



**Nguruta v Mwea & 3 others (Environmental and Land Originating  
Summons 14 of 2022) [2025] KEELC 1114 (KLR) (5 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1114 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 14 OF 2022**

**EK MAKORI, J  
MARCH 5, 2025**

**BETWEEN**

**THAMSON NGURE NGURUTA ..... APPLICANT**

**AND**

**BEATRICE WANGECHI MWEA ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY LAND REGISTRAR, LAMU COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**CHARITY NKIROTE MAINA ..... 3<sup>RD</sup> RESPONDENT**

**PATRICK WAWERU GACHERU ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Before this Court is a Notice of Preliminary Objection dated 16<sup>th</sup> October 2024:
  - i. The applicant lacks locus standi to lodge the Originating Summons as the Grant of Letters of Administration he relies on was revoked on 27<sup>th</sup> June 2019 in the Magistrate Court at Wang'uru Succession Cause Number 119 of 2016.
  - ii. The suit is otherwise frivolous, vexatious, and an abuse of Court process.
2. The Applicant filed Grounds of Opposition dated 10<sup>th</sup> December 2024 opposing the Notice of Preliminary objection.
3. The Applicant herein filed Amended Originating Summons and Supplementary Affidavit dated 18<sup>th</sup> October 2023. The Originating Summons seeks declaratory and injunctive orders in respect of Title Number Lamu/Lake Kenyatta I/125 against the Respondents.
4. The 3<sup>rd</sup> Respondent filed her Replying Affidavit dated 15<sup>th</sup> April 2024 in opposition to the said Application. The 3<sup>rd</sup> Respondent further filed a Notice of Preliminary Objection dated 16<sup>th</sup> October 2024 challenging the Applicant's locus standi to institute the current proceedings before this court.



5. The Applicant moved this Court relying on a Grant of Letters of Administration intestate issued on 16<sup>th</sup> June 2017, and confirmed on April 26, 2018. However, the said grant was revoked on June 27, 2019, in the Magistrate Court at Wang’uru Succession cause Number 119 of 2016.
6. The Applicant filed his Grounds of Opposition, arguing that the revocation of the grant of Letters of Administration at Wang’uru Law Courts was done ex-parte, and as such, the Applicant’s rights at the Lower Court were breached.
7. The court directed that the Preliminary Objection be disposed of through written submissions. The parties complied, except for the Attorney General, who fully supported it and did not see the need to file submissions.
8. I frame the single dominant issue for this court’s determination as whether the Notice of Preliminary Objection is merited based on the single cognomen - locus standi.
9. As submitted by the 3<sup>rd</sup> Respondent - correctly so, the Principles upon which this court is invited to determine the merit of a Notice of Preliminary Objection were set out in the oft cited case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696. This case established the criteria for a Preliminary Objection, stating that it consists of a point of law that may dispose of the suit if argued as a preliminary point. Examples are an objection to the jurisdiction of the court, a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration, in this matter, capacity to sue.
10. The Court of Appeal in Attorney General & Ministry of State for Immigration & Registrar of Persons v Andrew Maina Githinji & Zachary Mugo Kamunjiga [2016] KECA 817 (KLR), reiterated the same position on what would constitute a Preliminary Objection and held as follows:
 

“The test to be applied in determining whether the appellants’ Preliminary Objection met the threshold or not is what Sir Charles Newbold set out above in the Mukisa Case (supra). That is first, that the Preliminary Objection raises a pure point of law, second, that there is demonstration that all the facts pleaded by the other side are correct; and third, that there is no fact that needs to be ascertained.”
11. In the present case, the 3<sup>rd</sup> Respondent raises a point of law challenging the Applicant’s ability to commence, originate, and/or maintain the suit. In his Supporting Affidavit, the Applicant derives the power to institute the current suit based on a grant of letters of administration confirmed and annexed as “TNN 1 and TNN 2.”
12. The 3<sup>rd</sup> Respondent, in reply, contends that the grant annexed was revoked, and she has annexed a certified copy of the ruling revoking the said grant as “CNM-1” in her Replying Affidavit.
13. In his Grounds of Opposition and submissions, the Applicant argues that the grant was revoked at the trial court at Wang’uru ex parte without a hearing accorded to the Applicant, violating his constitutional right to a fair hearing. The Applicant will be applying appropriately to that court to remedy the situation.
14. The term locus standi means a right to appear in court. The Applicant pleaded that he is the sole administrator of the Estate of Gachoki Ngurugura Karigi, alias Wilson Gachoki Ngurugura.
15. To support the above position, the Applicant annexed a Grant of Letters of Administration intestate issued on 16<sup>th</sup> June 2017 and a Certificate of Confirmation of the said grant confirmed on 26<sup>th</sup> April 2018. It turned out that the same was revoked in June 2019 in the Magistrate Court at Wang’uru



Succession Cause Number 119 of 2016. The 3rd Respondent annexed a certified copy of the Ruling issued on 27<sup>th</sup> June 2019.

16. The revocation of the grant – which is admitted by the Applicant renders all actions taken under that grant without authority, and any legal proceedings started under such a grant would be deemed improper.
17. The decision cited by the 3<sup>rd</sup> Respondent (which I agree with) In re Estate of Njuguna Chege (Deceased) [2018] KEHC 4271 (KLR), supports this position. Ngaah J., stated:

“I must also add that once the grant was revoked, neither the applicant nor anybody else could proceed as if there still existed a valid grant; the nullification of the grant had the domino effect of nullifying any action taken, in this case the subdivision and transfer of the deceased’s estate, on the strength of the nullified grant.”

18. Given that the Grant the Applicant relies on was revoked by a court of competent jurisdiction, this position is uncontroverted by the Applicant. Therefore, the court’s decision is straightforward and final: The Preliminary Objection is purely on a point of law - the Applicant lacks locus standi to propagate this suit. Therefore, the suit is struck out with costs.

**DATED, SIGNED, AND DELIVERED AT MALINDI ON THIS 5<sup>TH</sup> DAY OF MARCH 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Maina, for the 3<sup>rd</sup> Respondent

Mr. Tindika, for the Applicant

Ms. Ekiru for the 1<sup>st</sup> Respondent

Happy: Court Assistant

