



Chai (Suing as the Legal Representative of the Estate of the Late Balozi Chai Ngala) v Kahindi & 6 others (Environment & Land Case E048 of 2022) [2025] KEELC 3148 (KLR) (2 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3148 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E048 OF 2022**

EK MAKORI, J

APRIL 2, 2025

BETWEEN

**CHIVATSI KABANI CHAI PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE
BALOZI CHAI NGALA**

AND

**SLOVIC SAFARI KAHINDI 1ST DEFENDANT
BABANYA KATANA NGALA 2ND DEFENDANT
FREDRICK NGANGA BEWERU 3RD DEFENDANT
KASIDI KATANA NGALA 4TH DEFENDANT
EMMANUEL KINGI MWASAMBU 5TH DEFENDANT
EZEKIEL ODUOR T/A NEWLIFE PRAYER CENTRE AND
CHURCH 6TH DEFENDANT
LAND REGSITRAR KILIFI 7TH DEFENDANT**

RULING

1. The Notice of Motion application, dated 22 October 2024, is filed by the 6th defendant pursuant to the provisions of Sections 1A, 1B, 3A, and 80 of the *Civil Procedure Act*, as well as Order 2, Rule 15 and Order 51, Rule 1 of the Civil Procedure Rules. The applicant prays for the following orders:
 - a. That the plaintiff's suit, dated August 18, 2022, and filed in court on the same date, be struck out with costs, which



- b. The plaintiff bears the cost for this application.
2. The court directed the parties to present their views through written submissions. The 6th defendant/applicant complied, while the other parties did not.
3. From the materials presented to me, the key issue to determine is whether the court should strike out the suit commenced by the plaintiff-respondent for want of locus standi and who should bear the costs of these proceedings. The court has thoroughly considered all aspects of the case to ensure a just and fair ruling.
4. The applicant's case is captured in the application, the grounds, and the supporting affidavit sworn by Samuel Dunga on 22nd October 2024:
 - a. The suit discloses no reasonable cause of action; it is scandalous, frivolous, and/or vexatious, constituting an abuse of the court process.
 - b. The plaintiff lacks locus standi as the purported administrator of the estate of the late Balozi Chai Ngala (deceased), as a certificate of confirmation of grant was issued to Emmanuel Kingi Mwasambu, the 5th defendant, on 18th October 2019 in Malindi CM E63 of 2019.
 - c. At the time the plaintiff applied for letters of administration for the estate of the late Balozi Chai Ngala (deceased) in Mombasa CM E203 of 2021, the duly appointed administrator, the 5th defendant herein, had been administering the estate for some time, and nothing remained to be administered.
 - d. The appointment of two different administrators in separate cases for the same estate is untenable in law, an embarrassment to the court, and an abuse of the court process. Additionally, the subsequent appointment of the plaintiff as administrator was void ab initio and of no effect. Consequently, the plaintiff has no valid letters of administration to institute this suit on behalf of the estate of the late Balozi Chai Ngala (deceased), rendering the current suit filed by the plaintiff untenable and an abuse of court processes.
 - e. The plaintiff's claim is, therefore, scandalous, frivolous, vexatious, and an abuse of the court process.
 - f. It serves the interest of justice for the court to strike out a suit to protect the court's dignity and prevent the abuse of court processes.
5. The applicant annexed:
 - i. A copy of the Letters of Administration and the Certificate of Confirmation issued to Emmanuel Kingi Mwasambu, dated 15 October 2019, in Malindi Succession Cause No. 63 of 2019.
 - ii. A copy of the letters of administration issued to Chivatsi Kabani Chai on 24th June 2021 in Mombasa, Succession Cause E203 of 2021.
6. According to the statement by the 6th defendant/applicant, the estate of the late Balozi Chai Ngala (deceased) was addressed to finality in Malindi Succession Cause No. 63 of 2019 and has been concluded. Letters of Administration Intestate were granted to Emmanuel Kingi Mwasambu on 15 October 2019, and a certificate of confirmation of the grant was issued on 18 October 2019.
7. The confirmed grant to Emmanuel Kingi Mwasambu, dated October 15, 2019, and the certificate of confirmation of the grant, issued on October 18, 2019, remain valid and have not been annulled or



revoked to date. There is nothing left to administer in the estate of the late Balozzi Chai Ngala for the plaintiff to claim as a reason for applying for fresh letters of administration.

8. The confirmed grant issued to Emmanuel Kingi Mwasambu concerns Land Parcel Nos. Kilifi Vyambani/364, Kilifi Vyambani/365, Kilifi Vyambani/366, and Kilifi Vyambani/367, which are part of the current suit properties, and any action taken by the said administrator Emmanuel Kingi Mwasambu, the 5th defendant, remains lawful.
9. No counterclaims were filed to controvert the averments raised by the 6th defendant/applicant.
10. I fully agree with the submissions and authorities cited by the 6th Defendant/Applicant that two different courts of coordinate jurisdiction cannot issue two valid letters of administration over the same estate. This ruling is in line with established legal principles and precedents, ensuring the fairness and integrity of the legal process.

