



**Wachira v Macharia & 4 others (Environment and Land Case E017 of 2025)
[2025] KEELC 6235 (KLR) (Environment and Land) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6235 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE E017 OF 2025
MC OUNDO, J
SEPTEMBER 25, 2025**

BETWEEN

ERASTUS NJOROGE WACHIRA PLAINTIFF

AND

RHODA NYAMBURA MACHARIA 1ST DEFENDANT

FRANCIS MUNGAI MUIRURI 2ND DEFENDANT

DAVID MUNGAI MWAURA 3RD DEFENDANT

THE REGISTRAR OF TITLES, NAIVASHA 4TH DEFENDANT

THE ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. Vide a Notice of Motion Application dated 12th February, 2025 brought pursuant to the provisions of Order 40 Rule 1 and 4 and Order 51 Rule 1 of the Civil Procedure Rules 2010 and Sections 1A, 1B and 3A of the *Civil Procedure Act* the Plaintiff Seeks for a temporary injunction restraining the Defendants from undertaking any further construction, alienating or disposing in any way the suit property known as Naivasha/Maraigushu Block 18/617 (Naivasha Unity), pending the hearing and determination of the suit. He also seeks for issuance of a permanent mandatory injunction restraining the Defendants from constructing disposing, alienating and interfering with the his quite possession of the suit premises known as Naivasha/Maraigushu Block 18/617 (Naivasha Unity). Lastly, he seeks for cost of the Application.
2. The Application was supported by the grounds therein as well as the Supporting Affidavit of equal date sworn by Erastus Njoroge Wacira, the Plaintiff/Applicant who deponed that he was the father to the late Joseph Kamau Wacira (deceased) who had passed away on 7th July 2007 and who had been



the registered proprietor of Naivasha/Maraigushu Block 18/617 (Naivasha Unity) as per a Title Deed issued on the 4th March 2008 by the Nakuru District Land Registry.

3. That he was the legal representative of his son by virtue of a Limited Grant issued to him for the purpose of prosecuting the suit.
4. That on 22nd February 2024, while in the company of Samson K. Rutto a surveyor and his son Njoroge Wachira, they had visited the suit premises only to find a construction of an illegal and unlawful, almost complete storied building ongoing on a quarter of an acre of the land. That on the other quarter, trenches had been dug in readiness for construction which would also be done illegally and unlawfully.
5. That on 24th February 2024, he proceeded to the District Land Office in Naivasha and made an application to the Registrar for a search which had been rejected by the Registrar for reason that another title had been issued to one Rhoda Nyambura Macharia and therefore, the original title in the name of Joseph Kamau Wacira (Deceased) could not be used as the basis of the official search.
6. That he had lodged a complaint of forcible detainer of land with the DCIO in Naivasha wherein he later learnt that the Registrar of Titles Naivasha District had fraudulently, illegally and unlawfully conspired with the 1st Defendant and thus transferred the suit land to her thus issuing her with a title on 29th October 2015.
7. That the 1st Defendant then fraudulently with the 4th Defendant illegally and illicitly sub-divided the suit premises into two (2) portions on 10th December 2020 and amended the RIM to give rise to titles No. 2280 and 2281 which were issued on the same date, by the 4th Defendant to the 3rd and 2nd Defendants respectively, despite the fact that he was still in possession of the original title. That subsequently, he had made a case warranting the issuance of a temporary injunction Order and a permanent mandatory injunction as prayed herein.
8. In response and in opposition to the Plaintiff/Applicant's Application, the 2nd and 3rd Defendants vide their Replying Affidavit dated 14th April, 2025 sworn by David Mungai Mwaura, the 3rd Defendant, and a Notice of Preliminary objection dated 12th May 2025 deponed that the suit parcel of land being Naivasha/Maraigushu Block 18/617 was initially registered to the 1st Defendant as per a search dated the 21st July, 2020 issued by the 4th Defendant that had indicated the 1st Defendant as the registered proprietor having been registered as such on 29th October, 2015. That subsequently, on 16th October, 2020, they had executed a sale agreement with the 1st Defendant for the purchase of Title Number: Naivasha/Maraigushu Block 18/617 at a consideration of Kshs. 3, 350, 000/=. Thereafter, the land was sub divided into two resulting into Naivasha/Maraigushu Block 18/2280 and 2281 whereupon it was transferred to them and they were registered as proprietors.
9. That pursuant to their registration as the owners of the portions of land, in question, he had commenced constructing his home on Title Number: Naivasha/Maraigushu Block 18/2280 which was now about 90% complete. That until the year 2024, there had never been any adverse claim and/or objection to his development ever since he had commenced the construction in the year 2020 and therefore the present suit was aimed at denying them their right to property which they had innocently and genuinely acquired for a valuable consideration as innocent purchasers for value without notice of any fraud and/or illegalities (if any). That pursuant to their registration as the owners of the portions of land, in question, he had commenced constructing his home on Title Number: Naivasha/Maraigushu Block 18/2280 which was now about 90% complete. That until the year 2024, there had never been any adverse claim and/or objection to his development ever since he had commenced the construction in the year 2020.



