



Mwangi & another v James Karanja Komu t/a Rubis Service Station Murang'a & another; Mwangi & another (Intended Interested Party) (Environment & Land Case E005 of 2022) [2023] KEELC 20088 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20088 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE E005 OF 2022
LN GACHERU, J
SEPTEMBER 28, 2023**

BETWEEN

PATRICK KANURI MWANGI 1ST PLAINTIFF

FABIANO KAMAU MWANGI 2ND PLAINTIFF

AND

**JAMES KARANJA KOMU T/A RUBIS SERVICE STATION
MURANG'A 1ST DEFENDANT**

RUBIS ENERGY KENYA LIMITED 2ND DEFENDANT

AND

PATRICK KANURI MWANGI INTENDED INTERESTED PARTY

HENRY GIKONYO MWANGI INTENDED INTERESTED PARTY

RULING

1. There are three Applications herein for determination. Two of them are by the 2nd Defendant/Applicant and the other one is by the Intended Interested Party.
2. The 2nd Defendant/Applicant filed a Chamber Summons Application dated 15th February 2023, wherein it sought for orders that Mr Henry Gikonyo Mwangi, be joined in this suit as a Co-defendant.
3. The Summons are anchored on the grounds set out therein as well as the Supporting Affidavit of Richard Ngonyo, described as the 2nd Defendant's Retail Manager. It is 2nd Defendant's case that it entered into a contractual obligation with the said Henry Gikonyo Mwangi, over the suit property. The deponent gives a brief history of how it acquired the suit property, detailing how the property was



first subleased to Gulf Energy Holding Limited (later acquired by the 1st Defendant) and subsequently the 2nd Defendant.

4. The deponent further contends that it enjoyed a quiet possession of the suit property since 21st July, 2021. It further deponed Henry Gikonyo Mwangi, filed a suit against the 2nd Defendant in Murang'a CMCC No. E299 of 2022, for breach of agreement and a claim for rent arrears. It is its contention that the Plaintiffs and the said Henry Gikonyo Mwangi, have filed separate suits against the 2nd Defendant over the same suit property. That as a result, the said Henry Gikonyo Mwangi, ought to be joined in this suit as a co-defendant to enable the 2nd Defendant put up a Defence.
5. The 2nd Plaintiff opposed the Chamber Summons Application through the Replying Affidavit sworn on the 27th April, 2023, and raised an issue with the 2nd Defendant's non-compliance with the Orders of this Court of 19th March, 2022. He contends that the 2nd Defendant ought to pursue their suit with Henry Gikonyo Mwangi, without involving him. He contended that the instant application is bad in law, and an abuse of the process of Court as there was inordinate and unexplained delay in filing it, yet the 2nd Defendant/Applicant had all the information in its disposal.
6. The 2nd Defendant filed a Further Affidavit in a rejoinder wherein it gave a chronology of events that lead to the filing of the instant application way after pleadings were served. The deponent further contended that that Henry Gikonyo Mwangi, has been adversely mentioned by the 2nd Plaintiff and there is need that he be joined in the proceedings.
7. The 2nd Defendant/Applicant filed a second application dated 15th February 2023, seeking for the following orders; -
 1. That this Honourable Court be pleased to strike out the suit commenced by the Plaintiff dated 18th March, 2022, in its entirety for lack of locus standi;
 2. That this Honourable Court reviews its orders issued on 19th May 2022, in this matter
 3. That the costs of this application be awarded to the 2nd Defendant/ Applicant.
8. The application is anchored on the grounds that the Plaintiffs sought eviction orders vide a Notice of Motion Application dated 18th March 2022, and which orders were granted by this Court. Further that the Letters of Administration issued to the 1st Plaintiff were revoked, and upon his withdrawal of the suit, the 2nd Plaintiff lacked the requisite *locus standi* to prosecute the case. The 2nd Defendant claims that the orders of this Court issued on 19th May 2022, renders their suit otiose. It urged this Court to review its orders on the premise that there was an error apparent.
9. In opposing the application, the 2nd Plaintiff; - Fabiano Kamau Mwangi, filed a Replying Affidavit sworn on the 27th April, 2023, wherein he avers that the application is *res judicata*. He deponed that he is the bona fide owner of the suit land whereupon the 2nd Defendant is illegally occupying. He adds that his deceased father Joseph Mwangi Kabachia, allocated him the suit land, and he has the right to claim his portion. That there is no ground that warrants the review of the orders of this Court that directed the Defendants/Applicants to be evicted from the suit land.
10. The 2nd Defendant filed a Further Affidavit in response to the foregoing and maintains that the application is not *res judicata*, as the Court did not make a determination as to the merits of the application. That since transmission has not taken place, the 2nd Plaintiff has no locus standi to file the instant suit. It is its disposition that they already ceased operation on the suit property, and attempts to handover was marred with chaos and threats of physical assaults hence inability to fully handover.



