



Aleli (Suing as the legal representative of the Estate of the Late William Juma Luyoko) v Onyango & 3 others (Environment & Land Case 1 of 2024) [2025] KEELC 3189 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3189 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 1 OF 2024**

**BN OLAO, J
APRIL 8, 2025**

BETWEEN

MOHAMUOD JUMA ALELI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE WILLIAM JUMA LUYOKO) APPLICANT

AND

**ANGELINE ATIENO ONYANGO 1ST RESPONDENT
OPONDO ANINDO EVERISTO 2ND RESPONDENT
THE LAND REGISTRAR BUSIA 3RD RESPONDENT
THE ATTORNEY GENERAL 4TH RESPONDENT**

RULING

1. By a Notice of Motion dated 4th September 2023, the Plaintiff herein Mohamoud Juma Aleli suing as the Legal Representative of the Estate of the late William Juma Luyoko (the deceased) approached this Court seeking the following remedies:
 1. Spent
 2. Spent
 3. That pending the hearing and determination of this suit, the Honourable Court be pleased to issue a permanent injunction restraining Angeline Atieno Onyango, Opondo Anindo Everisto, The Land Registrar Busia And The Attorney General (the 1st to 4th Defendants respectively) by their agents, servants, employees or whosoever from trespassing, tilling, cultivating, developing permanent or temporary structures on the land parcels No Bukhayo/ Bugengi/13913, 13918, 9336 and 9335 (the suit land) pending the hearing and determination of the suit and / or determination of the grant in the succession matter.



In support of the Motion, the Plaintiff had filed a supporting affidavit of even date in which he described himself in paragraph 1 as:

1: “That I am the son and legal representative of the Estate of William Juma Luyoko (deceased), the Applicant in this matter and I am competent to swear this affidavit.”

Annexed to the Motion were several documents but for purposes of this ruling, there was also a copy of a Limited Grant of Letters of Administration Ad Litem issued to the Plaintiff on 13th October 2023 in Busia Chief Magistrate’s Court Misc Succession Application No E201 of 2023 appointing him as the Personal Representative of the Estate of William Juma Luyoko the deceased for purposes of filing this suit.

2. I now have for my determination the Notice of Motion by Everisto Anindo Opondo Aka Opondo Anindo Everisto (the 2nd Defendant). The Motion is anchored under the provisions of Sections 1A, 1B and 3A of the Civil Procedure Act, Order 2 Rule 15, Order 3 Rule 7, Order 40 Rule 1(a) and 4 and Order 51 Rule 1 of the Civil Procedure Rules as well as Sections 80(2) of the Law of Succession Act.

3. By the Motion, the 2nd Defendant seeks the following orders:

1. Spent
2. That this Honourable Court be pleased to discharge and/or set aside the order of the Honourable B. Olao J issued on 25th July 2024 together with all consequential orders.
3. That this Honourable Court be pleased to strike out this suit for being instituted without locus.
4. Spent.
5. That pending the hearing and determination of this suit, this Honourable Court be pleased to grant a temporary injunction restraining the Plaintiff by himself, his agents, his servants and / or employees or any other persons claiming title through the Plaintiff from trespassing, transferring, assigning or in any other way interfering with the 2nd Defendant’s quiet occupation and use of LR No Bukhayo/Bugengi/13918.
6. That costs of the application be provided for.

For purposes of this ruling, I shall not dwell much on the grounds set out therein or the 54 paragraph supporting affidavit. What is important is that in paragraphs 33, 34, 35, 36 and 37 of the said affidavit dated 29th August 2024, the 2nd Defendant has averred thus:

33: “That the Plaintiff had no locus standi to institute this suit because of the time of filing the same, the Estate of William Juma Lukoyo already had Administrators that is one Krispinus Masiga Juma And Topista Adikinyi Juma.

34: “That the said Administrators were appointed in Succession Cause NO E379 of 2023 Estate of William Juma Lukoyo At The Busia Law Courts through a Grant of Letters of Administration dated 15th August 2023 and they had previously been gazette on 14th July 2023 (copy of Grant of Letters of Administration dated 15th August 2023 in Administration in Succession Cause NO E379 of 2023 – Estate of William Juma Lukoyo and copy of Kenya Gazette dated 14th July 2023 are hereby annexed and marked as EAO-11).”

35: “That Krispinus Masiga Juma And Topista Adikinyi Juma are the sons and wife of the late William Juma Lukoyo and as Administrators, they had the right to institute the suit on behalf of the Estate.”



36: “That the Grant of Letters of Administration was issued on 15th August 2023 and superseded the filing and issuance of the Plaintiff’s Limited Grant Ad Litem dated 13th October 2023.”

