



Gitari [Suing as the legal representative of the Estate of Timothy Gitari Mucheke - Deceased) v Mucheke & another; Mucheke & another (Interested Parties) (Environment and Land Case E012 of 2025) [2025] KEELC 8306 (KLR) (24 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8306 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE E012 OF 2025
JO MBOYA, J
NOVEMBER 24, 2025**

BETWEEN

JOSEPHINE KAARI GITARI [SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF TIMOTHY GITARI MUCHEKE - DECEASED) PLAINTIFF

AND

PAUL MWITI MUCHEKE 1ST DEFENDANT

YETU SACCO LIMITED 2ND DEFENDANT

AND

ANN MARY KAGENDO MUCHEKE INTERESTED PARTY

LUCY GATWIRI MUTHAMA INTERESTED PARTY

RULING

1. What is before me is the Chamber Summons Application [The Application] brought pursuant to the provisions of Order 2 15(1)(a), (b) (c) and (d) of the civil procedure rules 2010 ; sections 1A , 1B and 3A of the *civil procedure Act*, Chapter 21, Laws of Kenya; and wherein the Applicants have sought the following relief:-
 - i. The entire suit herein be struck out with costs.
2. The instant application is premised on the various grounds which have been enumerated in the body thereof. Furthermore, the application is supported by the affidavit of Paul Mwiti Mucheke [1st Defendant/ Applicant] sworn on even date, namely; the 21st October 2025 and wherein the deponent has annexed one document. The annexure under reference is a copy of the Grant of letters of administration ad litem which was issued vide Meru CM MISC SUCC casue No. E042 of 2024.



3. The Plaintiff respondent filed a Replying affidavit sworn on 3rd November 2025 and wherein the deponent has contended that the subject application is not only misconceived, but premised on misapprehension of the import of the Grant of letters of administration ad litem.
4. Additionally, the deponent has annexed a copy of the Petition for grant of letters of administration ad litem, which had been filed before the Chief Magistrate's court and which birthed the grant of letters ad litem.
5. The subject Application came up for hearing today, the 24th November 2025; and whereupon the application was canvassed vide oral submissions. The submissions by/ on behalf of the parties are on record.
6. Briefly, learned counsel for the applicants adopted the grounds at the foot of the application; reiterated the averments in the body of the supporting affidavit and thereafter highlighted two [2] key issues for consideration of the court.
7. Firstly, Learned counsel for the Applicants has submitted that the grant of letters of administration ad litem which was sought and obtained by the plaintiff respondent was restrictive in nature and limited in purpose. In particular, learned counsel for the applicant has submitted that the Grant ad litem was only issued for purposes of proceeding with Meru ELC case No. E021 of 2021 and not for filing any other case. For good measure it was contended that if the plaintiff respondent was desirous to file/ institute a separate suit, then same ought to have procured and obtained a fresh grant of letters ad litem.
8. Secondly, learned counsel for the applicant has submitted that the provisions of Rule 14 of the Probate and Administration rules do not sanction the utilization of a grant of letters ad litem like the one beforehand to be deployed for a purpose other than what is referenced thereunder.
9. Finally, learned counsel for the Applicants has submitted that in the absence of a lawful grant of letters of administration ad litem, the Plaintiff/ Respondent is divested of the requisite locus standi to commence and sustain the subject suit. Moreover, it was posited that locus standi [Legal capacity] goes to the heart of the dispute and thus same negates the entire suit.
10. Flowing from the forgoing, learned counsel for the Applicants has invited the court to find and hold that the suit beforehand is premature, misconceived and legally untenable. Further more it has been contended that the suit is irredeemably bad and beyond redemption.
11. The Plaintiff/ Respondent relied on the content of the Replying affidavit sworn on 3rd November 2025; and the annexure thereto. In addition, learned counsel for the respondent raised and canvassed two [2] salient issues for consideration.
12. Firstly, learned counsel for the Respondent has submitted that the respondent filed a petition before the chief magistrate's court namely; Meru CM misc succ cause No. E042 of 2024 and wherein the Respondent sought to be issued with a grant of letters of administration ad litem. Moreover, it was submitted that the petition for issuance of grant of letters of administration ad litem had indicated that the grant would be limited for purpose of proceeding with Meru ELC case No. E021 of 2021 [OS] or in any other cause or suit which may be commenced in the same or in any other court between the parties.
13. According to learned counsel, the Petition for the grant of letters of administration ad litem was wide enough to envisage or cover instances including the filing of the new suit/ proceedings, namely; ELC No. E012 of 2025.
14. Additionally, learned counsel for the respondent has submitted that the provisions of Rule 14 of the Probate and Administration rules and which falls under the law of Succession act denotes that a grant of