10. That the present suit was aimed at denying them their right to property which they had innocently and genuinely acquired for a valuable consideration. That they were innocent purchasers for value without notice of any fraud and/or illegalities (if any).
11. That not only was the suit as well as the application fatally defective, the Plaintiff herein lacked the necessary locus standi to commence and maintain the same and as such, both the suit and application were a non-starter and hence ought to be dismissed with costs.
12. The Hon Attorney General on behalf of the 4th and 5th Respondents and vide its Grounds of Opposition dated the 16th May 2025 also opposed the application on the grounds that the Applicant had not discharged the onus placed on him as was held in the case of Giella vs Cassman Brown & Co. Ltd [1973] EA 353.
13. That a permanent mandatory injunction was a final court order after a full trial and could not be granted in the application at an interim stage herein as prayed by the Applicant and lastly that since the matter centered on an ownership dispute between the Plaintiff and the 1st, 2nd and 3rd Defendants that the 4th and 5th Defendants were to be struck off the proceedings with costs.
14. In rejoinder, vide a Supplementary Supporting Affidavit dated 4th June 2025, the Applicant deposed that the 2nd and 3rd Defendants had withheld material information with an intent to mislead the Honorable Court. That the 1st Defendant had been charged with others, at the Naivasha Law Courts on the 10th March 2025 in Criminal Case No. E282 of 2025 where she faced three counts of conspiracy to commit a felony contrary to Section 393 of the Penal Code, Obtaining Land Registration by false pretense contrary to Section 320 of the Penal Code and Obtaining money by false pretense contrary to Section 313 of the Penal Code which criminal matter was still pending before the Criminal Court in Naivasha. That in a document titled 'Crime and Incident Report, the 2nd and 3rd Defendants had also filed a complaint, to the Police, against the 1st Defendant, for obtaining money by false pretense in the sale transaction in the aforesaid
15. That subsequently, the 2nd and 3rd Defendants did not conduct due diligence which would have established that the property belonged to the late Joseph Kamau Wacira and therefore could not claim to be innocent purchasers for value without notice of the suit property. That the 1st Defendant did not have a valid title capable of being transferred to the 2nd and 3rd Defendants.
16. The 1st Defendant did not participate in the proceedings.
17. The Application as well as the Preliminary Objection were disposed of by way of written submissions wherein the Plaintiff/Applicant filed his submissions dated 9th June 2025 based on his issues for determination as follows:
 - i. Whether the 1st Defendant had a good title capable of being conveyed to the 2nd and 3rd Defendants.
 - ii. Whether the 2nd and 3rd Defendants acquired any legal interest in the suit property recognized by the law.
 - iii. Whether the Plaintiff is entitled to the injunctive reliefs sought.
18. I have perused through the Plaintiff's submissions on issues numbers (i) and (ii) and find that the same are substantive submissions that have gone into the merit of the case and which cannot be determined at this interlocutory stage. I find that issue number (iii) is the one that is relevant in the instant application.



