



**Sakwa (Suing as the Legal Administrator of the Estate of Hosea Sakwa Silunya) v Aswani (Environment and Land Case 176 of 2015)
[2025] KEELC 7324 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7324 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE 176 OF 2015**

**DO OHUNGO, J
OCTOBER 29, 2025**

BETWEEN

**CHARLES TEMBA SAKWA PLAINTIFF
SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF HOSEA
SAKWA SILUNYA**

AND

JOSEPHAT AMBALE ASWANI DEFENDANT

JUDGMENT

1. Proceedings commenced in this matter in the High Court at Kakamega when the Plaintiff filed plaint dated 2nd March 2009. The matter was later transferred to this court, hence its current case number.
2. The initial plaint was replaced by amended plaint amended on 31st March 2009. The Plaintiff averred in the amended plaint that he brought the suit as the administrator of the estate of Hosea Sakwa Silunya (deceased) who was the registered proprietor of the parcel of land known as Kisa/Mwikalikha/1666 (the suit property). That on 15th February 2009, the Defendant trespassed on to the suit property, erected a fence round it and later planted maize on it.
3. The Plaintiff therefore prayed for judgment against the Defendant for a permanent injunction to restrain the Defendant from interfering with the suit property in any way whatsoever. He further sought a mandatory injunction against the Defendant requiring removal of all crops unlawfully planted on the suit property and construction materials assembled thereon. He additionally sought costs of the suit and interest.
4. The Defendant filed Statement of Defence and Counterclaim dated 16th March 2009. He denied the allegations of trespass and averred that he was the administrator of the estate of Kuta Omoro (deceased) who was his grandfather and the initial registered proprietor of the suit property. He also averred that



Hosea Sakwa Silunya (deceased) obtained title to the suit property fraudulently. He therefore prayed that the plaintiff's case be dismissed with costs and that judgment be entered against the Plaintiff for:

- a. A declaration that the plaintiff's father the late Hosea Sakwa Silunya deceased, the registered owner of all that parcel of land known as title number Kisa/Mwikalikha/1666 only held the said title and registration as an administrator in trust of the estate of the defendant's grandfather the late Kuta Omore and that the plaintiff who is now the legal and personal representative of the estate of the late Hosea Sakwa Silunya by virtue of a grant issued to him by this court ought to transfer the suit land herein to the estate of the late Kuta Omore deceased and especially to the defendant herein who only survives him.
 - b. An order that the defendant having stayed on the suit land for over 4 decades cannot be Restrained from living on or using it.
 - c. An order for cancellation of registration and nullification of the title document issued to the plaintiff's comprised in land parcel number Kisa/Mwikalikha/1666 to revert back to the original owner.
5. The Defendant also prayed for costs of the suit.
 6. The Plaintiff testified as PW1 and adopted his witness statement dated 11th May 2018. He also produced copies of the following documents listed in his list of documents dated 11th May 2018: Grant of Letters of Administration issued on 9th April 2008 in Nairobi High Court Succession Cause No. 4 of 2007, Certificate of Official Search in respect of the suit property dated 30th October 2006, Land Certificate in respect of the suit property dated 8th January 1986, affidavit in support for Petition of Letters of Administration Intestate filed in Kakamega High Court Succession Cause No. 135 of 1984, consent to issuance of Grant of letters of Administration filed in Kakamega High Court Succession Cause No. 135 of 1984, Certificate of Death dated 22nd May 1984 in respect of Kuta Omore, Petition for letters of Administration filed in Kakamega High Court Succession Cause No. 135 of 1984, Guarantee by personal sureties, Grant of letters of Administration issued on 11th April 1985 in Kakamega High Court Succession Cause No. 135 of 1984, a document said to be an agreement dated 11th July 1984, Objection to making Grant filed in Kakamega High Court Succession Cause No. 569 of 2006, Certificate of Translation to English of the document said to be an agreement dated 11th July 1984, Transfer by personal Representatives to person entitled to a will or intestacy in respect of the suit property dated 9th December 1985, and register in respect of the suit property certified by the Land Registrar on 15th August 2007.
 7. The Plaintiff stated in his witness statement that he was one of the administrators of the estate of Hosea Sakwa Silunya (deceased). That Hosea Sakwa Silunya (deceased) who was his father purchased the suit property from Loti Okore who was a son of Kuta Omore (deceased). That Loti Okore obtained letters of administration in High Court Succession Cause No. 135 of 1984. That later, Loti Okore and his uncle one William Ndenga Omore gave consent which was adopted as an order of the court that Hosea Sakwa Silunya petitions the court for letters of administration in respect of the estate of Kuta Omore.
 8. The Plaintiff further stated that it was under the above circumstances that Hosea Sakwa Silunya transferred the suit property to himself. That Kuta Omore left no estate to be administered by anyone and that the Defendant had no legal standing to bring any action against the estate of Hosea Sakwa Silunya (deceased). He added that on 15th February 2009, the Defendant trespassed into the suit property, ploughed the whole of it using a tractor and erected a fence around it. That in the circumstances, he was unable to develop the suit property. The Plaintiff went on to testify that his