11. The third application is by the Intended interested parties filed on the 4th May 2023, where the Applicants therein – Patrick Kanuri Mwangi and Henry Gikonyo Mwangi are seeking orders;
 1. That Patrick Kanuri Mwangi and Henry Gikonyo Mwangi, be allowed to join these proceedings as interested parties
 2. That the costs of this application be provided for.
12. The said application is predicated on the grounds set out on its face and on the Supporting Affidavit sworn by Henry Gikonyo Mwangi. He deponed that some of the beneficiaries of the registered proprietor of the suit land leased the land to him on 4th May, 2016. That he constructed a Petroleum Retail Station and leased it to the 2nd Defendant, and it would be fair and just that he be joined to the proceedings so that they assist the Court.
13. The 2nd Plaintiff opposed the said Application and averred that the Patrick Kanuri Mwangi, cannot seek to be joined to the suit as he withdrew his suit. He opposed being part of the lease agreement and added that he entered into a Sale Agreement with Henry Gikonyo Mwangi, and it was a term of the agreement that the land could not be subleased. That the Interested Parties have not demonstrated any interest over the suit, and they cannot be joined.
14. The three applications were dispensed together by way written submissions as directed by Court.
15. The 2nd Defendant/ Applicant filed its submissions through the Law Firm of G & A Advocates LLP, and raised three issues for determination.
16. On the issue of locus standi on the part of the 2nd Plaintiff, it was its submissions that 2nd Plaintiff/ Respondent has no standing in Court, since the Grant in which they hinged on was revoked. It relied on the case of Alfred Njau & Others vs City Council of Nairobi {1982-88} 1 KAR 229, where the Court, observed that a person with no locus cannot be heard. It further relied on the case of Julian Adoyo Ongunga vs Francis Kiberenge Abano {2015}, where the Court opined that locus standi can be equated to jurisdiction and any proceedings will thus be a nullity.
17. On the issue of review, the 2nd Defendant/Applicant set out the law on Review and relied on a litany of cases to support its claim that the Court erred in directing the 2nd Defendant/ Applicant to vacate from the suit property pending the hearing and determination of the suit. It was its submissions that the Court issued orders that were final in nature and which did not meet the test in Giella vs Casman Brown {1973}, and also that the orders caused huge financial loses as they continued to pay rent.
18. It further submitted that Henry Gikonyo Mwangi, should be joined to the proceedings. It invited this Court to the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules and sought reliance on the case of Meme vs Republic {2004}, where the Court enumerated three considerations for joinder of parties to wit
 - a. Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings
 - b. Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law and
 - c. Where the joinder will prevent a likely course of proliferated litigation
19. It was also submitted that the presence of Henry Gikonyo Mwangi, will aid in the just determination of the suit. It is its submissions that there is no stipulated timeline for bringing the application and



