



Ngovi (Suing as Guardian Ad Litem for the Estate of Esther Wairimu) v Muchiri (Sued as the Administrator of the Estate of Joseph Muchiri Muriuki) (Environment & Land Case E020 of 2024) [2025] KEELC 4193 (KLR) (4 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4193 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E020 OF 2024**

JM MUTUNGI, J

JUNE 4, 2025

BETWEEN

TITUS LUKINDO NGOVI (SUING AS GUARDIAN AD LITEM FOR THE ESTATE OF ESTHER WAIRIMU) PLAINTIFF

AND

JUCINA WAMBURA MUCHIRI (SUED AS THE ADMINISTRATOR OF THE ESTATE OF JOSEPH MUCHIRI MURIUKI) DEFENDANT

RULING

1. The Defendant/Objector filed a Preliminary Objection dated 25th September 2024, seeking to strike out the Plaintiff's suit on the following grounds:
 1. That the matter is res judicata as it was previously heard and determined in Wang'uru ELC E055 of 2022.
 2. That the Plaintiff lacks locus standi to institute the suit.
 3. That there is no suit properly filed before the court.
 4. That the suit was commenced through unprocedural means and is fatally defective.
 5. That the suit contravenes Sections 1A, 1B and 19 of the Civil Procedure Act and Order 3 Rule 1 of the Civil Procedure Rules.
 6. That the application is incompetent, an abuse of court process, and should be struck out with costs.
2. In response, the Plaintiff filed a Replying Affidavit sworn on 1st April 2025, asserting that the objection was without merit. The Plaintiff averred that:



1. The suit was not res judicata since he was not a party to the previous suit and his application to be joined therein was dismissed.
 2. The present claim is based on adverse possession, whereas the previous suit was an eviction claim.
 3. He holds a Limited Grant Ad Litem obtained on 10th July 2024 via Wang'uru Misc. P&A E034 of 2024, which gave him the authority to institute the present proceedings.
 4. The suit was properly instituted by way of a Plaint and not a miscellaneous application as alleged.
3. On 1st October 2024, the court directed that the Preliminary Objection be canvassed through written submissions. The Defendant filed written submissions dated 31st January 2025. The Plaintiff filed submissions through his Advocates which however were undated.

Arguments of Counsel

4. The Defendant's Counsel argued that the Plaintiff lacked locus standi since the estate of Esther Wairimu already had a confirmed grant issued to Monica Kamau, and it is a settled principle that two grants cannot subsist in relation to the same estate. On the issue of res judicata, she submitted that the current dispute involves the same subject matter and touches on parties litigating under the same title as in Wang'uru ELC E055 of 2022, where a Judgment was rendered. She cited the Case of Diocese of Eldoret Trustees [Registered] v Attorney General & Another [2020] eKLR in support.
5. The Plaintiff filed submissions in opposition to the objection. He maintained that he had locus standi under a Limited Grant Ad Litem issued to him specifically for the purpose of instituting the current suit. He asserted that the earlier grant to Monica Kamau was obtained fraudulently and that revocation proceedings were pending. He also submitted that the doctrine of res judicata did not apply, since he was not a party in the earlier proceedings, where the issue related to eviction, unlike the present claim for adverse possession in the instant suit. He cited authorities including DKT & PKT [suing in their capacity as Guardian ad Litem to MWT] v JMT & SKT [2017] KEELC 3225 [KLR], L.M Macharia v Githendu [2022] KEHC 13859 [KLR], and Wainaina v Kiarie & Another [2024] KEELC 5831[KLR].

Analysis and Determination

6. I have considered the pleadings herein, the arguments of Counsel and the authorities cited by Counsel. The following issues arises for determination.
 1. Whether the Plaintiff has locus standi to institute the present suit.
 2. Whether the suit is res judicata.
 3. Whether the suit was properly instituted.
7. The Court of Appeal in the Case of Mukisa Biscuit Manufacturing Co. Ltd -v- West End Distributors Ltd [1969] EA 696 established the threshold for determining what would constitute a valid Preliminary Objection. A Preliminary Objection to be valid must be on a point of law and founded on facts that are not disputed. If evidence is required to be adduced to establish the facts, then a Preliminary Objection would not be sustainable. In the Mukisa Biscuit Case [supra] Law, JA stated as follows: -

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a



preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or 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 the arbitration.”

Locus Standi

8. Locus standi is the legal capacity to bring an action before a court. Locus standi is defined in Black’s Law Dictionary, 9th Edition [page 1026] as:-

“the right to bring an action or to be heard in a given forum”. In the case of Alfred Njau and Others v City Council of Nairobi [1982] KAR 229, the Court held that:

“The term Locus Standi means a right to appear in Court and conversely, to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