- father Hosea Sakwa Silunya purchased the suit property from Kuta Omore and that the Defendant is not a grandson of Kuta Omore.
9. Cyrus Asunga (PW2) adopted his witness statement dated 11th May 2018. He stated in the statement that the Plaintiff had employed him as a gardener and that he had worked on the suit property for over 30 years as of the date of his statement. That he knew Hosea Sakwa Silunya and that he introduced him to Loti Omore and Ndenga Omore who were son and brother, respectively, to Kuta Omore who was previously the registered proprietor of the suit property.
 10. PW2 further stated that Loti Omore sold the whole of the suit property to Hosea Sakwa Silunya at a purchase price of KShs 24,000 in 1994 and that he (PW2) was a witness to the agreement. That after selling the suit property, Loti Omore and Ndenga Omore left the village and that Hosea Sakwa Silunya started to use it by planting maize and beans. That sometime in the year 2006, while he was tilling the suit property, the Defendant went there accompanied by around 10 people and demanded that they leave the suit property since it belonged to him. PW2 went on to testify that he was just an eye witness to the sale transaction and did not sign the agreement. That Kuta Omore was deceased by the time the suit property was sold to Hosea Sakwa Silunya.
 11. Tom Nabina Mbaye Brian (PW3) stated that he was Assistant Chief Munjiti Sub-Location as of the date of his testimony and that the suit property is located in his area of jurisdiction. He adopted his witness statement dated 11th May 2018 in which he stated that he had been Assistant Chief of the area since 1998 and that the suit property was owned and exclusively used by Hosea Sakwa Silunya until his death on 1st February 2006. He added that the Defendant trespassed into the suit property on 15th February 2009 and that the Plaintiff reported the matter to him.
 12. PW3 further testified that he knew PW2 and that PW2 had always been the caretaker of the suit property. That the Defendant was not a resident of his Sub-Location but came from a different area which was 8 kilometres away. That the Defendant is not related to the family of Kuta Omore at all.
 13. The Plaintiff's case was thereafter closed.
 14. The Defendant testified as DW1. He adopted his witness statement which he had filed on 24th September 2013 and produced copies of the following documents listed in his list of documents dated 23rd February 2018: Petition for letters of administration in in Kakamega High Court Succession Cause No. 569 of 2006, Kenya Gazette Notice No. 2270 dated 6th February 2007, East Kisa Location Chief's letter dated 29th May 2006, register in respect of the suit property certified by the Land Registrar on 14th July 2011, photographs, Divisional Agricultural Extension Officer's Crop Damage Assessment report, Caution forms dated 16th July 2009, Proceedings in Khwisero Division Land Dispute Tribunal Case Number 143, undated Chamber Summons in Kakamega CM Misc Case Number 73 of 2003, Certificate of Death dated 3rd April 2006 in respect of Boaz Wilson Munudi, and letter from the Chief East Kisa Location dated 3rd April 2006.
 15. The Defendant stated in the witness statement that he is the administrator of the estate of Kuta Omore (deceased) and a grandson and the only surviving heir of Kuta Omore (deceased) who passed away on 5th January 1967. That the suit property is ancestral land which was initially registered in the names of Kuta Omore and that the Plaintiff's father used to lease part of the suit property on an annual basis. The Defendant further stated that the Plaintiff's father was not a relative of Kuta Omore (deceased) and that the Plaintiff's father obtained title to the suit property fraudulently and without involving him (the Defendant) in Succession Cause No. 135 of 1984 that led to the title.



