



REPUBLIC OF KENYA



KENYA LAW
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**Musindalo v Nyangweso (Environment and Land Case 32 of 2019)
[2025] KEELC 4623 (KLR) (23 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4623 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE 32 OF 2019**

**DO OHUNGO, J
JUNE 23, 2025**

BETWEEN

JOSEPHINE MAKOKHA MUSINDALO PLAINTIFF

AND

KASSIM JOGINDA NYANGWESO DEFENDANT

JUDGMENT

1. Proceedings in this matter commenced on 15th January 2014 before the High Court at Kakamega when the Plaintiff filed Originating Summons (OS) dated 26th August 2013. The matter was later transferred to this Court, hence its current case number. The Plaintiff averred in the OS that she had become entitled to the parcel of land known as S/Wanga/Ekero/2X7 (the suit property) by adverse possession.
2. The Plaintiff therefore sought determination of the following:
 1. THAT the Plaintiff/Applicant be declared the owner of whole parcel of land better known as L.R. No. S/Wanga/Ekero/2X7 measuring approximately 1.1HA and/or thereabouts to which she is entitled by virtue of adverse possession and that Defendant/Respondent be ordered to transfer title of the suit land to the Plaintiff/Applicant.
 2. THAT the court do declare that the Defendant/Respondent is holding title to the land parcel better known as L.R. No. S/Wanga/Ekero/2X7 in trust for the Plaintiff/Applicant.
 3. THAT the court do authorize the Deputy Registrar to sign all relevant documents to facilitate transfer of the suit land to the Plaintiff/Applicant.
 4. THAT the Honourable court make further orders or grant any other relief expedient to grant.



5. THAT the Defendant/Respondent be ordered to pay the costs of this summons to the Plaintiff/Applicant.
3. Hearing of the OS proceeded by way of oral evidence. The Plaintiff testified as PW1 and adopted her witness statement and supporting affidavit, both of which she filed on 15th January 2014. She stated that as of the date of her testimony, the registered proprietor of the suit property was Asman N. Sakwa who was deceased by then. She produced copies of the documents listed as item numbers (a) to (c) in her list of documents dated 26th August 2013 and added that she was in possession of the suit property together with her family as of the date of her testimony having entered it in 1964 upon marriage.
4. Under cross-examination and re-examination, PW1 stated that the first registered proprietor of the suit property was Akelo Penda who was her father-in-law and that she was not in occupation of the suit property as of the date of her testimony having vacated it. She also stated that she did not grow any sugarcane in the suit property.
5. Francis Chuma Munyanya (PW2) adopted his witness statement which he filed on 30th March 2016 and added that the Plaintiff was not residing on the suit property but on an adjacent parcel where her husband was buried. The Plaintiff's case was then closed.
6. The Defendant testified as the sole witness in respect of his case. He adopted his replying affidavit and written statement, both dated 25th June 2015. He stated that Asman Sakwa (deceased) was his brother and that the initial registered proprietor of the suit property was Akello Openda who was his maternal grandfather. He further stated that the Plaintiff's husband was only a neighbour to Akello Openda but was not related to Akello Openda and that upon the death of Asman Sakwa, he (the Defendant) commenced succession proceedings in Kakamega HC Succession Cause No. 634 of 2005. He added that he also took possession of the suit property and started using it to support his brother's children who were then minors under his custody.
7. The Defendant produced a copy of certificate of confirmation of grant issued on 15th March 2023 in Kakamega HC Succession Cause No. 634 of 2005 in which the suit property was distributed in equal shares of 0.366 hectares each to him, Abdhaifah Maloba Sakwa and Idris Makokha Sakwa and added that he subdivided the suit property in line with the grant and that the suit property is no longer in existence. The defence case was then closed.
8. Directions were given that parties file and exchange written submissions. The Plaintiff filed submissions dated 26th February 2025 while the Defendant filed submissions dated 10th December 2024.
9. I have considered the pleadings, the evidence and the submissions. The issues that arise for determination are whether the plaintiff and the Defendant have locus standi, whether adverse possession has been established and whether the reliefs sought should issue.
10. The Defendant has argued that the Plaintiff's case is based on the estate of Julius Musimdalo Muramba (deceased) and that she lacks locus standi since she does not hold letters of administration in respect of the estate of Julius Musimdalo Muramba (deceased). The Defendant went on to argue that he is not the administrator of the estate of Asman N Sakwa (deceased) who is the registered proprietor of the suit property and that he lacks locus standi to be sued on behalf of the said estate.
11. 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).



12. The Court of Appeal stated in *Rugiri v Kinuthia & 3 others* [2024] KECA 1601 (KLR) thus:

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.

13. A perusal of the Plaintiff's case does not anywhere show any pleading by her that she brought the case on behalf of the estate of Julius Musindalo Muramba (deceased). Instead, it is apparent that she brought the case on her own behalf. I find that she has locus standi. On the other hand, the Plaintiff has brought the suit concerning the suit property, a parcel of land whose registered proprietor she stated in her own testimony is Asman N. Sakwa (deceased). Indeed, the copy of the register in respect of the suit property which she produced confirms that the registered proprietor is Asman N. Sakwa. Although the Defendant testified that the suit property has since been subdivided following confirmation of grant, no evidence by way of copy of register or certificate of search was produced to support that contention. Thus, the case as pleaded and prosecuted by the Plaintiff is that the registered proprietor of the suit property is deceased.

14. Despite the Defendant's submission that that he is not the legal representative of the estate of Asman N. Sakwa (deceased), I note that he testified that he filed succession proceedings in respect of the said estate in in Kakamega HC Succession Cause No. 634 of 2005, and that the grant was confirmed. Nevertheless, filing succession proceedings is not the same thing as being granted Letters of Administration and thereby becoming a legal representative.

15. In *Kihanya & 4 others v Gichuri & another* [2024] KECA 852 (KLR), the Court of Appeal emphasised the central role of locus standi and the consequences of its absence thus:

21. Locus standi is so cardinal in civil proceedings. This is because without locus standi, 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 LexisNexis 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.

22. The general rule is that it is for the party instituting proceedings to allege and prove his/her locus standi, and the onus of establishing it, rests on that party. It must accordingly appear ex facie from the pleading filed that the parties have the necessary legal standing. Locus standi in iudicio 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 matter. As stated earlier the property in question belongs to a deceased person. Therefore, it was a prerequisite for the



respondents to obtain a grant of letters of administration before instituting the said suit which involved properties registered in the deceased's name.

16. The burden of proving that the Defendant was properly sued rested throughout on the Plaintiff. The Plaintiff failed to discharge the said burden. In the circumstances, I find and hold that the Defendant has no locus standi to be sued on behalf of the estate of Asman N. Sakwa (deceased) who is the registered proprietor of the suit property.
17. It follows therefore that proceedings against the Defendant are null and void for want of locus standi. The Court therefore lacks jurisdiction to hear and determine the Plaintiff's case against the Defendant. In the result, I dismiss the Plaintiff's case with costs to the Defendant.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 23RD DAY OF JUNE 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

No appearance by the Plaintiff

No appearance by the Defendant

Court Assistant: B Kerubo