letters of administration ad litem can be used for purposes of filing any suit; or instituting proceedings in any court for and on behalf of the estate of the designated deceased. Consequently, and in this regard, it was contended that the grant of letters of administration ad litem issued on 9th April 2024; suffices for purposes of filing the instant suit.

15. Finally learned counsel for the respondent has submitted that it behoves the court to deploy and apply the golden rule in interpreting the provisions of Rule 14 of the Probate and Administration rules and by extension the grant ad litem issued on 9th April 2024. To this end, learned counsel for the respondent has invited the court to find and hold that the purport and tenor of the Grant ad litem was to facilitate the filing of civil proceedings with a view to protecting/ vindicating the interest of the estate of the deceased.
16. Premised on the foregoing, learned counsel for the respondent has submitted that the grant of letters ad litem suffices and that the respondent is seized of the requisite locus standi to mount ; maintain and prosecute the subject suit. To this end, the court has been invited to find and hold that the application dated 21st October 2025 is devoid of merit[s].
17. Having reviewed the chamber summons application; supporting affidavit thereto; the replying affidavit filed in opposition ; and upon consideration of the oral submissions canvassed by/ on behalf of the parties, I come to the conclusion that the determination of the subject application turns on two [2] key issues, namely; whether the grant of letters of administration ad litem issued on 9th April 2024 could be deployed for purposes of filing the current suit or otherwise; and whether the Plaintiff is seized of the requisite locus standi to mount the suit or otherwise.
18. Regarding the first issue, it is important to recall and reiterate that the Plaintiff herein filed/ lodged a Petition before the chief magistrate court and wherein same sought to be issued with a grant of letters of administration ad litem. For good measure, the Petition for grant of letters was filed vide Meru CM Misc succ cause E042 of 2024.
19. Following the filing of the said Misc succ cause, the chief magistrates' court proceeded to and issued a grant of letters of administration ad litem. The grant of letters ad litem was limited in scope purpose and tenor.
20. To be able to appreciate the limited scope and purpose of letters of administration ad litem it is apposite to reproduce the entire of the content[s] thereof.
21. Same are reproduced as hereunder:-

Be it known that letters of administration ad litem of all the estate of the above named Timothy Gitari Mucheke who died domicile in kenya on 14th January 2024, which devolves to and vests in his personal representatives but limited to the purposes of Proceeding With Meru Elc Case No. E021 Of 2021 And Until Further Representation Were Granted By This Court To Josephine Kaari Gitari. Having undertaken to administer such estate according to law [limited as aforesaid] and until further representation be granted and render a true and just account thereof whenever required by law to do

Given under my Hand and seal of theis honorable court this 9th day of April 2024'

[Emphasis Supplied].

22. There is no gainsaying that the grant of letters of administration under reference was limited to the purpose of proceeding with Meru ELC case No. E021 of 2021; and not otherwise. That much is explicit and crystal clear from the face of the grant of letters of administration ad litem.