19. On the third issue for determination as to whether the Plaintiff was entitled to the injunctive reliefs sought, he placed reliance in the decided case of *Giella vs Cassman Brown (1973) EA 358* to submit that it was trite law that for the court to grant an injunction, the Applicant must meet the condition enunciated in the above case.
20. On prima facie case, he submitted that the Plaintiff had established a prima facie case with overwhelming likelihood of success wherein pursuant to the deceased having had purchased the suit property and issued with the certificate of title in the year 2008, 12 years later, the 1st Defendant had purportedly and fraudulently acquired the title to the same suit property.
21. He explained that prior to commencing the instant suit, he Plaintiff had obtained a Limited Grant pursuant to Section 67 (1) and Rule 36 of the *Law of Succession Act*. He placed reliance in the decided case of *Martha Ndiro Odero (suing as the administrator and Personal representative of the estate of Willy Patrick Ochieng Ndiro (Deceased) v Come Cons Africa Limited [2015] KECA 405 (KLR)* to submit that he was clothed with the necessary legal capacity to secure, collect and sue for the assets of his deceased son for purposes of preserving the estate and nothing else.
22. That the 1st Defendant had illegally and fraudulently obtained the certificate of title, subdivided it and unscrupulously sold it to the 2nd and 3rd Defendants who without due diligence as was expected had been duped into the fraudulent transaction a matter that they had reported to the police leading to the apprehension and prosecution of the 1st Defendant. That the Defendants had no claim whatsoever or at all against the property or the deceased herein. That the deceased's claim for the suit property was unassailable. He thus submitted that the Plaintiff had a prima facie case with overwhelming chances of success hence he urged the court to grant the prayers sought.
23. On irreparable injury, he submitted that the Defendants had trespassed into the suit property without any color of legal right which had subjected the estate of the deceased to deprivation of the property thus violating the Plaintiff's constitutional rights to hold and preserve the suit property for the deceased's estate. That the injury that had been occasioned by the blatant action of the 1st to 3rd Defendants could not be sufficiently compensated by an award of damages. Reliance was placed in the decided case of *Banis Africa Ventures Limited v National Land Commission [2021] KEELC 4243 (KLR)* to submit that the continued occupation of the suit property by the 2nd and 3rd Defendants possessed real risk of destroying and permanently altering the purpose and nature of the property.
24. That further, there was real danger that the 2nd and 3rd Defendant may dispose of the property to third parties to defeat the ends of justice thus exposing the deceased's estate to irreparable harm. He thus urged the court to find that even where the injury was capable of financial compensation, an injunction may still be granted.
25. On balance of convenience, he submitted that the same tilted in his favour as his title was legitimate and the 1st, 2nd and 3rd Defendants had no claim whatsoever against the deceased's property. That the law of approbation and probation was to the effect that one could not blow hot and cold at the same time to submit that the 2nd and 3rd Defendants were not only witnesses in the criminal case against the 1st Defendant but had also filed a complaint against the 1st Defendant for receiving money from them through false pretense. That subsequently, they could not now be heard to say that they were innocent purchasers for value. He placed reliance on the decisions in the cases of *Evans v Bartlan (1937) 2 ALL ER 652* and *Banque DE Moscou v Kindersly (1950) 2ALL EER 548*. It was his submission that the 2nd and 3rd Defendant had recourse against the 1st Defendant for recovery of their loss.



26. In conclusion, he submitted that he had satisfied all the laid down legal requirement and met all the conditions laid down hence he sought that he be granted all the prayers as had been set out in the Application.
27. The 2nd and 3rd Defendants vide their joint submissions dated 23rd June 2025 in opposition to the Notice of Motion dated 12th February, 2025 and in support of the Preliminary Objection dated 12th May, 2025 submitted that the Plaintiff had brought the instant suit as a next of kin for his late son Joseph Kamau Wachira whereas it was required of him by the law to institute the same as a legal administrator and on behalf of the estate of his deceased son. They thus submitted that the instant suit suffers from non-conformity with both procedural and substantive law and was formally defective.
28. That in law, there was no known capacity as “the next of kin” in respect of a deceased person. That the present suit had been instituted on the basis of a Limited Grant ad Colligenda Bona, pursuant to the provisions of Section 67(1) of the Law of Succession Act, as read together with Rule 36 of the Probate and Administration Rules, which Limited Grant had been issued for collecting, getting in and receiving the estate and therefore, the same did not empower the Plaintiff to institute the present suit. The Plaintiff thus lacked the necessary locus standi to institute and maintain the instant suit. That in any case, there had been no identification documents/letter from the chief to confirm that the Plaintiff was the father of Joseph Kamau Wacira and a possible beneficiary of his estate.
29. They placed reliance on the decisions in the cases of Mukhisa Biscuit Manufacturing Co. Ltd –vs- West End Distributors Ltd (1969) EA 696 and Musakali -v- Speaker County of Bungoma & 4 others (2015) eKLR to submit that an objection on locus standi constituted a point of law which could dispose of the instant suit if successful.
30. Reliance was also placed on the decisions in the cases of Morjaria v Abdalla [1984] eKLR, Nathaniel O. Khisa v Mary Khisa Nyanyi & 3 Others [2013] eKLR, Elijah Nderitu Gachaga -v- Francis Gakuu Gachaga & 2 Others [2019] eKLR and Julian Adoyo Ongunga -v- Francis Kiberenge Bondeva [2016] eKLR to submit that a Limited Grant ad colligenda Bona herein exhibited did not empower the Plaintiff to institute the instant suit.
31. That having submitted strongly on the Preliminary Objection that the Plaintiff lacked capacity to institute the instant suit, the entire suit was defective, and as such the prayers sought in the application herein cannot be granted. They thus urged the court to strike out and/or dismiss the suit herein with costs.
32. That whereas the Plaintiff had cited the case of Martha Ndiro Odero –Vs- Come Cons Africa Limited (2015) eKLR in support of their argument that the Plaintiff was justified to use the Grant ad Colligenda Bona to institute this suit, the said authority was distinguishable because in the former case the ad colligenda bona had specifically included institution of a suit unlike in the present case where the Grant did not list the institution of suit.
33. That in the case of Elijah Nderitu Gachaga (supra), the court had also held distinguished the case of Martha Ndiro (supra) noting that the Court of Appeal, had upheld that a party had the requisite locus standi to institute a suit in a matter where the grant of letters of administration ad colligenda bona was for ‘the collection of the assets of the estate of the deceased including the filing of suit to claim the deceased’s properties.
34. The court had found in the case before her that the wording of the Grant in issue did not include filing of suit which was similar in the present case. That the said grant, in addition to being inappropriate, had not been tailored to include institution and maintenance of a suit and no evidence had been adduced that it was ever rectified so as to give locus to the Plaintiff.