- further submitted that the 2nd Plaintiff entered into an agreement with the intended Interested Parties and not the 2nd Defendant/ Applicant.
20. The 2nd Plaintiff/ Respondent filed his submissions on 5th July, 2023, through the Law Firm of Kinyua Muriithi & Co. Advocates, and maintained that the application is res judicata, and as such this Court has no jurisdiction to entertain the application. It is his submissions that the 2nd Defendant/ Applicant has not explained the inordinate delay of about two months. He relied on a number of cases to support his claim that there was inordinate delay.
 21. He further submitted that the 2nd Defendant/Applicant is not entitled to the review orders since they participated in proceedings. He relied on the case of Republic vs Principal Secretary, Ministry of Internal Security & Another Ex parte Schon Noorani & Another {2020} eKLR, where the Court expressed itself on the grounds of review.
 22. On the joinder of Henry Gikonyo Mwangi, the 2nd Plaintiff submitted that a party cannot be joined in a suit if the relief he is seeking makes him a principal party in a suit. He relied on the case of Gladys Nduku Nthuki vs Letshego Kenya Limited, Mueni Charles Maingi(Intended) Plaintiff {2022}, to emphasize this. He urged the Court to consider that the said Henry Gikonyo Mwangi, has already instituted a suit against the 2nd Defendant. He further submitted that there was unreasonable delay in filing the said application.
 23. The 2nd Defendant/ Applicant filed further submissions and submitted that there was no inordinate delay in filing of the application since it was filed two weeks from the date of the Intended Ruling. That the application is not res judicata, since the Court did not pronounce itself on merits.
 24. The Intended Interested Parties filed their written submissions on the 3rd July 2023, through the Law Firm of Karugu Mbugua & Co. Advocates. It was their submissions that they have interests on the suit property and they should be joined in the proceedings. That while Henry Gikonyo Mwangi, has beneficial interest having invested in the suit property, Patrick Kanuri Mwangi, is the administrator of the Estate of the deceased registered proprietor.
 25. The suit property is registered under the name of Joseph Mwangi Kabachia, who is the father of the 2nd Plaintiff and one Patrick Kanuri Mwangi. The said Patrick Kanuri Mwangi, had instituted the suit jointly with the 2nd Plaintiff, but later withdrew the suit and now wants to be joined to the proceedings as an Interested Party. There is an undisputed fact that the 2nd Defendant gained entry into the suit land by dint of a lease agreement entered between the Company and Henry Gikonyo Mwangi, dated 21st July, 2021. The said Henry Gikonyo Mwangi, had entered into a lease agreement with some of the beneficiaries of the estate of Joseph Mwangi Kabachia, where he put up infrastructure for a Petroleum Retail Station, on the suit property. Subsequently, Henry Gikonyo Mwangi, sub-leased the suit land to Gulf Energy Holdings Ltd., which was later acquired by the 2nd Defendant.
 26. The 2nd Plaintiff now wants the Defendants evicted from the suit property. It is a common fact that the 2nd Defendant is no longer running the Petroleum business on the suit land on account of the Orders of this Court of 19th May, 2022. The 2nd Defendant now wants this Court to dismiss the suit for want of locus standi or review the foregoing orders and join Henry Gikonyo Mwangi and Patrick Kanuri Mwangi as Co-Defendants. The 2nd Plaintiff opposed the application arguing that there was inordinate delay in filing the application and that the application is res judicata.
 27. This Court has perused the three applications and the responses thereto as well as the annexures attached thereto, the written rival submissions by parties and the authorities cited, and finds the issues for determination are;



- i. Whether the 2nd Defendant's applications were inordinately filed?
- ii. Whether the application dated 15th February 2023, is res judicata?
- iii. Whether the 2nd Plaintiff has locus standi?
- iv. Whether this Court should review its orders of 18th May, 2022?
- v. Whether Henry Gikonyo Mwangi and Patrick Kanuri Mwangi should be joined to the suit, if so whether as Interested Parties or Co-defendants?
- vi. Who should bear the costs for the applications?

I. Whether the 2nd Defendant's applications were inordinately filed?

28. The 2nd Plaintiff maintains that the 2nd Defendant's applications are an abuse of the process of Court for the sole reason that there was an unexplained delay for about two months. He contends that the applications ought to have been filed at the soonest, this being after the ruling of this Court of 26th January, 2023, that dismissed the 2nd Defendant's Notice of Preliminary Objection.
29. Evidentially, this Court issued its ruling on 26th January 2023, while the 2nd Defendant filed the applications on 15th February, 2023, and not 15th March 2023, as submitted by the 2nd Plaintiff. The impetus of the Oxygen principles as underpinned under Section 1A of the *Civil Procedure Act* is to provide a just, expeditious, proportionate and affordable disposal of cases. As rightly held in *E T Monks Company LTD Vs. Evans & 3 Others {1974}*, as quoted by the Plaintiff, the business of Court should be conducted expeditiously.
30. To determine whether there was inordinate delay or not, this Court must first determine what constitutes inordinate delay. The Court of Appeal in the case of *Cecilia Wanja Waweru Vs Jackson Wainaina Muiruri & another [2014] eKLR*, had this to say:

"There is no set rule as to what constitutes inordinate delay. Whether or not a party is guilty of inordinate delay depends on the circumstances of the case."
31. Further, in the case of *Mwangi S. Kimenyi v Attorney General & another [2014] eKLR*, the Court had this to say about what constitutes Inordinate delay:

"There is no precise measure of what amounts to inordinate delay. Inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay; and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable conclusion that it is inordinate and therefore, inexcusable. Caution is, however, advised for courts not to take the word "inordinate" in its dictionary meaning, but to apply it in the sense of excessive as compared to normality."
32. According the 2nd Plaintiff, there was unexplained delay in filing the instant application on the part of the 2nd Defendant/Applicant. It appears to this Court that the 2nd Defendant/ Applicant filed the application after being dissatisfied with the Ruling of this Court of 26th January 2023, that dismissed the 2nd Defendant/ Applicant's Notice of Preliminary Objection. The 2nd Defendant/ Applicant's application was filed on the 21st February, 2023. This was at least 25 Days from the date of the ruling.



33. Delay even for a day is delay (See Eldoret ELC No. 200 of 2012;- Jaber Mohsen Ali & another v Priscillah Boit & another [2014] ECLR). Also, it is anticipated that once a Court issues orders, there is always an expectation that execution will issue at the soonest. The 2nd Defendant/ Applicant was duty bound to move this Court appropriately if it so desired.
34. To determine whether the delay of 25 Day was inordinate or not, this Court must look into the reasons given by the 2nd Defendant/ Applicant for not filing the application at the soonest. It must be remembered that this Court had directed parties on 30th May 2022, to desist from filing Interlocutory Applications and set down the matter for hearing. The foregoing notwithstanding, the Court was moved through an Interlocutory Applications including these ones coming for determination.
35. The 2nd Defendant/ Applicant maintained that the application was filed on time and if there was any delay, the same was as a result of the intentions of parties to have an out of Court settlement. This Court takes cue of the proceedings of 18th July 2022, where parties had intimated to the Court that parties had attempted an out of Court settlement. This Court has no reason not to believe that parties were engaged in an out of Court settlement. This did not however bar the 2nd Defendant/ Applicant from moving the Court especially if they had the intention of ousting the locus of the 2nd Plaintiff to sustain the suit.
36. Even so, the suit has not been set down for hearing and at the time of filing the application, it appears from the record that matter had been slated for mention on several occasions for Pre-trial Directions. It would follow that the applications were made before a hearing date was given. This does not however grant the 2nd Defendant/ Applicant the option of bringing applications at its convenience. Justice is a double edged sword as such the 2nd Defendant/ Applicant must in the quest for justice not cripple the intentions of Section 1A and 1B of the Civil Procedure Act, which the 2nd Plaintiff is also entitled to, after all equity aids the vigilant not the indolent.
37. As stated by the Court in *Mwangi S. Kimenyi v Attorney General & another*, supra, inordinate delay differs from cases to case. In the case of *Bradley Horizons Limited v Sanlam General Insurance Limited* [2021] eCLR, the Court found that a delay 18 Days, before filing an application for leave to file out of time amounted to inordinate delay. While the Court of Appeal in the case of *Del Mote Kenya Limited v Patrick Njuguna Kariuki* [2015] eCLR, upheld the decision of a trial Court that found a delay for One year before filing for an application for extension of time was not inordinate since. The Court of Appeal considered the circumstances therein and had this to say;

"We agree with the assessment of the single judge that this was not an inordinate delay, and that this delay was properly explained. The period of delay that is in issue in this reference is the period of over one year which applicants' counsel took to file the application to regularize the notice of appeal that was served late."
38. Presently and as already stated above, there was a delay of 25 Days, and which the 2nd Defendant/ Applicant has attributed it to attempts to settle the matter out of Court. It is the findings of this Court that the delay has been sufficiently explained and as such the delay was not inordinate.

II. Whether the 2nd Defendants application dated 15th February 2023, is res judicata?

39. The 2nd Plaintiff contends that the 2nd Defendant/Applicant's Notice of Motion Application is res judicata the Preliminary Objection and should thus be dismissed. The 2nd Defendant/Applicant had filed a Notice of Preliminary Objection and raised three grounds and the issue of Locus Standi was one of it. This Court vide its ruling of 26th January 2023, dismissed the said Preliminary Objection on the



premise that the same did not meet the test set out in the case of *Mukisa Biscuits Manufacturing Co. Ltd...Vs...West End Distributors Ltd* (1969) EA 696.