23. To my mind, the grant of letters of administration could only be used for the limited purpose that was designated thereunder. If the respondent and her learned counsel perceived any error in the body of the Grant of letters of administration ad litem [which had been issued]; then it behoved same to revert to the issuing court and to seek amendment, or addition[s] to the grant.
24. In the absence of any amendment[s] and correction[s] on the face of grant of letters administration, this court cannot be invited to expand or enlarge the scope of the grant of letters of administration ad litem. Moreover, there is no gainsaying that this court is divested of the requisite jurisdiction to deal with matters/ issues of succession including correcting or enlarging the scope of the grant of letters of administration. [See the Jurisdictional remit of the Environment and Land Court vide Article 162 [2] [b] of *the Constitution*, 2010]
25. Furthermore, Learned counsel for the Respondent invited the court to invoke and apply the golden rule in interpreting the provision of Rule 14 of the probate and administration rules and the grant of letters of administration ad litem. I beg to state that the golden rule of interpretation enjoins this court and any other court to give the words and phrases their ordinary and grammatical meaning. The import of the rule is to the effect that where the text is clear and devoid of ambiguity same must be given its ordinary meaning. [See the holding of the Court of Appeal in County Government of Nyeri & another v Ndungu (Civil Appeal 2 of 2015) [2015] KECA 1011 (KLR) (18 March 2015) (Judgment).
26. Turning to the second issue, it is instructive to observe that the subject suit has been filed and commenced on behalf of the estate of Timothy Gitari Mucheke-deceased. In this regard there is no gainsaying that the plaintiff was obliged to obtain grant of letters of administration [whether limited or otherwise] before filing the suit. [See the provisions of section 82 of the *law of succession act* cap 160 Laws of Kenya].
27. Furthermore, it is important to underscore that where a suit is filed for and on behalf of the estate of a deceased person albeit prior to issuance of grant of letters of administration, such a suit is premature, misconceived and still born. [See the holding of the court of appeal in the case of Otieno v Ougo & Another [1986-1989] EALR 468]
28. Suffice it to state that it is the grant of letters of administration whether ad litem or full grant; which bestows upon a particular party the legal capacity to sue or be sued on behalf of the estate of the deceased. In the absence of the requisite grant of letters of administration, the suitor will be divested of locus standi.
29. I beg to highlight that in the absence of locus standi[legal capacity], the suit filed by the Plaintiff herein becomes a nullity ab initio. Notably, locus standi is what gives a party the right to appear and to be heard before a court of law. Where a party has no locus standi such a party cannot be heard even if the party had a pertinent grievance/ cause of action.
30. In the case of Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama [2014] KECA 250 (KLR), the Court of Appeal stated thus:

In Alfred Njau & Others v City Council of Nairobi [supra] this Court had occasion to discuss the two. They stated:

“Lack of locus standi and a cause of action are two different things. Cause of action is the fact or combination of facts which give rise to a right to sue whereas locus standi is the right to appear or be heard, in court or other proceedings; ...”

The court proceeded to state:



“To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the court but to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”

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 foregoing holding is apt and succinct. For good measure, it is immaterial whether the Plaintiff herein has a cause of action against the Applicant and the interested party. What is integral is that the Plaintiff must be properly clothed in the eyes of the law before same can knock at the doors of justice.
32. In my humble albeit considered view, the Plaintiff herein cannot seek to rely on the Grant of letters of administration ad litem whose purpose was limited to proceeding with Meru ELC No. E021 of 2021; and not otherwise in propagating the subject suit.
33. Quite clearly, the two suits are separate and distinct.

Final Disposition

34. Flowing from the analysis highlighted in the body of the ruling, it must have become apparent that the Chamber Summons Application dated 21st October 2025; is meritorious. For good measure, the Plaintiff herein is divested of the requisite locus standi.
35. In the upshoot, the final order that commend themselves to the court are as here-under:-
 - i. The Chamber Summons Application dated 21st October 2025; be and is hereby allowed.
 - ii. The Plaintiff's suit vide Plaint dated 9th May 2025 be and is hereby struck out.
 - iii. Cost of the Application and the suit be and are hereby awarded to the Defendants'/applicants.
 - iv. The Cost in terms of clause[iii] shall be agreed upon; and in default be taxed in the conventional manner.
36. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 24TH DAY OF NOVEMBER 2025.

OGUTTU MBOYA, FCI Arb, CPM [MTI].

JUDGE.

In the presence of:

Hussein – Court Assistants

Ms. Wadegu for the Defendants/ Applicants

Mr. Kaumbi for the Plaintiff/ Respondent.