35. The 2nd and 3rd Respondents thus submitted that their Notice of Preliminary Objection had merit and should be upheld with the result that the Plaintiff's suit be struck out and/or dismissed with costs.

Determination.

36. The Plaintiff in this matter filed a Notice of Motion, under certificate of urgency dated 12th February, 2025 seeking both temporary and permanent injunction orders against the Respondents restraining them from dealing with land parcel No. Naivasha/Maraigushu Block 18/617 (Naivasha unity) originally registered in his deceased's son's name, Joseph Kamau Wacira, pending the hearing and determination of the suit.
37. That he had filed suit as the legal representative of his deceased son who passed away in 2007, by virtue of a Limited Grant issued to him for the purpose of prosecuting the matter.
38. That the 1st Respondent in collaboration with the 4th Defendant/Respondent, illegally and fraudulently subdivided the land into two, transferred and registered the resulting parcels of land being Naivasha/Maraigushu Block 2280 and 2281 to the 2nd and 3rd Respondents who then proceeded to illegally construct thereon this despite him still being in possession of the original title deed.
39. The 1st Respondent did not participate in the proceedings wherein the 2nd and 3rd Respondents herein filed their Replying affidavit and a Preliminary objection to the Application and suit contending that they are innocent purchasers for value without notice of any alleged fraud having purchased the land from the 1st Respondent on 16th October 2020, for Kshs. 3,350,000/= after a search confirmed she was the owner for which the 3rd Respondent had since started construction on his portion, which is now approximately 90% complete where there had been no objections raised since it began in 2020 until 2024.
40. That secondly the Plaintiff/Applicant lacked the legal standing (locus standi) to file the suit because in law, there was no known capacity as "the next of kin" in respect of a deceased person. That the present suit had been instituted on the basis of a Limited Grant ad Colligenda Bona, issued pursuant to the provisions of Section 67(1) of the Law of Succession Act, as read together with Rule 36 of the Probate and Administration Rules, which Limited Grant had been issued for collecting, getting in and receiving the estate and therefore, the same did not empower the Plaintiff to institute the present suit.
41. The Attorney General, representing the 4th and 5th Respondents also opposed the Applicant's application for reasons that he had not met the legal requirements for obtaining an injunction, as established in the case of *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 353. That a permanent mandatory injunction was a final order that could only be issued after a full trial, not at an interim stage. Lastly that the core of the dispute being a private ownership matter between the Applicant and the 1st, 2nd and 3rd Respondents, that the 4th and 5th Respondents be removed from the proceedings with costs.
42. I have therefore interrogated the application, the opposition thereto, the submissions, the authorities cited and the applicable law. What stands out for my determination therefore is as follows;
- i. Whether the Plaintiff/Applicant has the Locus standi to file suit on behalf of his deceased son; if so
 - ii. Whether the Plaintiff/Applicant has made a prima facie case to deserve the orders so sought.
43. On the first issue for determination, it is trite that where a Preliminary objection has been raised that seeks to attack the jurisdiction of the Court thus determine a matter at its preliminary stage, the same ought to be determined in the first instance, I have given due consideration to the rival arguments and the authority cited, applying the principles in *Mukisa Biscuit Manufacturing Co. Ltd. vs West End*



