



REPUBLIC OF KENYA



**Muliro (Suing as a Legal Representative of the Estate of Henry Masinde Muliro) v Wanyama & 15 others (Environment & Land Case 9 of 2023) [2025] KEELC 4402 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4402 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 9 OF 2023**

**CK NZILI, J  
JUNE 10, 2025**

**BETWEEN**

**MUKASA MWAMBU MULIRO ..... PLAINTIFF  
SUING AS A LEGAL REPRESENTATIVE OF THE ESTATE OF HENRY  
MASINDE MULIRO**

**AND**

**JOSEPH MUCHOE WANYAMA ..... 1<sup>ST</sup> DEFENDANT  
WILSON WAKWEIKA MUKUBUYI ..... 2<sup>ND</sup> DEFENDANT  
TOM BARASA WANYAMA ..... 3<sup>RD</sup> DEFENDANT  
BENJAMIN LUKA BARASA ..... 4<sup>TH</sup> DEFENDANT  
GETA MATOFARI ..... 5<sup>TH</sup> DEFENDANT  
CLEOPHAS MASINDE ..... 6<sup>TH</sup> DEFENDANT  
NICKSON ONZERIO ..... 7<sup>TH</sup> DEFENDANT  
SIMON SIFUNA ..... 8<sup>TH</sup> DEFENDANT  
GIDEON WANYONYI KUYA ..... 9<sup>TH</sup> DEFENDANT  
JOHN MULEYI ..... 10<sup>TH</sup> DEFENDANT  
WANASWA SUNGURA ..... 11<sup>TH</sup> DEFENDANT  
AUGUSTINE WANYAMA ..... 12<sup>TH</sup> DEFENDANT  
LEONARD SIFUNA ..... 13<sup>TH</sup> DEFENDANT  
RICHARD WEKESA ..... 14<sup>TH</sup> DEFENDANT  
MURUNGA MKEMBU ..... 15<sup>TH</sup> DEFENDANT**



**RULING**

1. The 10<sup>th</sup> defendant/applicant has brought an application dated 27/1/2025. He seeks that this suit be struck out or dismissed for want of prosecution and as an abuse of the court process. The reasons are contained on the face of the application and in a supporting affidavit of Edward Kimingich Muleyi, sworn on 27/1/2025.
2. According to the 10<sup>th</sup> defendant/applicant, the grant of letters of administration ad litem issued to file the suit was to expire after 90 days of its issuance, the plaintiff has failed to make full and frank disclosure on key materials relating to the suit and there is no subsisting cause of action against the defendants. The 10<sup>th</sup> defendant/applicant avers that he resides on Plot No. 19 Yuya Farm, which is separate and distinct from IR Number 11209 (19870/3), where he has constructed a permanent house, going by annexures marked EKM-4 and 5. The 10<sup>th</sup> defendant/applicant deposes that the grant attached as EKM-7 lapsed after 90 days and that the family members had also filed a petition in Eldoret HC Succession Cause No. 23 of 2023 as per annexure marked EKM-8(a) and (b), which information has not been disclosed to court at the time of seeking and obtaining the grant ad litem.
3. Similarly, the 10<sup>th</sup> defendant/applicant avers that the plaintiff has no powers to represent the estate of the deceased nor have any beneficiaries or family members executed a consent authorizing him to file the suit. The suit therefore is termed as an abuse of the court process, improperly and prematurely filed in court. Similarly, the 10<sup>th</sup> defendant/applicant deposes that the court has no jurisdiction to entertain the suit, that he is improperly sued, and that despite the plaintiff seeking leave to amend, the plaint was never amended.
4. The plaintiff/respondent opposes the application through a replying affidavit sworn on 12/2/2025. He says that he was issued with a grant of letters ad litem on 9/2/2023, which document remains valid and has not lapsed, and that a full grant was applied for on 13/2/2024. A copy of the grant ad litem is marked as annexure MMM-1. That he has petitioned for grant of letter of administration and marks the petition as MMM-2. Again, the plaintiff/respondent deposes that Eldoret HC Succession Cause No. 23 of 2023 was a separate suit, where a full grant was issued to five administrators. A copy of the full grant is annexed as MMM-4.
5. In a further affidavit sworn on 13/2/2025, the 10<sup>th</sup> defendant/applicant insists that there was no disclosure that the full grant was to be obtained within 90 days. Again, the 10<sup>th</sup> defendant/applicant deposes that though the full grant was issued to five administrators, the present suit is instituted by a sole person without the inclusion or authority of the other administrators, contrary to Order 31 Rule 2 of the Civil Procedure Rules. The applicant deposes that there is an ongoing dispute in Eldoret HC Succession No. 23 of 2023 over the deceased's estate, which is yet to be concluded.
6. The 10<sup>th</sup> defendant/applicant relies on written submissions dated 12/2/2025. It is submitted that jurisdiction is everything as held in Owners of the Motor Vessel "Lilian S" -vs- Caltex Oil (K) Ltd [1989] KLR 1. The 10<sup>th</sup> defendant/applicant submits that the subject matter, as per paragraph 5 of the plaint, is on an alleged eviction of members of the estate of the late Henry Masinde Muliro. Therefore, it is submitted that succession matters under Section 47 of *Law of Succession Act* as read together with Rule 73 of the Probate and Administration Rules, fall under the High Court. In this case, the 10<sup>th</sup> defendant/applicant submits that there is a matter before the High Court, Eldoret.