40. This begs the question of whether the issue of *Locus Standi* is *res judicata* or not. Section 7 of the Civil Procedure Act, makes provisions for the doctrine of *res judicata*, which ousts the jurisdiction of a court to try any suit or issue which had been finally determined by a court of competent jurisdiction in a former suit involving the same parties or parties litigating under the same title. The doctrine will apply only if it is proved that:
- i. The suit or issue raised was directly and substantially in issue in the former suit.
 - ii. That the former suit was between the same party or parties under whom they or any of them claim.
 - iii. That those parties were litigating under the same title.
 - iv. That the issue in question was heard and finally determined in the former suit.
 - v. That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.
41. These were echoed in the case of *The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, Nairobi CA Civil Appeal No. 105 of 2017 ([2017] eKLR), where the Court of Appeal held that:
- "Thus, for the bar of *res judicata* to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;
- a) The suit or issue was directly and substantially in issue in the former suit.
 - b) That former suit was between the same parties or parties under whom they or any of them claim.
 - c) Those parties were litigating under the same title.
 - d) The issue was heard and finally determined in the former suit.
 - e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised."
42. What this Court determined in its ruling was whether the Preliminary Objection met the required legal tests. This Court had in fact expressed itself thus that to determine whether the Grant that donated *Locus* had been revoked or not, it required the Court to investigate facts. A reading of the said ruling should inform the parties herein that the issue of *locus* was not determined by this Court, since the manner in which the same was placed before it was not proper. To this end, it would not be difficult for this Court to conclude that the Application herein is not *res judicata* and it proceeds to find so.

III. Whether the 2nd Plaintiff has *locus standi*?

43. Having found that the application is properly before this Court, the Court will proceed to determine the issue of *locus*. The issue of *locus* was discussed by the Supreme Court in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2014] eKLR, though the facts therein are



different, the Court observed that the issue of locus extended after the promulgation of the Constitution and had this to say:

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

44. The Court of Appeal in the case of *Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others* [2017] eKLR considered the writings in Halsbury's Laws of England's 4th Edition Para. 49 page 52, where the author had this to say on locus standi:

"In order to maintain proceedings successfully, a plaintiff or applicant must show not only that the court has power to determine the issue, but also that he is entitled to bring the matter before the court.....

In other contexts, locus standi depends primarily on the nature of the remedy or relief sought

45. Locus Standi therefore gives a party the proper standing before a Court. It is not in dispute that the suit property belongs to Joseph Mwangi Kabachia, and who the Court has been sufficiently guided is dead. Resultantly, his property is subject to the provisions of the Law of Succession Act.

46. Section 83(a) of the Law of Succession Act provides:

"Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative"

47. Similarly, Section 79 of the Law of Succession Act makes provision that the property of a deceased person shall vest on the Personal Representatives. (see the case of *in re Estate of Barasa Kenenje Many (Deceased) Succession Cause NO. 263 of 2002 (2020) KEHC 1(KLR)*)

48. In this case, Patrick Kanuri Mwangi, was described in paragraph 4 of the *Plaint* as an administrator of the estate. There was a copy of *Grant* filed before this Court that was issued on 26th July, 2017, in Murang'a CMCC Succ' Cause No. 555 of 2016, which confirmed the said Patrick Kanuri Mwangi, was issued with a *Grant*. There was no copy of *Grant* issued in favour of the 2nd Plaintiff. The suit property by dint of the above provisions therefore vested on Patrick Kanuri Mwangi, and who by application of Section 83(a) of the Law of Succession Act was mandated to move this Court to preserve the suit. It is no doubt the 2nd Plaintiff did not have a *Grant* to enable him to move this Court. Further, the 1st Plaintiff's grant was revoked and he ended up withdrawing his suit.

49. It is trite law that a party must first obtain a *Grant of Representation* before moving the Court. In *Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama* [2014] eKLR, the Court held:

"As far as he was concerned, he moved to court by virtue of being a beneficiary for purposes of preserving the deceased's estate. That may well be the case, but in our view the position in law as regards locus standi in succession matters is well settled. A litigant is clothed with



locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession”.