- Distributors Ltd. (1969) EA 696 to wit that an objection must consist of a point of law which if argued as a preliminary objection is capable of disposing of the suit, the 2nd and 3rd Respondents herein have argued that the Applicant cannot bring a suit against them because he has no locus standi because the Limited Grant ad Colligenda Bona, issued to him did not empower him to institute the present suit.
44. Locus standi is a primary point of law almost similar to that of jurisdiction and is therefore within the first principle in the Mukisa Biscuit case. It is a point of law capable of disposing the application.
45. In *The Owners of the Motor Vessel "Lilian S" –vs- Caltex (Kenya) Ltd* [1989] KLR 1, the Court stated as follows:-
- “...Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law draws tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
46. Indeed, the Court of Appeal in *Rajesh Pranjivan Chudasama vs. Sailesh Pranjivan Chudasama* [2014] eKLR observed as follows;
- “In our view issues of locus standi and jurisdiction are critical preliminary issues which ought to have been settled before dwelling on other substantive issues.”
47. I have considered the Title deed herein annexed as the Applicant’s documents and note that the suit land herein No. Naivasha/Maraigushu Block 18/617 (Naivasha unity) was registered to Joseph Kamau Wachira on the 4th March 2008 who as per the death Certificate also annexed herein died on the 7th July 2007. I have also considered the impugned Letters of Administration ad Colligenda Bona issued pursuant to the Applicant pursuant to the provisions of Section 67(1) Rule 36 of the [Law of Succession Act](#) and dated the 13th January 2025.
48. Of interest to note is that the said Letters of Administration ad Colligenda Bona was coached in the following fashion;
- “..... Which by law devolves and vests in the personal representative of the deceased but limited to for the purpose of collecting/ getting in/ receiving the estate and without power of distribution” [emphasis mine]
49. An Administration ad colligenda bona is a Latin phrase that means "to collect the goods", and refers to a limited grant of letters of administration that a court may issue for a deceased person's estate, which Grant is temporary and is intended to be used in urgent or special circumstances where there is a delay in obtaining a full grant of representation (either a Grant of Probate or Letters of Administration). The main purpose of an ad colligenda bona grant is to collect and preserve the assets of the estate and gives the appointed person the authority to take actions to protect the assets, such as paying urgent bills or collecting debts. The authority of the administrator is restricted to the specific purpose outlined by the court until a full grant of representation is issued to the proper personal representative of the estate.
50. In the present case however the ad colligenda bona grant was granted to the Plaintiff/Applicant for the purpose of collecting/ getting in and receiving the estate only. The wording of the ad colligenda bona grant respectively did not include filing of suit and therefore the Plaintiff/Applicant herein lacked the locus standi to bring suit on behalf of his deceased son.



51. In Alfred Njau & Others v City Council of Nairobi [1982-88] 1 KAR 229 the Court of Appeal gave meaning to the term locus-standi by stating:

“.....to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”

52. In the case of Martha Ndiro Odero (suing as the administrator and Personal representative of the estate of Willy Patrick Ochieng Ndiro (Deceased) v Come Cons Africa Limited [2015] KECA 405 (KLR), the Court of Appeal sitting in Nairobi had observed as follows at paragraphs 16 and 19:

“The limited grant in this case was issued pursuant to Rule 36(1)(supra). The object of the limited grant was collection of the assets of the estate of the deceased including the filing of suit to claim the deceased’s properties...

In this case, the limited grant gave capacity to the appellant to institute the suit....”

53. An in the case of Morjaria v Abdalla [1984] eKLR, the Court of Appeal held as follows:

“However, we do not think that the appointment of a person “ad colligenda bona” can possibly include the right to stand in the shoes of the deceased for the purpose of instituting an action, or, indeed, an appeal, especially where there is a specific provision, paragraph 14 of the fifth schedule, designed for this purpose. The Latin verb “colligere” means to collect, bring together or assemble, and we are satisfied that this form of grant is only to be used for the purpose we have indicated, and not for purpose of representation in a suit or in an appeal.”

54. Having considered the authorities herein above cited, which are binding to this court, and having found inter alia that the grant of letters of administration ad colligenda bona herein issued to the Plaintiff/Applicant herein did not include the filing of suit to claim the deceased’s properties, I find that the Plaintiff/Applicant herein lacked the locus standi. The same being a point of law that goes to the root of any suit wherein its absence renders a suit fatally defective, I hereby proceed to strike out both the Application dated the 12th February 2025 and the suit herein. The Preliminary objection herein succeeds with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 25TH DAY OF SEPTEMBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

NAIVASHA ELCLC No. E017/2025 RULING Page 4 of 4