7. Further, the 10<sup>th</sup> defendant/applicant submits that the plaintiff cannot institute the suit and therefore, given the existing succession cause and a grant issued to five people, the plaintiff cannot file it solely, without the inclusion or express authority of the co-administrators to the estate since the law expects them to act jointly. Reliance is placed on *Mary C. Kitur -vs- County Government of Trans Nzoia* [2019] eKLR, *Savala & Another -vs- Ndanyi* [2023] KEELC [20234] KLR and *Alfred Njau & Others -vs- City Council of Nairobi* [1982] KAR 209.
8. Given that the grant ad litem lapsed after 90 days, the 10<sup>th</sup> defendant/applicant submits that the plaintiff lacks the requisite legal standards to maintain the suit. On abuse of court process, the 10<sup>th</sup> defendant/applicant submits that a party lacking capacity and filing a suit in a court without jurisdiction constitutes abuse of court process. Reliance is placed on *Gideon Moi -vs- Samuel Towett Kibowen* [2018] KEELC 222 KLR, citing with approval *Machanga Investments Ltd -vs- Safaris Unlimited Africa Ltd & Others* [2009] eKLR. Reliance is also placed on *Virginia Edith Wambui Otieno -vs- Joash Ochieng Ougo & Another* [1987] eKLR, *Moore (Suing on behalf of the estate of the late Henry Albert Moore) -vs- Patel (As an administrator of the estate of Kanja Naran Patel) & Others* [2023] KEELC 21773 [KLR].
9. The plaintiff/respondent relies on written submissions dated 14/2/2025. It is submitted that the amended plaint dated 21/2/2024 seeks prayers that only this court can grant under Section 13 of the *Environment and Land Court Act*. On capacity to sue, the plaintiff submits that he obtained grant ad litem solely authorizing him to file the suit before a full grant could be issued, hence it did not require any other authorization by the beneficiaries to the estate, as such. Therefore, it is submitted that Order 31 Rule 2 of the Civil Procedure Rules is not applicable.
10. The plaintiff/respondent submits that the conditions by the court that the filing of the petition for a full grant be within 90 days did not mean that the limited grant would expire or lapse. That notwithstanding, the plaintiff/respondent submits that the full grant was applied for on 13/2/2023, following which a full grant was issued to five administrators, hence there was compliance, making the suit properly before the court, and duly filed.
11. From the court record, it appears that the plaintiff filed an amended plaint dated 21/2/2024 where he describes himself as the legal representative of the estate of Henry Masinde Muliro, who used to own L.R No. 11209 of I.R No. 19870/3, said to have been trespassed into, on 30/12/2022 by the defendants.
12. The plaintiff avers that after trespass to the deceased land, the defendants embarked on developments thereon and the destruction of food crops, and trees on the land belonging to the estate of the deceased with a view of dispossessing and evicting family members of the deceased from the suit land in flagrant breach of the law.
13. The plaintiff terms the acts of the defendant as unlawful and amounting to encroachment. The plaintiff seeks a permanent injunction to restrain the defendants from aforesaid acts of trespass and encroachment. In the replying affidavit sworn on 21/2/2024, the plaintiff deposes that he was competent to swear and verify the correctness of the amended plaint. In the replying affidavit, the plaintiff has admitted that a full grant has now been granted to five legal administrators to the estate of the deceased. Unfortunately, while aware of the five appointed legal representatives, the plaintiff in the amended plaint dated 21/2/2024, continues to describe himself as a legal representative of the estate of the late Henry Masinde Muliro. The plaintiff is swearing on facts which he knows to be untrue.
14. This court takes judicial notice of the supplementary affidavit sworn by Mukasa Mwambu Muliro dated 10/7/2023



