



Republic v Minister for Land and Settlement & another; Supeyo & another (Ex parte Applicant); Mpaayei & 2 others (Interested Parties) (Environment and Land Judicial Review Case 31 of 2020) [2025] KEELC 6459 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6459 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 31 OF 2020
MD MWANGI, J
SEPTEMBER 25, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

MINISTER FOR LAND AND SETTLEMENT 1ST RESPONDENT

THE DISTRICT COMMISSIONER, KAJIADO DISTRICT ... 2ND RESPONDENT

AND

RAHAB KAMASI SUPEYO & MOSES N SUPEYO EX PARTE APPLICANT

AND

ERNEST LETOYA MPAAYEI INTERESTED PARTY

PERIS MPAAYEI INTERESTED PARTY

MOINKEI MPAAYEI INTERESTED PARTY

JUDGMENT

Background

1. This Judgment is in respect of the Ex parte Applicants Notice of Motion dated 25th June 2003 brought pursuant to Sections 8 and 9 of the Law Reform Act and Order L111 Rule 3(1) of the Civil Procedure Rules. The Ex parte Applicants pray for an Order of Certiorari to quash the order made by the 2nd Respondent, the District Commissioner, Kajiado District on 16th May 2003 in the Appeal to the Minister for Lands and Settlement, Appeal No. 307 of 1980, Ita Ole Supeyo v Ernest Ole Mpaayei. They also pray for the costs of the Application.



2. The Application is supported by the Amended Statement dated 29th September 2005 and Affidavits of Moses Supeyo, Benjamin Maora and Rahah Kamasi Supeyo sworn on 21st January 2004, 15th December 2005, 29th September 2009 and 15th July 2010 respectively.
3. The Ex Parte Applicants assert that they are the widow and children of the late Ita Ole Supeyo who passed on on 14th May 1980. It is affirmed that on or about the year 1968, the deceased was allocated Kajiado/Olchoro-Onyore/39 adjoining Kajiado/Olchoro-Onyore/38 allocated to Ernest Letoya Mpaayei by the Keekanyoike Development Committee. The deceased's objection that there was an attempted alteration of boundaries during the demarcation was dismissed by the Kajiado District Land Adjudication officer. The matter was referred to the Kajiado Land Adjudication Committee to hear and determine the boundary dispute, that rendered a decision on 23rd February 1979 in favor of the 1st Interested Party.
4. Aggrieved by the decision, the deceased lodged an appeal to the Minister being Land Appeal No. 307 of 1980 before the Minister of Land and Settlement pursuant to Section 29 of the [Land Adjudication Act](#). Consequently, a restriction was placed on the suit property on 9th July 1980 during the pendency of the appeal pursuant to Section 28 of the [Land Adjudication Act](#). It is further avowed that the appeal was referred to the Kajiado District Commissioner by the Minister through a letter dated 21st January 1981.
5. The Ex Parte Applicants affirm that they took over the conduct of the appeal to the Minister following the demise of Ita Ole Supeyo.
6. It is alleged that on 9th January 2002, the restriction placed on the suit property was lifted by the Kajiado District Land Registrar and a fresh title issued in favor of the 1st Interested Party. The Ex Parte Applicants further affirm that a ruling was issued in their favor on 2nd May 2002 when they lodged an appeal before the Kajiado Land Dispute Tribunal TC.178/2/2002. According to the Applicants, the basis of the appeal was that it related to a boundary dispute and the lethargy with which the District Commissioner handled the matter.
7. It is further averred that even though the Kajiado District Commissioner acknowledged the appeal was being handled by the Tribunal and his intervention was not required, he retracted his position claiming that the determination by the Tribunal was a legal oversight. The Ex Parte Applicants maintain that the proceedings before the Kajiado District Commissioner were abandoned by themselves and the 1st Interested Party when they participated in the Tribunal proceedings. The Ex Parte Applicants accuse the Kajiado District Commissioner of purporting to adjudicate the appeal yet the Kajiado Land Dispute Tribunal decision had been challenged before the Provincial Land Dispute Appeal Tribunal.
8. According to the Applicants, the Kajiado District Commissioner act of re-opening the appeal and adjudicating it was arbitrary, beyond his jurisdiction and in bad faith. Further, his decision rendered on 16th April 2003 upholding the findings of the Kajiado Land Adjudication Committee were predetermined. This is because the decision exceeded his powers and jurisdiction, breached rules of natural justice and violated the law.
9. Further it was alleged that the action was marred with bad faith, improper motive, bias, unfairness and was in violation of the ex parte Applicants' legitimate expectation to a fair hearing. This is because any party aggrieved by the Kajiado Land Dispute Tribunal decision ought to have lodged an appeal before the Provincial Land Disputes Appeal Tribunal.