37: “That the Plaintiff filed the same knowing fully well that the Estate of William Juma Lukoyo already had Administrators without informing the rest of the beneficiaries and knowing fully well he had no capacity to file same.”

Among the documents filed in support of the Motion is a copy of the Grant of Letters of Administration issued to Krispinus Masiga Juma And Topista Adikinyi Juma on 15th August 2023 in respect of the Estate of William Juma Lukoyo.

4. When the Motion came up for directions on 11th November 2024, I directed that it be canvassed by way of written submission.
5. Submissions were subsequently filed both by Ms Myra instructed by the firm of Maina Kingara & Company Advocates for the 2nd Defendant and by Ms Nyandoro instructed by the firm of Nyandoro J & Company Advocates for the Plaintiff.
6. I have considered the Motion, the rival affidavits and necessary annexures relevant to the orders above as well as the submissions by counsel.
7. As is clear from the Plaintiff’s pleadings and particularly paragraph 1 of his plaint and which is replicated in paragraph 1 of his supporting affidavit, he has approached this Court suing as the Legal Representative of the Estate of the deceased. He has annexed to his Motion the subject of this ruling a copy of the limited Grant of Letters of Administration issued to him in Busia Chief Magistrate’s Court Misc Succession Application No E201 of 2023 on 13th October 2023.
8. On the other hand, the 2nd Defendant has in support of his motion seeking the discharge and/or setting aside of the orders issued in favour of the Plaintiff on 25th July 2024 and the striking out of the plaint, availed a copy of the Grant of Letters of Administrations issued to Krispinus Masiga Juma And Topista Adikinyi Juma on 15th August 2023 in respect of the Estate of William Juma Luyoko In Busia Chief Magistrate’s Court Succession Cause No E379 of 2023.
9. What is obvious from all the above is that while the Plaintiff has displayed a copy of Limited Grant Ad Litem in respect of the Estate of the deceased issued to him on 13th October 2023, the 2nd Defendant has also displayed a Grant of Letters of Administration issued to him on 15th August 2023 in respect of the same Estate. Those Grants have been issued by the same Court but in different causes.
10. The position in law is that a litigant can only be clothed with the locus standi to file a suit on behalf of the Estate of a deceased person upon obtaining a Limited or full Grant of Letters of Administration in cases of intestate succession – *Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama* Civil Appeal No 30 Of 2013 [2014 Keca 250 Klr]. See Also *Otieno v Ougo & Another* 1987 KLR 407.
11. Where, as in this case, there are two Grants issued in respect of the same Estate but through separate Succession Causes as is the position in this case, then it follows that one of the two Grants could only have been obtained through a flawed process and is therefore null and void. Unfortunately, this Court is not clothed with the jurisdiction to interrogate which of the two Grants is valid and which one is void. That is a matter to be determined by the Succession Court. Before that is done, this Court must treat both Grants as suspect. In the circumstances, it is only proper that until that is done, this Court must discharge and set aside the orders issued on 25th July 2024.
12. With regard to the prayer seeking the striking out of the Plaintiff’s suit for being instituted without locus standi, it is the Court’s view that it will be prudent to await the determination of the Succession



Court before taking the drastic step of striking out the Plaintiff's suit. I will therefore take the route which I recently took in the case of *Francisca Nabwire Wabwire suing as the Legal Representative of the Estate of Marisiana Nabwire v Joseph Omolo Ayienga & Others* Busia Elc Case No E008 of 2024.

13. Therefore, with regard to the orders issued on 25th July 2024, there is a doubt as to who is the proper Legal Representative of the Estate of the deceased William Juma Luyoko and it cannot therefore be argued that the Plaintiff had demonstrated "a prima facie case" to warrant the grant of the injunction orders. They must be vacated. And with regard to the prayer for striking out the Plaintiff's suit, again granted the doubt of his locus, this Court will be reluctant to strike it out in the circumstances.
14. The up-shot of all the above is that having considered the Notice of Motion dated 29th August 2024, this Court issues the following orders:
 1. The orders issued on 25th July 2024 are hereby discharged and set aside.
 2. The prayer seeking the striking out of the plaint herein is declined.
 3. The parties shall go back to the Succession Court to confirm which of the two Grants herein is valid and which one is null and void.
 4. Once that is done, the Court will issue further orders.
 5. Mention on 1st October 2025 for further direction.

RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 8TH DAY OF APRIL 2025 WITH NOTICE TO THE PARTIES.

BOAZ N. OLAO

JUDGE

8TH APRIL 2025

