



Mogeni v Attorney General & another; Manyi (Interested Party) (Environment and Land Petition E006 of 2022) [2025] KEELC 5078 (KLR) (7 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5078 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND PETITION E006 OF 2022**

DO OHUNGO, J

JULY 7, 2025

BETWEEN

MARY MORAA MOGENI PETITIONER

AND

THE HONOURABLE ATTORNEY GENERAL 1ST RESPONDENT

THE LAND REGISTRAR NYAMIRA COUNTY 2ND RESPONDENT

AND

ENOCK SIRIBA MANYI INTERESTED PARTY

JUDGMENT

1. The Petitioner moved the Court through Petition dated 16th August 2022 in which she averred that she was the wife of Christopher Mogeni Omondi (deceased) whose remains were interred on parcel number North Mugirango/Boisanga/6538 (the suit property). She further averred that her deceased husband was entitled to inherit a share of her late mother's estate and that by extension her children and her who are living on the suit property are also entitled to inherit. That the suit property was registered in the name of James Manyi Omandi and Selepina Bwari Miyogo and that she was facing eviction from the suit property together with her children at the instance of the Interested Party. She also averred that her constitutional right to own property and equal treatment by the law were threatened.
2. The Petitioner therefore prayed for judgment for:
 1. As against the 1st Respondent, a declaration that the Petitioner herein is entitled to inherit the share of his late husband Christopher Omondi Mogeni as a widow from the Estate of Moraa Omondi.
 2. As against the 2nd Respondent, on order requiring that title No. North Mugirango/Boisanga/6538 be transferred and registered in the name of the Petitioner.



3. As against the Interest Party, a permanent injunction restraining the Interest Party from interfering with quiet possession by the petitioner of the Title No North Mugirango/Boisanga/6538.
4. Cost of this Petition is paid by the interested party.
3. The Petition is supported by an affidavit sworn by the Petitioner. She deposed that she is a widow to Christopher Mogeni Omondi (deceased) with whom she was blessed with six children and that her husband was the third born to Moraa Omondi (deceased) who was second wife of Moses Miyogo Omondi (deceased). That as widow of Christopher Mogeni Omondi (deceased), she was entitled to inherit his share of the estate of Moraa Omondi (deceased) which included the suit property. That the suit property is registered in the name of Enock Saiba Manyi and that a caution which she had lodged against the suit property had been removed at the instance of the Interested Party through an order issued in Nyamira CM Misc Application No E016 of 2022. She also deposed that she was living on the suit property together with her children.
4. The Respondents filed Grounds of Opposition in which they averred that the Petitioner had failed to demonstrate any breach or threat of breach of her fundamental rights and that the Petition had been filed prematurely since the Petitioner had not exhausted mechanisms of redress provided by law. They further averred that the Petition discloses no constitutional issue and does not meet the threshold in Anarita case. They therefore urged the Court to dismiss it with costs.
5. The Interested Party opposed the Petition through “Response to Petition” in which he averred that the Petition offended Section 82 of the Law of Succession Act and that the Petitioner lacks locus standi. He further averred that the caution was removed through a court order in respect of which no appeal had been preferred. He prayed that the Petition be dismissed with costs.
6. The Petition was canvassed through affidavit evidence, pleadings on record and written submissions. The Petitioner filed undated submissions on 19th October 2022 through which she generally reiterated the averments in her petition. She submitted that the suit property was registered in the name of Enock Saiba Manyi through fraud thereby disinheriting her and her children. That the Interested Party may mortgage or sell the suit property thereby rendering her family homeless.
7. The Respondents filed submissions dated 18th February 2025. They argued that the petition has not met the threshold in Anarita Karimi Njeru v Republic [1979] eKLR as restated by the Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR. They argued that it is not enough to mere cite constitutional provisions without particulars of the alleged infringement to enable Respondents to answer. They also relied on the case of Chosen Children International v County Government of Trans-Nzoia & 2 others [2019] eKLR and argued that the Petitioner is not seeking interpretation of the Constitution but is instead seeking resolution of a private claim against an individual citizen. The Respondents went on to argued that the Petitioner’s claim is aligned with succession and property disputes as opposed to constitutional law and should therefore be dismissed.
8. On his part, the Interested Party filed submissions dated 21st October 2022 in which he argued that the caution was validly removed through Nyamira CM Misc Application No E016 of 2022 and the Petitioner’s focus is the estate of her deceased husband, yet she does not have letters of administration in respect of the said estate. That in view of the provisions of Section 82 of the Law of Succession Act, the Petitioner lacks locus standi and her petition is fatally defective. He therefore urged the Court to dismiss the Petition with costs to him.