9. A claim that one has no locus standi challenges a party’s right to be heard before a Court. If a determination is made in the affirmative, then this issue can dispose of the suit. Therefore, a claim that a party lacks locus standi is a pure point of law that needs to be raised and determined at the earliest opportunity.
10. In the present case, the Plaintiff avers that he was issued with a Limited Grant Ad Litem to represent the estate of Esther Wairimu. It is not in dispute that another person, Monica Kamau, already holds full Grant of Letters of Administration to the estate of Esther Wairimu Kamau issued in Kangundo Succession Cause No. 43 of 2020. The Plaintiff contends that the earlier grant was obtained fraudulently and that revocation proceedings are pending.
11. Section 54 of the Law of Succession Act permits the issuance of limited grants in appropriate circumstances. It provides that:
54. Limited grants
- A Court may, according to the circumstances of each case, limit a grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule.
12. Rule 14 of the Fifth Schedule to the Probate and Administration Rules allows for a grant limited to representing a deceased person in a suit where the Administrator is unwilling or unable to act. This Rule is in the following terms;
- When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause of suit, and until a final decree shall be made therein, and carried into complete execution.
13. For a grant contemplated in Rule 14 to be valid, the Plaintiff must demonstrate that: 1] There is a pending suit requiring the deceased’s representation; and 2] The person with the substantive grant is unwilling or unable to act.
14. No evidence has been presented to show that the Administrator, Monica Kamau, was unwilling to act in the present matter. In Estate of Mwaura Mbira [Deceased] [2018] eKLR, the court cautioned



against the coexistence of two grants over the same estate, as it creates legal confusion and undermines orderly succession. The Court stated that:

“The *Law of Succession Act* does not envisage a situation where there are two parallel administrators for the same estate, one holding a grant of Letters of Administration and another holding a Limited Grant. This would create chaos and confusion.

10. The *Law of Succession Act* provides for the powers and duties of the personal representative, Sections 82 & 83. There are Letters of Administration issued in a substantive cause, that is, No. 144 of 2012. The estate has administrators who are supposed to take care of the interests of the estate. I am of the view that where there is a substantive succession cause which has followed all the processes and a Grant of Letters of Administration has been issued, a limited or special grant cannot be issued to another person over the same estate. The Act has provisions on how the administrators can be held and/or made to account.”
15. Consequently, the Court finds that the Plaintiff lacks the requisite locus standi to maintain this suit. The Limited Grant Ad Litem issued in favour of the Plaintiff cannot override or replace the full grant issued in respect of the deceased estate to the said Monica Kamau.

Res Judicata

16. The doctrine of res judicata is governed by Section 7 of the *Civil Procedure Act*. It provides that:
No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
17. The Court of Appeal in the Case of IEBC v Maina Kiai & 5 Others [2017] KECA 477 [KLR] set out conditions that must be satisfied for the doctrine of res judicata to be applicable. The Court held as follows:-
“Thus, for the bar of resjudicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in distinctive but conjunctive terms:
 1. The Suit or issue was directly and subsequently in issue in the former suit.
 2. The former suit was between the same parties or parties under whom they or any of them claim.
 3. Those parties were litigating under the same title.
 4. The issue was heard and finally determined in the former suit.
 5. 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”.
18. The rationale for the res judicata doctrine is that litigation has to end and that parties that have had a litigation that has been concluded should not be allowed to open a new front of litigation before another Court on the same issues that have previously been litigated before another Court. If parties were to be allowed to file fresh suits on issues that have been concluded before another Court, litigation



would never come to an end, and a successful litigant would never take a deserved rest, as he would not be assured that the litigation would not be reopened in another Court.

19. The Court in the Case of ET v Attorney General & Another [2012] eKLR stated as follows:-

“The Courts must always be vigilant to guard against litigants evading the doctrine of resjudicata by introducing new causes of action so as to seek the same remedy before the Court. The test is whether the Plaintiff in the second suit is trying to bring before the Court in another way and in a form of a new cause of action which has been resolved by a Court of competent jurisdiction. In the case of Omondi v National Bank of Kenya Ltd & Others [2001] EA 177 the Court held that, ‘Parties cannot evade the doctrine of resjudicata by merely adding other parties or causes of action in a subsequent suit’. In that case the Court quoted Kuloba, J, in the case of Njangu v Wambugu & another HCCC No. 2340 of 1991 [unreported] where he stated, ‘If parties were allowed to go on litigating forever over the same issue with the same opponent before Courts of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he comes to Court, then I do not see the use of the doctrine of resjudicata.’”

20. In the present case, it is admitted that the Plaintiff was not a party in ELC E055 of 2022. His application to be joined in that suit was dismissed. The cause of action in that suit was eviction, while the present claim is founded on adverse possession. In the Case of IEBC v Maina Kia case [supra] the Court of Appeal emphasized that all the elements under Section 7 must be met conjunctively for the doctrine to apply. The Court holds that the parties in the earlier suit were different from the parties in the instant suit and that the issues were not similar to the issues in the instant suit. The present suit is therefore not res judicata.

Whether the suit was properly instituted

21. Section 19 of the *Civil Procedure Act* and Order 3 Rule 1 of the Civil Procedure Rules require that every suit be commenced by Plaint or as prescribed by the rules. The record shows that the Plaintiff filed a Plaint dated 16th July 2024, together with an interlocutory application and hence the reference by the Defendant to a "miscellaneous application" appears to be mistaken. The suit was properly instituted and complies with procedural requirements.

Conclusion

22. The objection regarding res judicata fails, as the previous suit involved different parties. The objection to the improper commencement of suit also fails. However, the objection on locus standi succeeds. The Plaintiff, holding a Limited Grant Ad Litem, cannot maintain this suit in the face of the existing unrevoked full grant issued to another person in respect of the same deceased estate. Lack of locus standi goes to the jurisdiction of the Court. A party without capacity to sue cannot invoke the Court's jurisdiction and the instant suit is unsustainable for want of locus standi on the part of the Plaintiff.

23. Accordingly, the suit is hereby struck out with costs to the Defendant.

****RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 4TH DAY OF JUNE 2025.**

J. M. MUTUNGI

ELC - JUDGE

