



Massawa (Suing as the Personal Representative of the Estate of Michael Massawa Ombayo) v Massawa (Environment and Land Case E004 of 2024) [2025] KEELC 5148 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5148 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT AND LAND CASE E004 OF 2024**

**BN OLAO, J
JULY 10, 2025**

BETWEEN

**ANTONY SIWOLLO MASSAWA PLAINTIFF
SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF
MICHAEL MASSAWA OMBAYO**

AND

RAPHAEL OGHONA MASSAWA DEFENDANT

RULING

1. Antony Siwollo Massawa (the Plaintiff herein and suing as the legal Representative of the Estate of Michael Massawa Ombayo now deceased) filed this suit against Raphael Oghona Massawa (the Defendant) seeking various orders with regard to the land parcel No Bukhayo Ebusibwabo/3105. The basis of the Plaintiff's claim and the orders sought are not necessary for purposes of this ruling. What is relevant is that the Plaintiff approached this Court as the legal Representative of the Estate of Michael Massawa Ombayo (the deceased). He pleaded that he had been so appointed vide Siaya Chief Magistrates Court Succession Cause No E126 of 2021 on 15th September 2021.
2. The Defendant filed his defence in which he pleaded that the Grant issued to the Plaintiff in Siaya Chief Magistrates Court Succession Cause NO E126 of 2021 on 15th September 2021 was revoked on 18th July 2023 and therefore the Plaintiff lacks the requisite locus standi to prosecute or even institute this suit. Therefore, this Court lacks the requisite jurisdiction to determine this dispute.
3. The Defendant also filed a Notice of Preliminary Objection dated 24th October 2024 in which the following issues were raised:
 1. That the Plaintiff lacks the requisite locus standi not only to institute this suit but also to prosecute the same on behalf of the Estate of the deceased Michael Massawa Ombwayo



since the Siaya Chief Magistrates Court Succession Cause No E126 of 2021 had suo moto revoked the Grant issued to the Plaintiff on 18th July 2023 which had clothed him as the legal Representative of the deceased's Estate.

2. That the Grant having been revoked by the Court, the Plaintiff now lacks locus standi to file this suit and this Court cannot entertain the same for lack of jurisdiction.
3. That this Court lacks the jurisdiction and the plaint dated 29th February 2024 is incurably bad and defective and should be struck out in limine with costs to the Defendant.

The Plaintiff's reaction to that Notice of Preliminary Objection was to file a supplementary list of documents dated 14th November 2024 to which he annexed a copy of an order issued by Hon Limo Principal Magistrate on 7th November 2024 in Siaya Chief Magistrates Court Succession Cause No E126 of 2021.

4. When the Motion was placed before me on 29th January 2025, I directed that it be canvassed by way of written submissions.
5. The submissions were subsequently filed by Mr Otieno instructed by the firm of O'Tieno Obwanda & Company Advocates for the Defendant and by Mr Amuga instructed by the firm of Amuga & Company Advocates for the Plaintiff.
6. I have considered the Preliminary Objection and the submissions by counsel.
7. The Preliminary Objection is essentially on the Plaintiff's locus standi to file this suit and therefore this Court's jurisdiction to determine the same.
8. This suit was filed on 13th March 2024 as is clear from the plaint. The Plaintiff described himself as suing on behalf of the Estate of the deceased. Among the documents which he filed was a Grant of Letters of Administration issued to him on 15th September 2021 in Siaya Magistrate's Court Succession Cause No E126 of 2021 by Hon James Ong'ondo Senior Principal Magistrate. Therefore, when the Plaintiff was filing this suit on 13th March 2024, what, purportedly clothed him with the jurisdiction to approach this Court vide his plaint was the Grant of Letters of Administration dated 15th September 2021.
9. The Defendant's Preliminary Objection is that the said Grant of Letters of Administration issued on 15th September 2021 was in fact revoked suo moto by the Court on 18th July 2023. The Plaintiff's response is that the Grant issued to the Plaintiff on 15th September 2021 was in fact reinstated on 14th September 2024 and the file for the cause was re-opened and a full grant was issued.
10. It is important, at this point, to observe that although the Plaintiff's counsel has submitted at paragraph 5 of his submissions that

“5: “The Grant issued to the Plaintiff in the said Succession Cause NO E126 of 2021 is a full Grant. It confers upon the Plaintiff power to institute and prosecute the suit herein.”

no such copy of the full Grant was availed for the Courts inspection. All that the Plaintiff has annexed is a copy of an order issued on 7th November 2024



in Siaya Magistrate’s Court Succession Cause No E126 of 2021. Due to its relevance in this application, I shall cite it in extenso. It reads:

“This matter coming up on 7.11.2024 for directions on the Notice of Motion dated 29.10.24 before Honourable Limo Benjamin P. M. and upon perusal of the application and its annexures:

It Is Hereby Ordered:

1. That the application certified urgent.
2. That the application allowed in terms of prayer 2 and 3 of the application.
3.

Given under my hand and seal of the Honourable Court this 7.11.2024.