9. I have considered the pleadings, evidence and submissions. The issues that arise for determination are whether the court has jurisdiction and whether the reliefs sought should issue.
10. The question of whether the court has jurisdiction is in two parts; whether the Petitioner has locus standi and whether the Petition meets the threshold in Anarita Karimi Njeru case. Both are jurisdictional issues.
11. Jurisdiction, as has been severally held by the Courts, is the entry point in any matter that the Court is called upon to determine. Without it, the proceedings come to a certain end and the court cannot take any further step. See Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR. Jurisdiction cannot be conferred even by consent of the parties or by innovation whether in drafting of pleadings or on the part of the Court. If the Court proceeds in a matter in which it lacks jurisdiction, even if the parties applaud, urge and nudge it on, its determination would amount to a nullity. The Supreme Court reiterated the position in Benson Ambuti Adega & 2 others v Kibos Distillers Limited & 5 others [2020] eKLR.
12. The Respondents and the Interested Party have contended that the Petitioner’s case concerns the estate of her deceased husband and that since she does not have letters of administration in respect of the said estate, she lacks locus standi in view of the provisions of Section 82 of the Law of Succession Act. The said section provides in part as follows:

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers —

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best ...

13. The Petitioner’s case is that she is the widow of Christopher Mogeni Omondi (deceased) who was a son of Moraa Omondi (deceased). She is pursuing what she considers to be her late husband’s inheritance and by extension her inheritance as well her children’s inheritance in respect of the estate of Moraa Omondi (deceased). According to her, the suit property is part of the said estate.
14. The Court of Appeal considered the meaning and scope of locus standi in the case of Rugiri v Kinuthia & 3 others [2024] KECA 1601 (KLR) where it stated:

The Black’s Law Dictionary, 9th Edition (page 1026) defines locus standi as “the right to bring an action or to be heard in a given forum”. This Court in Alfred Njau and Others vs. City Council of Nairobi [1982] KAR 229 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”.

Locus standi is cardinal in civil proceedings because without it, a party lacks the right to institute and/or maintain the suit even where a valid cause of action subsists. It can be equated to a court acting without jurisdiction. In Amlers Precedents of Pleadings, Lexis Nexis LTC Harms et al 2018 on page 248 the following is said: “The question of locus standi is in a sense procedural, but it is also a matter of substance. It concerns the sufficiency and directness of a person’s interest in the litigation to be accepted as a litigating party. It is also



related to the capacity of a person to conclude a jural act. Sufficiency of interest depends on the facts of each case and there are no fixed rules.”

Locus standi concerns the sufficiency and directness of a litigant’s interest in proceedings which warrants his or her title to prosecute the claim asserted, and should be one of the first things to establish in a litigation.

15. The law is that a cause of action vested in or against the estate of a deceased person can only be validly agitated by or against the personal representative of the estate. See *Trouistik Union International & another v Jane Mbeyu & another* [1993] eKLR and *CKM v ENM & another* (Civil Appeal 250 of 2019) [2024] KECA 293 (KLR) (8 March 2024) (Judgment). The term “legal representative” is defined at Section 2 of the *Civil Procedure Act* as meaning “a person who in law represents the estate of a deceased person, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.” The Petitioner has neither averred nor demonstrated that she is a personal representative of the estate of her deceased husband.

