



**Odwaro (Suing as Beneficiary of the Estate of Lucas Odwaro Okumu) v
Odwaro aka David Olukoe aka Brigadier Odongo (Environment & Land
Case E004 of 2025) [2025] KEELC 1481 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1481 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE E004 OF 2025
AE DENA, J
MARCH 21, 2025**

BETWEEN

**JOSEPH ONYANGO ODWARO PLAINTIFF
SUING AS BENEFICIARY OF THE ESTATE OF LUCAS ODWARO OKUMU**

AND

**JOSEPH ODONGO ODWARO AKA DAVID OLUKOE AKA BRIGADIER
ODONGO DEFENDANT**

RULING

1. The subject of this ruling is the Notice of Motion dated 12/02/2025 brought by the Plaintiff. The Plaintiff/applicant prays for the following orders:
 1. Spent
 2. That pending the hearing and determination of this suit a temporary injunction be issued restraining the Respondent from burying his deceased wife on South Gem/Kanyadet/651 and accessing, occupying or interfering with the suit property.
 3. That pending the hearing and determination of this suit a conservatory order be issued restraining the respondent from making any burial arrangement on the suit property
 4. That the Officer Commanding Station (OCS) of Akala Police Station do enforce compliance with these orders.
 5. Costs of this application be provided for.
2. The application is premised on the grounds on its face and supported by the affidavit of Joseph Onyango Odwaro. It is deponed that the Plaintiff is the son of Lucas Odwano Okumu Ogotu



- (deceased) and a beneficiary of the deceased estate. That the Plaintiff has lived on the parcel South Gem/Kanyadet/651 (suit property) since birth. The title deed is annexed as MM1.
3. It is averred that the Respondent has never been known to the Plaintiff or the plaintiffs family as a legitimate son of the deceased and wants to bury his deceased wife without the consent from the family. That the Respondents' actions amount to trespass and an illegal claim over the land. That the said burial should be stopped.
 4. The application is opposed by the replying affidavit sworn by Joseph Odongo Odwaro on 17/2/2025. The deponent admits the Plaintiff is the son of the deceased and a beneficiary of the estate. However the Plaintiff is not an administrator of the said estate and therefore lacks legal capacity to sue on matters of the estate. That the Plaintiff pleadings clearly indicate the proceedings relate to a claim over the beneficiary's interest over the suit property which forms part of the deceased estate. That no grant of administration has been issued to any administrator in respect of the deceased estate. That the orders sought are premature and cannot be issued in the manner the suit has been filed and is meant to embarrass the deponent and subject him to unnecessary costs.
 5. The Respondent further states that the deceased was his biological father. The deceased married the Respondents mother in 1966 under luo customs and traditions and the Respondent born in 1968 when the parents were still together. That he left the parents' home at 15 years of age to live with his maternal uncle. A copy of employment ID and police abstract were annexed as JOO1. That the applicant's mother was the first wife and the Respondents the sixth wife. That the deceased lived with all his wives in the suit property.
 6. The Respondent depones that he had constructed his first house on the suit property but the same collapsed as it was not a permanent structure. He could not undertake periodic repairs since he had been away. The deceased before death had allocated each of the wives a piece of land on the suit property but the Plaintiff constructed a house for his son on the Respondents mothers portion. That his mother died before the deceased and was buried in the suit property. That he is entitled to the estate in equal rights with the applicant. The Respondent states he intends to bury his deceased wife on the portion where the deceased father and mother were buried being the portion he is entitled and where the Respondent had constructed his house.
 7. The Respondent avers that the dispute herein was subject of proceedings before the chief and elders on 2/02/2025 where a decision was reached to allow the burial. The minutes are attached as JOO2. That the beneficiaries of the deceased estate are not opposed to the burial herein except the Plaintiff who is driven by malice to grab and disinherit the Respondent. The Respondent prays that the application is dismissed.
 8. The applicant filed supplementary affidavit sworn on 20/02/25 in response to the foregoing. It is deponed that the Respondent was 18 years when the deceased was alive and 36 years old at the time of the deceased death in 2004 yet never lay claim of any familial connection or recognition at the time. He was failed to provide legal or official documents that he is the deceased son such as birth certificate, academic records or National Identity Card. The Respondent has changed identities multiple times which raises suspicion about the legitimacy of his claim.
 9. It is stated that the Respondent appeared before his counsel on 17/2/2025 with an identity card bearing his names inconsistent with his claim that the same is lost. This is calculated at hiding his true background and identity. That during a family meeting on 1/02/2025 he failed to produce his identification document claiming he had not travelled with the same. That the Respondents deceased wife was never legally married to the Respondent under luo customs and was never introduced to the plaintiffs family and relatives. On the plaintiffs' further investigations, the two had separated at the time



of her death. A video clip is annexed as JO-1. That by dint of the separation and death without fulfilling matrimonial customs the deceased cannot be buried on the purported husband's ancestral land.

10. It is stated that if the burial were to proceed it will cause irreparable damage, emotional distress and permanent interference with the family land leading to unnecessary disputes and legal battles. That the dispute herein is a burial dispute and not a succession matter requiring an administrator.