50. Similarly, in the case of *Trouistik Union International & another v Jane Mbeyu & another* [1993] eKLR, the Court held:

“To determine who may agitate by suit any cause of action vested in him 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. As to who are personal representatives within the contemplation of the Act, section 3, the interpretative section, provides an all-inclusive answer. It says “personal representative means executor or administrator of a deceased person”. It is common ground that the deceased in this case died intestate. Therefore, the only person who can answer the description of a personal representative, is the administrator of the estate of the deceased. The next enquiry must answer the question, who is an administrator within the true meaning and intendment of the Act? section 3 says “administrator means a person to whom a grant of letters of administration has been made under this Act”.

51. The Court in the case of *In re Estate of Benson Maingi Mulwa (Deceased)* [2021] eKLR held

“In my view since intermeddling can be committed even by administrators, any person interested in the state of a deceased person as a beneficiary or otherwise is properly entitled to move the court and seek orders intended to preserve the estate. It is therefore not mandatory that such an application be made by the administrators or with consent or authority of the other beneficiaries since a beneficiary is property entitled to protect his or her interest in the estate.”

52. In the latter case, the claim raised before the Court was on intermeddling and which the Court considered that a beneficiary was entitled to move Court without a Grant to preserve property that was being intermeddled. While the 2nd Plaintiff alleged that the property in which the 2nd Defendant carried on business was allocated to him and he even attached a copy of sub-division, there was no legal document placed before this Court in the form of Certificate of Confirmation of Grant to confirm so.
53. The case herein was not on intermeddling, but a claim for eviction. It cannot be over emphasized that the 2nd Plaintiff lacked the locus standi to prosecute this case. The 2nd Plaintiff averred in paragraph 6 of his Replying Affidavit in response to this application that he is the bona fide owner of the portion of land that the 2nd Defendant was operating a Petrol Station on. There was no document placed before this Court that transmission occurred, and he is the owner of the disputed portion.
54. What happens to a suit that has been filed by a party without a grant has been discussed in a number of cases. In the case of *Naftali Nyangena Ogesi v David Ogega Omwonywa & 2 others* [2020] eKLR the Court found that the suit was incompetent where the Defendant was sued without a Grant. Further, in the case of *Pravinchandra Jamnadas Kakad v Estate of Lucas Oluoch Mumia & 2 others* [2022] eKLR, the Court dismissed a suit that was filed by the Plaintiff without first obtaining a Grant of Representation.
55. To this end, this Court finds and holds that the 2nd Plaintiff lacks the locus standi to sustain this suit. Therefore, it follows that this suit is ripe for striking out, and should suffer the fate. The 2nd Plaintiff may file a fresh suit after acquiring the requisite Grant of letters of administration.
56. Having dismissed the suit for lack of Grant of Representation, this Court does not have to determine the other remaining issues, as it would amount to an academic exercise.



IV. Who should bear the costs for the application?

57. It is trite law that costs shall follow the events and that a successful party is entitled to costs. Also matters of costs is a discretionary power donate to a Court by Section 27 of the [Civil Procedure Act](#). This Court is alive to the prevailing circumstances between the parties herein and taking into account the facts leading to the filing of this suit, this Court directs each party to bear its own costs.
58. Having carefully considered all the three Applications herein and having found that the 2nd Plaintiff lacks the requisite locus standi to sustain this suit for lack of grant of letters of Administration to represent the estate of the deceased, and having struck out the suit accordingly, the Court finds no reasons to determine the other two Applications.
59. Accordingly, the suit herein is struck out entirely with an order that each party to bear its own costs.
60. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANGA THIS 28TH DAY OF SEPTEMBER, 2023.

L. GACHERU

JUDGE

Delivered online in the presence of: -

N/A - 1st Plaintiff

Mr Kinyua Muriithi for the 2nd Plaintiff/Respondent

N/A -1st Defendant

M/s Nyambura H/B for Mr Ochola for the 2nd Defendant

1st Intended Interested Party/Applicant Mr Mbugua

2nd Intended Interested Party/Applicant

Court Assistant – Joel Njonjo

L. GACHERU

JUDGE

28/9/2023

