

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 172 OF 2013

CHRYSANTUS WAFULA PLAINTIFF

VERSUS

SILAS MARUTI

SAMMY K. NGEYWO DEFENDANTS

R U L I N G

1. Before the hearing of this suit could commence, a Preliminary Objection was taken don behalf of the defendants on the ground that the plaintiff has no locus standi to bring this suit and that it should therefore be struck out.
2. The plaintiff had filed this suit on behalf of his late brother Clement Simiyu Manamana (deceased). The plaintiff contends in the plaint that the defendants entered the deceased's land and that his efforts to have them move out has failed.
3. The defendants contend that since the plaintiff has not taken out letters of administration in respect of the deceased, he cannot purport to sue the defendants.
4. The plaintiff responded to the submissions by counsel for the defendants that he had been selected to take care of the deceased's family and that therefore he has capacity to bring the suit on behalf of the deceased.
5. The only issue for determination is whether the plaintiff has capacity to bring this suit against the defendants. The plaintiff has admitted in the plaint that plot No. 429 at Kapkoi Settlement Scheme belongs to the deceased. The plaintiff has not taken out letters of administration in respect of the estate of the deceased. He therefore has no capacity to sue the defendants. The plaintiff's suit cannot be maintained. The preliminary objection is allowed with the result that the suit herein is struck out with costs to the defendants.

It is so ordered.

Dated, signed and delivered at Kitale on this 6th day of May, 2014.

E. OBAGA,

JUDGE

In the presence of Mr Nyakundi for Mr Nyamu for defendant and plaintiff in person. Court Clerk –
Kassachoon.

E. OBAGA,

JUDGE

6/5/2014