Interested Parties' case

10. The Application was contested by the Interested Parties through the Replying Affidavits of Ernest Letoya Mpaayei sworn on 24th November 2003 and Peris Mashipei Mpaayei sworn on 22nd October 2009 and 3rd August 2010 respectively.
11. Peris Mashipei Mpaayei affirms that she is the wife of Ernest Letoya Mpaayei, who died on 16th February 2004. On 16th September 2005, she was appointed the Legal Representative of deceased's estate in Nairobi High Court Succession Cause No. 1836 of 2005.
12. It is avowed that Ita Ole Supeyo and Ernest Letoya Mpaayei are the registered owners of parcels of land known as Kajiado/Olchoro-Onyore/39 and Kajiado/Olchoro-Onyore/38 respectively, which parcels were allocated to them by the Keekanyoike Development committee in 1973. According to the Interested Parties, Ita Ole Supeyo's Objection to Land Adjudication and Boundary registration was dismissed on 23rd February 1976 by the Kajiado Land Adjudication Officer because it was unmerited. Further, his appeal to the Minister for Land and Settlement was likewise dismissed.
13. According to the Interested Parties, the proceedings before the Kajiado Land Dispute are res judicata. It is asserted the Tribunal proceedings contravened Section 29 of the *Land Adjudication Act* because the dispute was pending hearing and determination before the Minister. Given that the Tribunal did not have jurisdiction to hear and determine the matter, its decision is null and void ab initio. It is contended that the Applicants' allegation that the Kajiado District Commissioner was biased during the conduct of the proceedings are irregular and scandalous. This is because they subjected themselves and fully participated in the proceedings. In addition, the proceedings were conducted in a fair, transparent and judicial manner.
14. According to the Interested Parties, the Applicants do not have the locus standi and lack the legal capacity to institute the proceedings before this court. Further, no documentation was produced to prove that they were authorized to take over the conduct of this matter by the by estate of Ita Ole Supeyo, deceased.
15. It is alleged that the application by the Ex Parte Applicants is in bad faith, malicious, misconceived, vexatious, an afterthought, scandalous and an abuse of court processes because it is promoted by their failure to obtain a favorable decision at the Kajiado Land Adjudication Committee and before the Minister for Lands and Settlement. Further, the Interested Parties assert that the Applicants have not demonstrated that the rules of natural justice were not observed and that they seek to use the court proceedings to achieve an ill-intended desire of acquisition of extra land from the Interested Parties.

Respondents' case

16. The Attorney General acting on behalf of the 1st and 2nd Respondents opposed the Application through Grounds of Opposition and the replying affidavits of Kenneth Makelo Lusaka and Hon. Amos Muhinga Kimunya sworn on 20th November 2003 and 16th December 2003 respectively.
17. Kenneth Makelo Lusaka, formerly the Kajiado District Commissioner, affirms that he was the Chairperson of the Kajiado District Land Appeal Board which determined the Land Appeal Case No. 307 of 1990 on 16th April 2003. He asserts that the matter was referred to his office on 21st January 1981 and 19th October 1994 for hearing and determination by the Minister for Lands and Settlement.
18. According to the deponent, the Kajiado Land Dispute Tribunal did not have the jurisdiction to determine the matter in favor of the Applicant pursuant to the *Land Adjudication Act*. Therefore, the



Tribunal's decision was ultra vires, null and void because it overrode the District Land Appeal Board decision to which the Minister had delegated his powers under Legal Notice No.73 of 1978. While denying the allegation levelled against him and seeking for dismissal of the application with costs, he deposes that no party complained of hostility during the hearing of the matter.

19. Hon. Amos Muhinga Kimunya formerly, Minister for Lands and Settlement avers that on 21st January 1981, he referred the Appeal to the Kajiado District Commissioner for hearing and determination pursuant to Legal Notice No. 73 of 1978. The Appeal related to an objection lodged in his office by the Applicants against Land Adjudication Register in accordance with Section 29 of [Land Adjudication Act](#).
20. According to the deponent, determination of the matter by the Kajiado Land Dispute Tribunal in favor of the Applicant is null, void and ultra vires because the Tribunal did not have jurisdiction to hear the matter under [Land Adjudication Act](#). He maintains that the Kajiado District Commissioner's decision should not be set aside because it is complied with [Land Adjudication Act](#) CAP 284 and Legal Notice No. 73 of 1978.
21. The Grounds of Opposition dated 28th July 2003 contend that the application is misconceived, incompetent, an abuse of court process, conceals material facts, defeats and delays the execution statutory duties of the Respondents and that the orders sought cannot be granted because they are unjustified.

Court's directions

22. The Application was canvassed by way of written submissions. All the parties duly complied with the directive and filed their respective submissions which the court has considered in making its determination. The parties too had occasion to highlight the submissions orally before the court. The proceedings during the oral highlighting of the submissions form part of the record of the court and which I have also considered in the writing of this judgement.