Signed By Benjamin Limo”

11. The Notice of Motion dated 29th October 2024 and which gave rise to the above orders was not annexed. In the absence of a copy of that Motion, this Court is not in a position to confirm with any certainty that the Grant issued to the Plaintiff on 15th September 2021 and which had been revoked on 18th July 2023 was indeed re-instated on 7th November 2024.
12. Even if the said Grant was indeed re-instated on 7th November 2024, it is clear that between 18th July 2023 when the Grant was revoked and 13th March 2024 when the Plaintiff filed this suit on behalf of the Estate of the deceased, he had no locus standi to do so. The term locus standi is defined in the Black’s Law Dictionary 10th Edition as:

“(Latin ‘place of standing’. The right to bring an action or to be heard in a given forum.”)

Having approached this Court as a legal representative to the Estate of the deceased, the Plaintiff ought to have been in possession of a Grant of Letters of Administration in respect to the Estate of the deceased. Without it, he cannot agitate any suit on behalf of that Estate – Troustik Union International & Ingrid Ursula Heinz -v- Jane Mbeyu & Alice Mbeyu C.A.Civil Appeal No145 of 1990. Similarly in the case of Virginia Otieno -v- Joash Ougo 1988 I KAR 1048, the Court of Appeal held thus:

“The administrator is not entitled to bring an action as administrator before he has taken letters of administration. If he does, the action is incompetent at the date of its inception.”

Therefore, from 13th March 2024 when the Plaintiff filed this suit, it was an incompetent suit from the date of inception.

13. This Court has not been shown the order reinstating the revoked Grant. The Plaintiff’s counsel has submitted at paragraphs 3 and 4 of his submissions that:

“3: “The Plaintiff only became aware of the suo moto revocation of the Grant issued to him in the said cause NO E126 of 2021 when the Defendant served his defence and the Preliminary Objection. Upon becoming aware of the revocation of the Grant without notice to him, the Plaintiff moved the same Court for an order setting aside the revocation and reinstatement of the Grant. By an order made in that cause on 14th November 2024, the Grant issued to the Plaintiff on 15th September 2021 was reinstated and the file for the cause



re-opened. A copy of the ruling/order of the Chief Magistrate’s Court at Siaya is contained in the Plaintiff’s supplementary List of Documents dated 14th September 2024. We attach hereto another copy for ease of reference.”

- 4: “The Grant having been reinstated, the Defendant’s Preliminary Objection dated 24th October 2024 has no legs to stand on. The Preliminary Objection has lost substance.”

Even if that Grant of Letters of Administration issued on 15th September 2021 was reinstated on 14th November 2024, that reinstatement cannot regularize a plaint that had been filed by the Plaintiff when he did not have the requisite locus standi. A Grant takes effect from the date of its issue. It cannot have retrospective effect. Section 80(2) of the Law of Succession Act provides that:

“A grant of Letters of Administration, with or without the will annexed, shall take effect only as from the date of the grant.”

Therefore, even if the Grant was reinstated on 14th November 2024 it cannot cure what had happened on 13th March 2024 when this suit was filed because by that date, the Grant issued on 15th September 2021 had already been revoked on 18th July 2023.

14. In the case of Joseph Kuria Kihanya & 4 Others -v- Veronica Ngatha Gichuri & Another C.A. Civil Appeal No 15 of 2019 [2024 KECA 852 KLR], the Court of Appeal while considering a not too dissimilar scenario, had the following to say at paragraph 27:

- “27: “As we have demonstrated, for the respondents to legally institute the suit on behalf of the Estate of the deceased, they needed to have sought and obtained a grant of Letters of administration to enable them to bring the suit on behalf of the deceased’s estate. They did not and consequently, they lacked the capacity to institute the suit before the ELC. They had no locus standi to file the suit. A suit instituted by a person without legal capacity is a nullity ab initio and is unsustainable. It is noteworthy that the limited grant of Letters of Administration Ad Litem obtained on 29th March 2007 is inconsequential since it was not capable of curing a suit that was a nullity ab initio. For avoidance of doubt, the limited grant of Letters of Administration Ad Litem obtained on 29th March 2007, 7 years after filing the suit is inconsequential and of no effect, and it was not capable of curing a suit that was a nullity ab initio.”

Even if the revocation of the Grant was later found to have been irregular and the Grant issued earlier was subsequently re-instated on 14th November 2024, the fact of the matter is that on 13th March 2024, the Plaintiff had no Grant and therefore no locus standi to enable him file this suit. Whatever happened following the plaint dated 29th February 2024 and filed on 13th March 2024 was a nullity, void in law and incurably bad – MACFOY -V- UNITED AFRICA CO LTD 1961 3 ALL E.R 1169. The Plaintiff will have to properly cloth himself with the requisite locus standi if he is still desirous of pursuing this claim on behalf of the Estate of the deceased.



15. The up-shot of all the above is that having considered the Defendant's Preliminary Objection dated 25th October 2024, I issue the following orders:

1. The Plaintiff lacks the requisite locus standi to institute or prosecute this suit on behalf of the Estate of the deceased.
2. This suit is hereby struck out.
3. Costs to the Defendant.

BOAZ N. OLAO

JUDGE

10TH JULY 2025

Ruling dated, signed and delivered on this 10th day of July 2025 by way of electronic mail.

BOAZ N. OLAO

JUDGE

10TH JULY 2025