16. The Defendant also stated that they only discovered around the years 1999 and 2001 that the Plaintiff's father had become the registered proprietor. That prior to the discovery, they had filed Tribunal Case Number 143 of 2001 and that the claim was determined in favour of his (the Defendant's) family. That although the award was adopted through Chief Magistrate's Court Application Number 73 of 2003, it could not be fully implemented since the Defendant's mother and brother who had lodged the claim, and even the Plaintiff's father, had passed away.
17. The Defendant added that the Plaintiff's father disinherited them by fraudulently excluding them from the succession proceedings. He also stated that although he did not hold title to the suit property, he had been cultivating it, had built houses on it and fenced it to the valued of over KShs 1.2 Million until 22nd April 2011 when the Plaintiff together with a gang of about 50 people invaded the home, slashed down his crops and trees and pulled down one of the houses as well as the fence and even harvested his maize crop. That following the invasion and eviction by the Plaintiff, he was forced to rent houses at Stend Kisa Trading Centre since he was receiving threats from the Plaintiff not to set foot on the suit property again.
18. Under cross examination and re-examination, the Defendant stated that the Tribunal award was not adopted and that the adoption proceedings were not concluded owing to changes in the law. He added that although he filed Succession Cause No. 569 of 2006 in respect of the estate of Kuta Omoro (deceased), he did not proceed with it because he discovered that a grant in respect of the said estate had been issued to the Plaintiff and the Plaintiff's father.
19. The Defence case was then closed, after which parties filed and exchanged written submissions. The Plaintiff filed submissions erroneously dated 4th March 2024 while the Defendant filed submissions dated 20th February 2025.
20. The Plaintiff identified the following issues for determination: whether he had proven his case on a balance of probability; whether the Defendant had capacity to sue; and whether the suit property was acquired through fraudulent means. He submitted that Hosea Sakwa Silunya (deceased) is the registered proprietor of the suit property and that the law jealously protects sanctity of title. Relying on Section 26 of the *Land Registration Act* and the case of *Elijah Makeri Nyangwira Vs Stephen Mungai Njuguna & another* [2013] eKLR, he submitted that he had proved his case to the required legal standard.
21. On the issue of whether the Defendant has locus standi, he submitted that the Defendant lacks standing. He further submitted that the Defendant averred at paragraphs 15 and 16 of his counter-claim that he brought the case as the personal representative of the estate of the late Kuta Omoro but did not produce any grant in respect of the said estate. That instead, material on record shows that Hosea Sakwa Silunya was appointed as the legal representative of the said estate on 11th April 1985 in Kakamega High Court Succession Cause No. 135 of 1984. Relying on *Re Estate of Barasa Kanenje Manyu* [2020] eKLR and *Newton Gikaru Gathiomi & another vs Attorney General/Public Trustee* [2015] eKLR, he contended that the Defendant did not have legal capacity to mount the counter-claim.
22. Lastly, on the question of whether fraud was established, the Plaintiff submitted that fraud is a profoundly serious issue which is a ground for cancellation of a title. That pursuant to Sections 107, 109 and 112 of the *Evidence Act*, he who alleges anything including fraud must prove it. He also cited the case of *Rop Albert (Suing as the representative of the estate of Francis Kiproop Sanga Deceased) & Another vs Gladys Koskey & 3 Others* [2018] eKLR and submitted that the Defendant did not establish fraud.



23. On his part, the Defendant submitted that the Plaintiff claimed that his father became registered proprietor of the suit property through Kakamega High Court Succession Cause No. 135 of 1984 and that a perusal of both the petition and the affidavit in support of it shows that the Plaintiff's father claimed that he was an elder son of Kuta Omore yet in this case the Plaintiff claimed that his father purchased the suit property. That in those circumstances, the Plaintiff's father obtained title fraudulently. The Defendant went on to submit that the Plaintiff's father had no locus standi to petition for letters of administration of the estate of Kuta Omore (deceased) and that the Plaintiff's father fraudulently transferred the suit property to himself by transmission.
24. Regarding his counter-claim, the Defendant submitted that he was a grandchild of Kuta Omore (deceased) and that the suit property was the only home that he had ever known. That in an effort to have the suit property revert to the estate of Kuta Omore (deceased), he filed Kakamega High Court Succession Cause No. 569 of 2006 but the Plaintiff objected on the ground that the estate had been dealt with and that there was nothing to administer. He further submitted that he had a valid defence and counterclaim and that he had proved the particulars of fraud. He urged the court to find that he had proved his counterclaim and to grant him orders as prayed therein.
25. The Defendant also submitted that he could not call any witnesses to support his case since all defence witnesses passed away during pendency of the case. He urged the court to find that the suit property belongs to the estate of Kuta Omore (deceased), to dismiss the Plaintiff's claim and to grant orders as prayed in the counterclaim.
26. I have carefully considered the pleadings, the evidence and the submissions. The issues that emerge for determination are whether the Defendant had capacity to sue, whether fraud has been established and whether the reliefs sought are available.
27. There is no dispute the registered proprietor of the suit property is Hosea Sakwa Silunya (deceased) and that the Plaintiff is an administrator of his estate. The foregoing fact of proprietorship is confirmed by the copies of Certificate of Official Search dated 30th October 2006, Land Certificate dated 8th January 1986, and register certified by the Land Registrar on 15th August 2007, all of which were produced by the Plaintiff. The Defendant confirmed in his testimony that Hosea Sakwa Silunya (deceased) is the registered proprietor, hence his case for declaration of trust and cancellation of title.
28. The rights of a registered proprietor of land are well articulated in law. Such a proprietor is entitled to the rights, privileges, and benefits spelt out under Article 40 of *the Constitution* which secures protection of right to property and Sections 24 and 26 of the *Land Registration Act*. Pursuant to Section 26 of the *Land Registration Act*, the Court is obligated to accept the proprietor's certificates of title as prima facie evidence of proprietorship, unless the provisos under Section 26 (1) (a) or (b) are established.
29. Section 24 of the *Land Registration Act* provides as follows:
 - Subject to this Act—
 - (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
 - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and



expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

30. Further, Section 26 (1) of the *Land Registration Act* provides as follows:

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.

