th and 6th defendants who were non- existent in law, that the suit is materially defective and that the suit is frivolous, vexatious and misconceived and barred in law.

15 On the 16th day of October 2023, the applicants filed this application against the respondent seeking to determine whether the plaintiff/ respondent had locus standi to file the suit hence this ruling.

Representation

The applicants were represented by Counsel Kaddu Dennis and Counsel
20 Nakibuuka Lynett while the respondent was represented by Counsel Kato Paul Ssemengo and Counsel Doreen Sabuka Christine.

Merits of the application

Both parties' counsel filed written submissions as directed by this Court and the same shall be considered by this court when arriving at its decision.

The Applicants brought this application under **Section 64 (e) of the Civil Procedure Act** which provides that;

5 *“In order to prevent the ends of justice from being defeated, the court may if it so prescribed make such other interlocutory orders as may appear to the court to be just and convenient”.*

As earlier stated, counsel for the applicants raised a preliminary point of law to the effect that the respondent lacks locus standi to bring the main suit before this court hence this application under **Order 6 rule 28 of the Civil Procedure Rules** which provides that;

10 *“Any party shall be entitled to raise by his or her pleadings any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of the court on the application of either party, a point of law may be set down for hearing and disposed*
15 *of at any time before the hearing”.*

In the current application, the applicants applied to court such that the legal issue of locus standi is determined before the hearing of the main suit under Order 6 rule 28 of the Civil Procedure Rules. It is the applicants’ argument that the respondent is a not a son to the late Kasule Paulo as he claimed in the plaint but he is a son to the Late Kalule Israel hence he lacks the authority to bring the main suit. The applicants are praying to court to determine the question; **whether the respondent had locus standi to bring the main suit vide Civil Suit No. 544of 2018?**

The term ‘*locus standi*’ was defined in *Njau & others v. City Council of Nairobi [1976-1985]1 EA 397 at 407* as cited by Hon. Justice Stephen Mubiru in *Dima*
25 *Domnic Poro v. Inyani Godfrey & Anor High Court Civil Appeal No. 17 of 2016,*

as a place of standing. Court went ahead to state that it means a right to appear in court, and conversely, to say that a person has no locus standi means that he has no right to appear or be heard in a specified proceeding. In **Dima Domnic Poro** (Supra) court indicated that the issue of locus standi is a pure point of law that can be raised as a preliminary objection. In determining such a point, the court is perfectly entitled to look at the pleadings and other relevant material in its records as per the case of **Omondi v. National Bank of Kenya Ltd and others** [2001] 1 EA 177.

As rightly put by Counsel for the applicants' locus standi is a statutory prerequisite and a pure point of law which can be raised as a preliminary objection or by way of pleading as was done in this case in accordance with **Order 6 rule 28 of the Civil Procedure Rules**. In the case of **Mukisa Biscuit versus West End Distributors (1969) EA 696**, it was held that in determining such a point of law, the court is perfectly entitled to look at the pleadings and other relevant matters in its record.

According to paragraph 4 (a) and (c) of the Plaintiff in Civil Suit No. 554 of 2018, the plaintiff/ respondent pleaded that he brought this suit in his capacity as a son to the Late Kasule Paulo and is the Administrator of the deceased's Estate.

However, in the instant application, under paragraph 5 of the affidavit in reply, the respondent/ plaintiff deposed that he is a nephew to the Late Kasule Paulo who was his paternal uncle. The respondent further deposed that the Late Kasule Paulo left no surviving children whereby the respondent was appointed as the deceased's customary heir and he subsequently applied for Letters of Administration to manage the deceased's estate and the same were granted on 28th November 2016.

According to Annexure **'B'** to the affidavit in support of the application which is a certified copy of the respondent's bio data as registered by the National

Identification and Registration Authority (herein after referred to as ‘NIRA’), the respondent’s father is the Late Israel Kalule and not Kasule Paulo as pleaded by the respondent in his plaint in Civil Suit 554 of the 2018. This fact was further corroborated by Annexure ‘D’ and ‘G’ to the affidavit in support of the
5 **application**, which is the respondent’s certified copy of his marriage certificate and his NIRA application for replacement of a lost, defaced or damaged National Identification Card respectively, wherein it was marked that the respondent’s father is the Late Isrirairi Kalule.

