



Bett v Livingstone K. Rono, Margaret Chepngeno Serser, Benjamin Kipkemoi Maseri, Janet Chepkorir Serser and Veronica Serser (Legal Representatives of the Estate of Eliud Maseri Serser) & another (Environmental and Land Originating Summons E013 of 2024) [2025] KEELC 6021 (KLR) (17 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6021 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E013 OF 2024
MAO ODENY, J
SEPTEMBER 17, 2025**

BETWEEN

SAMWEL BETT' PLAINTIFF

AND

LIVINGSTONE K. RONO, MARGARET CHEPNGENO SERSER, BENJAMIN KIPKEMOI MASERI, JANET CHEPKORIR SERSER AND VERONICA SERSER (LEGAL REPRESENTATIVES OF THE ESTATE OF ELIUD MASERI SERSER) 1ST RESPONDENT

SONOIYA STANLEY SERSER, DAVID SONOIYA, HENRY SONOIYA, BENARD KIPKEMOI SONOIYA, LEONARD KIPKORIR SONOIYA AND WILSON SONOIYA (LEGAL REPRESENTATIVES OF THE ESTATE OF SONOIYA ARAP SERSER) 2ND RESPONDENT

RULING

1. This ruling is in respect of two Preliminary Objections by the 1st and 2nd Defendants dated 9th December 2024 and 28th January 2025 respectively on the following grounds:
 1. That the 1st Defendant/Respondents lack the locus standi to respond to and defend the application and suit herein since the parcel of land under reference is registered in the name of a deceased person who died intestate and representation in his estate is yet to be granted by the Court.
 2. That the suit offends Section 7 of the Limitation of Actions Acts, is barred by effluxion of time and the Honourable Court lacks the jurisdiction to hear and determine it as it is bad in law and incurably defective.



3. That the application and the suit herein are fatally defective in substance and in form, incompetent, lack merit, misconceived because the application and suit seek court orders against persons who neither do not have the capacity to respond and defend the application and the suit respectively nor effect and or enforce the orders that may be issued by the Honourable Court.
4. That the Application and the suit are frivolous, vexatious and an abuse of the court process.

1st Defendant's Submissions

2. Counsel for the 1st Defendant submitted that the Plaintiff sued the 1st Defendant while aware that he did not have the capacity to defend this matter and urged the court to uphold the preliminary objection.
3. It was counsel's further submission that the 1st Defendant's father died in 2007, and to date no Succession has been filed in respect of the estate of the deceased. Further, that the suit parcel is registered in the name of the deceased and no Legal Representative of the estate has been appointed to administer the estate.
4. Counsel relied on Section 2 of the *Civil Procedure Act*, Order 24 Rule 5 of the Civil Procedure Rules, and Section 82 of the *Law of Succession Act* and prayed that the Plaintiff's suit be struck out with costs.
5. Counsel also relied on the cases of *Esther Wangari Kihara vs Samuel Ndiba Senior & Another* [2012] eKLR, *Isaya Masira Momanyi vs Daniel Omwoyo & Another* [2017] eKLR, *Mumo Matemu vs Trusted Society of Human Rights Alliances & 5 others* (2014) eKLR, *Trouistik Union International & Another vs Mrs Jane Mbeyu and Another* Civil Appeal No 145 of 1990 [1993] KLR 230 and *Joel Chepkwony vs Vincent Bett & Another* ELC No 39 of 2019, and urged the court to allow the preliminary objection with costs.

2nd Defendant's Submissions

6. Counsel for the 2nd Defendant also filed submissions on the issue of locus standi and listed the following issues for determination:
 - a. Whether the 2nd Defendant/Respondents are the Legal Representatives of the estate of the Late Sonoiya Arap Serser
 - b. Whether the 2nd Defendant/Respondents have locus standi to defend this matter
 - c. Whether the Application is misconceived, frivolous and an abuse of the court process.
7. Counsel relied on Sections 2 and 3 of the *Law of Succession Act* on the definition of a legal representative and submitted that the 2nd Respondents are not personal or legal representatives of the Estate of the late Sonoiya Arap Serser.
8. Counsel further stated that it is the 2nd Respondents' submission that their father died on 27th March 2023 and to date they have not taken out any letters for a grant of representation either limited or full grant and further that the parcel of land is registered in the deceased's name.
9. Counsel relied on the case of *In re Estate of Barasa Kanenje Many (Deceased)* (Succession Cause 263 of 2002) [2020] KEHC 1 (KLR) (30 July 2020) (Ruling) where the court held that the mere fact that a surviving spouse or child of the deceased did not make him or her a personal representative of the deceased.