31. Thus, unless the Defendant is able to successfully impeach the deceased's title, the proprietary rights of the estate of Hosea Sakwa Silunya (deceased) must be upheld. In that regard, it is important to note that the Defendant admitted in his testimony that although he did not hold title to the suit property, he had been cultivating it, had built houses on it and fenced it to the value of over KShs 1.2 Million.

32. Did the Defendant have the capacity to file the counterclaim? Capacity to sue is also referred to as locus standi. Locus standi is defined in Black's Law Dictionary, 9th Edition (page 1026) as "the right to bring an action or to be heard in a given forum."

33. The Plaintiff has submitted that the Defendant lacks locus standi since he averred that he brought the counterclaim as a personal representative of the estate of Kuta Omore (deceased), yet he did not produce any grant in respect of the said estate. I have perused the defence and counterclaim, and I note that indeed, the Defendant averred at paragraphs 15 and 16 thereof that he is a personal representative of the estate of Kuta Omore (deceased).

34. The Defendant's case as pleaded in the counterclaim is that Kuta Omore (deceased) was the initial registered proprietor of the suit property and that Hosea Sakwa Silunya (deceased) obtained title to the suit property fraudulently thereby depriving the estate of Kuta Omore (deceased) of the said asset. In an effort to right the perceived wrongs against the estate of Kuta Omore (deceased), he seeks the reliefs of a declaration that Hosea Sakwa Silunya (deceased) held the suit property in trust for the estate of Kuta Omore (deceased) and cancellation of the title in the name of Hosea Sakwa Silunya (deceased). Simply put, he is advancing a cause of action vested in the estate of Kuta Omore (deceased).

35. 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).

36. 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.

37. The Defendant did not produce any letters of administration issued to him in respect of the estate of Kuta Omoro (deceased). In fact, he admitted in his testimony that his efforts to obtain letters of administration in respect of the estate through Kakamega High Court Succession Cause No. 569 of 2006 failed. The upshot is that he is not a personal representative of the estate of Kuta Omoro (deceased). Consequently, he lacks locus standi to mount and prosecute the counterclaim herein.
38. The Court of Appeal emphasised the significant role of locus standi and the consequences of its absence in *Kihanya & 4 others v Gichuri & another* [2024] KECA 852 (KLR) where it held as follows:
 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.
39. It follows therefore that the Defendant's counterclaim has no leg to stand on and is consequently dismissed. In those circumstances, I do not need to determine the second issue for determination, as to whether fraud has been established.
40. The last issue for determination is whether the reliefs sought by the Plaintiff are available. The Plaintiff has sought judgment against the Defendant for a permanent injunction to restrain the Defendant from interfering with the suit property in any way whatsoever and a mandatory injunction requiring the Defendant to remove of all crops unlawfully planted on the suit property and construction materials assembled thereon. As I noted earlier in this judgment, the Defendant admitted in his testimony that he had been cultivating the suit property, had built houses on it and fenced it. He had no right to do so since he was not the registered proprietor. His claims that that he is a grandson and the only surviving heir of Kuta Omoro (deceased) and that he was thereby entitled to the suit property should have been prosecuted in the succession court. The Plaintiff has made a case for the relief of permanent injunction.
41. The case pleaded by the Plaintiff and evidence adduced in its support is that the Defendant trespassed into the suit property on 15th February 2009 and planted maize and beans therein. Maize and beans are seasonal crops. No evidence was adduced to show that the Defendant had continued to plant the said crops as of the date of trial. On the contrary, the Defendant testified that the Plaintiff evicted him on 22nd April 2011, slashed down his crops, harvested his maize crop and demolished one of his houses. In



the absence of specific evidence of current existence of the Defendant's crops, construction materials and buildings in the suit property, there is no basis to issue the mandatory injunction sought. Such an order would be in vain.

42. I find merit in the Plaintiff's case. In the result, I make the following orders:

- a. The Defendant's counterclaim is dismissed.
- b. A permanent injunction is hereby issued restraining the Defendant from interfering with the parcel of land known as Kisa/Mwikalikha/1666 in any way whatsoever.
- c. The Plaintiff shall have costs of the suit and interest thereon.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 29TH DAY OF OCTOBER 2025.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Mbaka for the Plaintiff

No appearance by the Defendant

Court Assistant: B Kerubo