Submissions

The application was canvassed by way of written submissions. The applicants' submissions are dated 28/02/2025 and 4/03/2025 and the respondents' 3/03/2025. Counsels were also given an opportunity to highlight the submissions herein on 4/03/2025. The court has considered the submissions.

Analysis And Determination

I have considered the application for injunction, the grounds thereof, supporting affidavit and annexures. I have also considered the replying affidavit and submissions together with case law cited. The following issues commend determination; -

1. Whether the Plaintiff has locus standi to bring this suit.
2. Whether the Court should grant orders of interim injunction restraining the defendant from burying his wife on the suit property

Whether the plaintiff has locus standi to bring this suit.

11. This preliminary issue has been pleaded and raised by the Defendant in opposition to the application. It is contended that the Plaintiff is not an administrator of the said estate and therefore lacks legal capacity to sue on matters of the estate. The applicant has referred the court to a number of authorities defining locus standi in relation to a deceased estate. That in the absence of letters of administration the matter cannot be saved it is null and void ab initio and cannot be cured.
12. What is locus standi and its import to the proceedings filed before court. In *Alfred Njau & Others v City Council of Nairobi* [1982-88] 1 KAR 229 cited by the Respondent the Court of Appeal defined the term locus-standi thus:

“.....to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”

In *Law Society of Kenya ...Vs... Commissioner of Lands & Others*, Nakuru High Court Civil Case No.464 of 2000, the court stated as follows: -

“ the term Locus Standi 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 such and such proceedings”.

13. From the foregoing therefore locus standi is a substantive point of law and is a kin to jurisdiction. It must therefore be decided at the earliest opportunity for without jurisdiction this court must down its tools. This was emphasised by Justice Mrima in *Julian Adoyo Ongunga V Francis Kiberenge Abano Migori Civil Appeal No.119 of 2015*, where the learned Judge had this to say on the issue of a party filing a suit without having obtained a limited grant.

“ Further, the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to



institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a Court acting without jurisdiction. Since it all amounts to null and void proceedings. It is also worth noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.”

14. Order 4 Rule 4 of the Civil Procedure Rules is on capacity of parties and is to the effect that where a plaintiff sues in representative capacity the plaint shall state the capacity in which he sues. This also applies to a defendant and in both cases it shall be stated how that capacity arises.
15. Guided by the case law and legal provisions hereinbefore cited I will proceed to interrogate the Plaintiff that has commenced these proceedings. In the title the Plaintiff is suing as beneficiary of the estate of Lucas Odwaro Okumu under which he is a beneficiary as a son. This is not disputed by the Respondent. A title deed has also been availed by the plaintiff confirming the suit property is registered under the said Lucas Odwaro Okumu and which is also not disputed by the Respondent.
16. There being evidence that the suit property wherein the intended burial is impugned belongs to the deceased, it is therefore part of the estate of the deceased. At paragraph 6 of the plaint, the Plaintiff pleads that the attempt by the Respondent to bury his wife on the property amounts to trespass. There is also allegation it is an illegal claim over the land.
17. At paragraph 14 the plaintiff states he has the right to protect the family land from illegal occupation and interference. The question that I posed is who is permitted in law to defend an estate of a deceased person? I find guidance in the case of *Trouistik Union International & another v Jane Mbeyu & Another* [2008] IKLR (G&F) 730 where the Court of Appeal held that;

“To determine who may agitate by suit any cause of action vested in the deceased at the time of his death, one must turn to section 82 (a) of the *Law of Succession Act*. That section confers that power on personal representatives and on them alone”
18. I see no point in reproducing the provisions as the above section the holding speaks for itself. There is no evidence before court that the Plaintiff is the personal representative of the deceased and or administrator. Infact there are many other beneficiaries involved as alluded by the Defendant. The Plaintiff applicant is not the estate yet as long as there is no succession. The Defendant on the other hand cannot claim entitlement to the land belonging to the deceased by virtue of being the deceased son without being declared he is a son and therefore a beneficiary before a family court.
19. Let me state that in the Environment and Land court capacity becomes key since the court deals with ownership of land, title, use and occupation. I have noted the plaintiffs arguments that this is a burial dispute and not succession. From the analysis I have given elsewhere in this ruling this is clearly a dispute on land ownership and from which I also see the defendant wants to claim a portion by using the deceased wife body. This court has no jurisdiction to determine who is beneficiary or not. It is not a family court either.
20. The upshot of the foregoing is that the Plaintiff does not have the legal capacity to bring this suit.
21. Having made the above finding I find no need to make a determination on the orders of injunction sought by the Plaintiff applicant. The application dated 12/02/2025 must collapse with the suit.
22. The Plaintiff’s suit is accordingly struck out. Let each party bear its own costs.

DELIVERED AND DATED AT SIAYA THIS 21ST DAY OF MARCH 2025.



HON. LADY JUSTICE A.E. DENA

JUDGE

21/03/2025

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Achando for the Plaintiff

Mr. Otieno G. for Defendant

Court Assistant: Ishmael Orwa