The respondent deposed in paragraph 5 of his affidavit in reply that the Late
10 Kasule Paulo left no surviving children, however, according to his application for letters of administration of the Estate of the Late Kasule Paulo which was filed at High Court, Family Division, the respondent averred in paragraph 2 that the Late Kasule Paulo was survived by two children to wit Buwembo Godfrey and Nabunya Kate and he further deposed in the affidavit in support of the said application under
15 paragraph 2 that he was the son to the Late Kasule Paulo. Similarly, these are the facts that were presented to the Administrator General as was reflected in the family meeting minutes before the Administrator General.

On the basis of the facts presented to me, it suffices to say that the respondent’s father is the Late Israel a.k.a Isriairi Kalule and not the Late Kasule Paulo as
20 pleaded. Furthermore, I agree with the application to the extent that the respondent adopts a different type of relation with the Late Kasule Paulo as and when it suits him.

The respondent pleaded that he is a son to the Late Kasule Paulo, he cannot now change his status to nephew in this application simply because the applicants were
25 able to produce documentation which disqualifies him as a son to the late Kasule Paulo. The law is very clear in **Order 6 rule 7 of the Civil Procedure Rules** to the

effect that parties are prohibited from departing from their pleadings except by way of amendment. In the case of ***Struggle Ltd versus Pan African Insurance Co. Ltd (1990) ALR 46-47***, Court observed that, “... the parties in civil matters are bound by what they say in their pleadings which have potential of forming part of the record moreover, the court itself is also bound by what the parties have stated in their pleadings as to form the facts relied upon by them. No party can be allowed to depart from its pleadings.” The same was held in the case of ***Jan Properties Ltd v. Dar es Salaam City Council [1966] EA 281***.

Therefore, it is my considered opinion that the respondent’s depositions in the affidavit in reply were a clear departure from what was pleaded in the plaint in the main suit. Furthermore, it is also evident that the respondent was dishonest in his plaint but so was he to the Family Court in his application for Letters for Administration as well as during the meeting in the Administrator General’s office.

It is trite that court cannot sanction an illegality. The Supreme Court noted in ***Crane Bank Ltd v. Nipun Narottam Bhatia S.C.C.A No. 2 of 2014*** that, “A court of law cannot sanction what is illegal and an illegality once brought to the attention of court, overrides all questions of pleading including any admissions made thereon. *Arach Amoko JSC*, went ahead to hold that *such an illegality must be obvious or clear from the evidence before court.*” In the instant case, it is a glaring fact that the respondent has never been the Late Kasule Paulo’s son and as such he acted dishonestly and illegally when he assumed the role of his son to apply for letters of administration which in turn allowed him institute the main suit as the registered proprietor of the suit land.

The respondent did not disclaim or refute the documentation produced by the applicants in his affidavit in reply and neither did the respondent take the opportunity to draw a nexus between the Late Kalule and the Late Kasule. The

respondent simply deposed that the Late Kasule was his paternal uncle and hold Letters of Administration in respect of his estate.

Given the contradictions in the respondent's pleadings and the overwhelming evidence adduced by the applicants in the instant application, I can comfortably
5 conclude that the respondent's father is the Late Israel Kalule and not Kasule Paulo and as such the respondent cannot sustain his cause of action in the main suit since he is not the Late Kasule Paulo's son and as such does not enjoy any claim of right over the suit land comprised in Block 206 plot 764 Mengo, Mpererwe measuring approximately 88 decimals hence the respondent does not have a right to appear
10 before court in the main suit and therefore, lacks locus standi.

In light of the above and in accordance with **Order 6 rule 29 of the Civil Procedure Rules**, I find that the respondent did not have locus standi to institute the main suit vide HCCS No. 554 of 2018 hence the same is dismissed. Therefore, I order as follows;

- 15 i. ***This application is granted***
- ii. ***Civil Suit No. 554 of 2018 is hereby dismissed.***
- iii. ***The respondent is neither a son nor a beneficiary of the Late Kasule Paulo.***
- iv. ***The applicants' Counterclaim under Civil Suit No. 554 of 2018 shall be***
20 ***mentioned on the of 2024.***
- v. ***The respondent shall pay the costs of this application.***

I so order.

Ruling delivered at High Court, Land Division via ECCMIS this **14th day of March, 2024.**

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**Immaculate Busingye Byaruhanga
Judge**