10. Counsel further relied on Order 24 Rule 5 of the Civil Procedure Rules and Section 2(11) of the Civil Procedure Code on the definition of legal Representative.
11. On the issue of whether the respondent has locus standi, counsel relied on the cases of Alfred Njau Vs City Council of Nairobi [1983] KLR 625 and Julian Adoyo Ongonga Vs Francis Kiberenge Abano, Migori Civil Appeal No. 119 of 2015 and submitted that the 2nd Respondents lack locus standi to defend this matter. Counsel therefore urged the court to uphold the preliminary objection and strike out the suit with costs.
12. The Plaintiff neither filed a response nor submissions to the preliminary objection as directed by the court.

Analysis and Determination

13. The issue for determination is whether the Defendants' Preliminary Objections on the issue of locus standi have merit.
14. It is not disputed that the suit parcels of land are registered in the names of deceased persons. There is further no evidence that the Defendant Respondents have taken out letters of administration for the estates of the two deceased persons whose estates have been sued.
15. Order 4 Rule 4 of the Civil Procedure Rules provides as follows:

Where the Plaintiff sues in a representative capacity, the Plaintiff shall state the capacity in which he sues and where the Defendant is sued in a representative capacity, the Plaintiff shall state the capacity in which he is sued, and in both cases it shall be stated how the capacity arises.

16. The 1st Defendant submitted that their father died in 2007, and to date, no representation has been filed over his estate in the form of a limited or a full grant. Similarly, the 2nd Defendant also stated that their father died on 27th March 2023, and they have not filed any Succession Cause either for a Limited grant or a full grant. The Plaintiff has not controverted this assertion by the Defendants.
17. Locus standi is a cardinal principle that determines whether a party can sue or be sued in a suit before the court or other proceedings. In the case of Alfred Njau Vs City Council of Nairobi (1983) KLR 625, (Supra) the Court of Appeal held inter alia, that:

“... “Locus standi” literally means a place of standing and refers to the right to appear or be heard in court or other proceedings and to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceedings.”

18. Similarly, in the case Julian Adoyo Ongunga & Another –vs- Francis Kiberenge Bendera (suing as Administrator of the Estate of Fanuel Evans Amudavi, Deceased) (2016) eKLR, the court stated:

“Further the issue of locus standi is so cardinal in a Civil matter since it runs through the heart of the case. Simply put, a party without locus standi lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly so the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a Court acting without jurisdiction, it all amounts to null and void proceedings.”



19. A party without locus standi lacks the capacity to sue or be sued or even to sustain such a suit if filed. The Defendants lack the capacity to be sued as they are not the Legal Representatives of the estates of the deceased persons who are the registered owners of the suit parcels of land.
20. Further in the case of *Hawo Shanko v Mohamed UTA Shanko* [2018] eKLR the Court observed as follows:

“The issue as to whether a party can file a suit involving a deceased’s estate before obtaining a limited grant has been the subject of several Court cases. The general consensus is that a party lacks the locus standi to file a suit before obtaining a grant limited for that purpose. This legal position is quite reasonable in that if the Plaintiff or applicant has not been formally authorized by the Court by way of a grant limited for that purpose, then it will be difficult to control the flow of Court cases by those entitled to benefit from the estate. If each beneficiary is allowed to file a suit touching on a deceased’s estate without first obtaining a limited grant, then several suits will be filed by the beneficiaries. It is the Limited grant which gives the plaintiff the locus to stand before the Court and argue the case. It does not matter whether the suit involves a claim of intermeddling of the estate or the preservation of the same.”

21. I need not say more about the issue of locus standi, as it is clear from the averments and submissions, which have not been controverted that the Defendants lack locus standi to defend this suit as they are not the legal representatives of the estate of the deceased as provided for in law.
22. I have considered the preliminary objections, the submissions by counsel, and find that the same has merit hence upheld. Consequently, this suit is hereby struck out with costs to the Defendants.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 17TH DAY OF SEPTEMBER 2025.

M. A. ODENY

JUDGE