15. The issue of legal representation goes to the heart of a suit. Under Section 82(a) of the [Law of Succession Act](#), it is only a personal representative who is granted the power to enforce, by a suit or otherwise, all causes of action which, under any law, survive the deceased or arise out of his death. In this suit, the plaintiff has filed the amended plaintiff without involving the other four co-administrators in the estate. No explanation has been given as to why the rest of the legal representatives have not been joined in this suit. There is no authority to plead and sue attached to the amended plaintiff or the verifying affidavit giving the plaintiff the capacity to advance the cause of action on behalf of the estate.
16. In *Simon Kamau Muhindi (Suing as the administrator of the estate of Esther Nyokabi Muhindi) -vs- Monica Wambui Ngugi & Another* [2014] eKLR, the court observed that the plaintiff having been formerly appointed with his brother as the administrators of the estate of the late Esther Nyokambi Muhindi and having sued only by himself without authority to sue from the other, and guided by *Republic -vs- Nairobi City Council Misc. Appl. No. 103B of 2013*, that the co-administrator must act jointly at all times, and one administrator cannot bind the estate or file a suit alone, his suit was incompetent in the absence of his co-administrator.
17. In *Apex Finance International Ltd & Another -vs- KACC Nairobi HC JR 64 of 2011*, the court cited *Goodwill & Trust Investment Ltd & Another -vs- Witt & Bush Ltd Nigeria SC 266 of 2005*, that to be competent and have jurisdiction over a matter, the proper parties must be identified before the action can succeed, whose rights and obligations arose from the cause of action. The court said that when proper parties are not before the court, the properties before it and its judgment, no matter how reasoned, will amount to a nullity.
18. As to whether the dispute before the court is competent, the jurisdiction of the High Court Family Division and that of this court are distinct and separate. In *Maina -vs- Njoki (Civil Appeal E021 of 2021)* [2024] and *Re estate of Stone Kathuli Muinde (deceased) [2016] eKLR*, the court held that claims on ownership of deceased estate as between the estate and a third party should be resolved through the civil process as per the [Civil Procedure Act](#). The court observed that a succession court is concerned with the identification of the estate, establishment of the beneficiaries and the distribution of the free property of the deceased estate, the identification of the bona fide beneficiaries, and the distribution thereof. Due to this mandate, any dispute arising out of ownership of any deceased asset with the creditors to the estate or third parties in view of Rule 4(13) of the Probate and Administration Rules, has to be referred to another forum for determination. Succession proceedings as court's have held are not the appropriate forum for determining such disputes.
19. Article 162(2) and 165(5) of [the Constitution](#) delineate the jurisdiction of both the High Court and the ELC. The High Court has no elastic jurisdiction to determine matters falling under the ELC and vice versa. Given the foregoing case law, the plaintiff in my view cannot sustain the suit in its current form without involving the co-administrators. It could very well be true that the plaintiff had the primary capacity to sustain the suit as of 10/2/2023. However, once the full grant was issued jointly, the five could only act in unison not individually. The five legal administrators are like Siamese twins who are conjoined at the hip.
20. The amended plaintiff cannot thereby stand and so is the capacity of the plaintiff to swear the verifying affidavit without seeking an authority to sue or plead from the co-administrators to the estate. Without capacity, the suit is built on quicksand. It is incompetent and amounts to an abuse of the court process.
21. As to jurisdiction to hear and determine the dispute, I think the cause of action, as pleaded, fails under this court, for the defendants are not family members or beneficiaries of the estate. The upshot is that the plaintiff lacks the requisite capacity to sustain the suit. It is hereby struck out with costs to the 10<sup>th</sup> defendant.



22. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT  
KITALE ON THIS 10<sup>TH</sup> DAY OF JUNE 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant - Dennis

Mr. Wanyonyi for 10<sup>th</sup> defendant present

Mr. Nyamuf for the plaintiff absent