Analysis and Determination

23. The foremost issue for determination in this matter is whether the Ex parte Applicants have the requisite locus standi to institute and maintain this judicial review proceedings on behalf of the estate of the late Ita Ole Supeyo. This issue is of fundamental importance because locus standi goes to the very root of jurisdiction. Where it is absent, any further consideration of the merits becomes superfluous.
24. Mr. Ochieng, Advocate for the Interested Parties argued that the Law of Succession demands that a party instituting legal proceedings for an estate of a deceased person to have letters of administration. He further submitted that where a party fails to obtain the letters of administration, the proceedings are null and void because it amounts to intermeddling. According to the learned counsel, the Ex Parte Applicants did not have any letters of administration authorizing them to prosecute the suit on behalf of the estate of Ita Ole Supeyo.
25. In support of these arguments, the Interested Parties relied on various decisions including, Trouistik Union International & Another v Jane Mbeyu & Another (2008) IKLR (G&F) 730, Geeta Bharant Shah & 4 Others-vs-Omar Said Mwatayari & Another (2009) eKLR and Julian Adoyo Ongunga & Another-vs- Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi(Deceased)eKLR where the courts held that parties cannot institute and maintain a suit unless they have locus standi.



26. Mr. Muindi, Counsel for the Applicants on the other hand maintained that the Ex Parte Applicants had locus standi since the suit property has never been registered in the name of the late Ita Supeyo's name. It is further submitted that the Ex Parte Applicants have the requisite locus standi to sustain the judicial review proceedings because they have sufficient interest in the matter. Given that they have demonstrated that they are the aggrieved parties, with or without letters of administration, the remedy lies ex debito justitiae (as a matter of justice). Counsel further cited Articles 22 and 258 of [the Constitution](#) to justify that the Ex Parte Applicants are properly before this court.
27. Locus standi concerns the legal capacity of a party to institute or maintain a suit. The Court of Appeal in *Alfred Njau, Aluchio Liboi, Joseph Muya Mukabi, Peter Inyangala, Akhonya Analo and Jacob Gichigo v City Council of Nairobi* [1983] KECA 56 (KLR), defined the concept as follows:
- “The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt's Dictionary of English Law, 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 proceeding.”
28. In respect of the estate of a deceased person, locus standi is conferred exclusively upon personal representatives duly clothed with a grant of letters of administration. Section 82(a) of the [Law of Succession Act](#), Cap 160 provides that:
- “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 arise out of his death for his estate.”
29. The Court of Appeal in *Trouistik Union International & Another v Jane Mbeyu & Another* (2008) IKLR (G&F) 730, affirmed this position, stating that:
- “To determine who may agitate by suit any cause of action vested in the deceased at the time of his death, one must turn to section 82(a) of the [Law of Succession Act](#). That section confers that power on personal representatives and on them alone.”
30. Similarly, in *Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama* [2014] KECA 250 (KLR), the Court of Appeal too held that:
- “It is common ground that at the time of institution of the said summons, the respondent was not in possession of a grant of letters of administration. As far as he was concerned, he moved to court by virtue of being a beneficiary for purposes of preserving the deceased's estate. That may well be the case, but in our view the position in law as regards locus standi in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession.... It therefore matters not that the respondent had a cause of action. Indeed, the issue was not whether he had a cause of action or not but that he lacked the requisite locus standi to seek relief from the Court without first obtaining letters of administration.”



31. The same principle was reiterated by MRIMA J in *Julian Adoyo Ongunga & Another v Francis Kiberenge Bondeva* (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) [2016] KEHC 4186 (KLR), where he categorically stated that:

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

32. It is not in dispute that the late Ita Ole Supeyo was the original Appellant before the Minister for Lands and Settlement. It is equally not in dispute that he passed away on 14th May 1980 before his Appeal was heard and determined. The present application has been instituted by his alleged widow and children. While their relationship to the deceased is acknowledged, they have not placed before this Court any evidence of a grant of letters of administration empowering them to act as legal representatives of the deceased's estate.

33. In contrast, the record confirms that upon the demise of Ernest Letoya Mpaayei, letters of administration were duly issued to his legal representative on 16th September 2005, thereby clothing that party with the requisite legal authority to represent the estate. The Applicants, however, lack such legal authority.

34. In light of the settled jurisprudence, it matters not that the Applicants may have a genuine grievance or a sufficient interest in the matter. What is decisive is the absence of legal capacity to institute and maintain the proceedings. Without a grant of representation, they cannot maintain proceedings on behalf of the estate of the deceased. The effect is akin to this Court acting without jurisdiction, rendering the proceedings a nullity.

35. On the basis of the foregoing, I find that the Ex parte Applicants lack the requisite locus standi to institute and sustain these proceedings. The want of standing is fatal and renders the application incompetent. Consequently, the Notice of Motion dated 25th June 2003 is hereby struck out.

36. Considering the overall circumstances of this case, the court directs that each party shall bear its own costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25TH DAY OF SEPTEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ochieng for the Interested Parties

Mr. Muiruri h/b for Mr. Munyalo for the Ex Parte Applicants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