“In the ruling of 4th April 2019, this court pointed out that there was already a grant of representation issued by the High Court sitting in Nairobi, on 2nd October 1967 to Saleh Awke in Cause No. 273 of 1967 and, therefore, it was not possible to have two grants for the same estate held by two different administrators.

First, counsel for the Petitioner/ applicant has admitted that he has never perused the High Court file in Cause No. 237 of 1967 and that he is not sure whether the full grant issued on 2nd October 1967 was still in force. Without ascertaining whether or not that grant was in force, the Petitioner could not seek to have another grant for the same estate. And as this court stated on 4th April, 2019, there cannot be two administrators for the same estate appointed through different grants of administration whether full or limited. In other words, there cannot be two succession causes over the same estate.”

11. Further in Misc. Succession Cause No. 21 of 2021, In the Matter of the Estate of Sandra Gathoni Kanyotu (Deceased), Onyiego J. persuasively held on the same issue as follows:

“The next question that begs for answer is, can two grants issue in respect of the same estate? It is trite law that two grants cannot issue in respect of the same estate. That is why Form 30, issued by the Principal Registrar, is necessary to ensure that there are no multiple causes in respect of the same estate. This is meant to preserve the dignity of the court not to issue contradicting orders and also to bring litigation to an end once and for all.

As stated above, two parallel grants cannot issue in respect of the same estate. See in the re estate of Kanyeki Kimatu (deceased) [2020] eKLR where the court stated that;

“the issuance of the two grants over the same suit property by two different courts which contradict each other is an embarrassment to the court process for which I fault Margaret Muthoni Kanyeki”

29. The petitioner having discovered the existence of the Malindi high court suit, he ought to have withdrawn this application so as to direct his energies towards Malindi file. In the circumstances, I do agree with the respondents that the application herein is bad in law and the orders cannot issue.”



12. In Succession Cause No. 146 of 2016, In the Matter of the Estate of Zakaria Lugonzo Amalemba (Deceased), Nyakundi J. held:

“Again, regarding two separate causes in respect of the same estate, the Court in Succession Cause 1842 of 1999 re Estate of Nyambia Mukaya (Deceased) [2019] eKLR held that such a situation was an embarrassment to the Court process and tantamount to concealment of material facts owing to the fact that the respondent in that matter was aware of the existence of another matter that had fully dealt with the estate of the deceased. The Court held:

“30. The respondent does not deny filing both succession causes. What justification is there in filing a succession cause in respect of one estate affecting same property in two different courts and, worse still, after losing the first one.”

31. I do agree with Mr. Gacheru there cannot be two separate succession files in respect of the same estate. It does not matter whether there is a Will. The best the respondent would have done was to disclose to the High court of the existence of a similar file already determined. Alternatively, the respondent should have filed an appeal to the high court for revocation of the grant on account of discovery of new material evidence in this case a Will. It is embarrassing to the court process to have two parallel proceedings touching on the same estate with different enforceable orders. 32. Without considering the merits or validity of the Will, it is my conviction that the respondent is guilty of concealment of material facts and or information by failing to disclose that there was another case having been filed at Murang’a, fully determined and estate fully distributed.”

13. I agree that the above case law indicates that the limited grant of Letters of Administration Ad Litem issued to Chivtsi Kabani Chai on 24th June 2021 in Succession Cause E203 of 2021 in Mombasa, for bringing the current suit, despite an existing confirmed grant for the same estate, is invalid. The plaintiff obtained it through concealment of facts and fraud, as the Estate of Balozi Chai Ngala (deceased) had already been dealt with and finalized.

14. This, therefore, renders the plaintiff-respondent without locus standi to bring the present suit on behalf of the Estate of Balozí Chai Ngála (deceased).

15. In Ibrahim v Hassan & Charles Kimenyi Macharia [2009] eKLR, it was held as follows concerning locus standi:

“Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, it means that party cannot be heard despite whether or not he has a case worth listening to. The issue herein is whether the Applicant lacks the requisite Locus Standi to seek relief from the court to revoke the grant in question issued to the Respondent. In my view, issues regarding locus standi are critical preliminary issues which must be dealt with and settled before delving into other substantive issues.”

16. In conclusion, the plaintiff lacks the necessary locus standi to be heard in the present suit, rendering the entire proceeding an abuse of the court process. Therefore, the Motion Application, dated October 22, 2024, is allowed in its entirety, with costs.



DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 2ND DAY OF APRIL 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Musyimi, for the 6th Defendant/Applicant

Happy: Court Assistant

In the Absence of:

Mr. Nyange, for the Plaintiff/Respondent