16. In *Rugiri v Kinuthia & 3 others* (supra), the Court of Appeal held as follows regarding the consequence of filing a case in respect of a deceased’s estate without a grant of representation:

Decided cases are in agreement that where a suit is filed relating to a deceased’s estate without a grant of representation, the proceedings are null and void for want of locus standi. (See *Virginia Edith Wamboi vs. Joash Ochieng Ougo & Another* [1982-88] 1 KAR and *Trouistik Union International & Another vs. Jane Mbeyu & Another* Civil Appeal No. 145 of 1990). It follows, therefore, that for a party to have locus standi to institute or defend a case for and on behalf of a deceased person, he or she must first obtain a grant of letters of administration empowering him or her to administer the deceased’s estate or a limited grant limited for the purpose of filing or defending the suit.

17. The question that I have to decide is whether the Petitioner is pursuing a cause of action vested in the estate of her deceased husband. The answer is both yes and no. From her pleadings, she is pursuing her late husband’s inheritance and her own as well as her children’s inheritance. She needs letters of administration to pursue that which her husband would be entitled to. On the other hand, she does not need letters of administration to pursue her own inheritance since that cause of action is vested in her as opposed to her deceased husband. Whether her cause of action has merit is not an issue for purposes of determining locus standi. I have no difficulty in holding, as I now do, that she has locus standi for purposes of her own claim.

18. The other aspect of the jurisdictional question is whether the Petition meets the threshold in *Anarita Karimi Njeru v Republic* [1979] eKLR. The effect of the said decision is that a person seeking redress on a matter which involves a reference to *the constitution* must set out with a reasonable degree of precision that of which she complains, the provisions said to be infringed, and the manner in which they are alleged to have been infringed.

19. The Court of Appeal reiterated those requirements in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR where it stated:

Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. ...



(43) The petition before the High Court referred to Articles 1, 2, 3, 4, 10, 19, 20 and 73 of *the Constitution* in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements. ... No particulars were enumerated.

(44) We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (*supra*). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test ...

20. The Supreme Court affirmed the Anarita Karimi principles in *Communications Commission of Kenya & 5 others vs. Royal Media Services Limited & 5 Others* [2014] KESC 53 (KLR) as follows:

(349) ... Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Annarita Karimi Njeru v. Republic*, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement... .

21. I have perused the Petition herein as well as the supporting affidavit. Beyond generically complaining about fear of being disinherited and a right to equal treatment by the law, the Petitioner has not offered any specifics that merits the attention of the constitutional court. On the contrary, her grouse seems to be a matter that can be fully addressed under the *Law of Succession Act* and related statutory procedures concerning inheritance.

22. Procedural law relating to constitutional matters requires that where there exist ample statutory avenues for resolution of a dispute, the statutory options for redress must be followed and the constitutional court will decline to entertain the dispute. The basis for that kind of approach is the principle of constitutional avoidance which bars the practice of bringing ordinary disputes to the constitutional court. See the decision of the Court of Appeal in *Sumayya Athmani Hassan v Paul Masinde Simidi & another* [2019] eKLR.

23. In *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* (*supra*), the Supreme Court held as follows regarding the principle of constitutional avoidance:

The appellants in this case are seeking to invoke the “principle of avoidance”, also known as “constitutional avoidance”. The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in *S v. Mhlungu*, 1995 (3) SA 867 (CC) the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:

“I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”



From the foundation of principle well developed in the comparative practice, we hold that the 1st, second and 3rd respondents' claim in the High Court, regarding infringement of intellectual property rights, was a plain copyright- infringement claim, and it was not properly laid before that Court as a constitutional issue. This was, therefore, not a proper question falling to the jurisdiction of the Appellate Court.

24. The Petitioner's quest to inherit from her husband and her mother-in-law is an issue that can be exhaustively addressed through statutory remedies, particularly under *Law of Succession Act*. To that extent, her case has not been properly laid before this Court as a constitutional issue. This court therefore lacks jurisdiction to hear and determine this petition. A case filed in a court without jurisdiction is dead on arrival and cannot be resuscitated. See *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] eKLR.
25. In view of the foregoing, I dismiss the Petition. Considering the nature of the dispute, I make no order as to costs.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 7TH DAY OF JULY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

The Petitioner in person

Mr Rana for the Respondents

No appearance for the Interested Party

Court Assistant: B Kerubo

