

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO. 270 OF 2002

IN THE MATTER OF THE ESTATE OF MAINA GIKANDI ALIAS

TARASICIO MAINA GIKANDI (DECEASED)

RULING

1. Before this Court for determination is the Notice of Preliminary Objection dated **27th February 2023** filed by **AGNES WANJIRU MAINA** (the 5th Respondent). The Preliminary Objection was premised upon the following grounds;-

"1. THAT the Applicant as a daughter in law has no locus standi to bring this application as provided under Section 39 of the law of succession Act.

2. THAT the Applicant's application is subjudice succession cause Nyeri High Court Succession 516 of 2013 where the two widows are involved.

3. THAT the application is therefore bad in law, frivolous, vexatious and an abuse of court process.”

2. The Applicant **MIRRIAM WAITHERA GIKANDI** (suing as the **administrator of the estate of EVANTUS GIKANDI MAINA**) (Deceased) opposed the Preliminary Objection.

BACKGROUND

3. This succession cause relates to the estate of the late **MAINA GIKANDI** (hereinafter '**the Deceased**') who died intestate on **21st December 2001**. Following the demise of the Deceased Grant of letters of Administration Intestate were on **19th July 2005** issued to the widow **ROSE WANGARI MAINA** (hereinafter '**the Administrator**'). That grant was duly confirmed on **19th July 2005**.

4. The Applicant is the widow of the late **Evantus Gikandi Maina** who was a son to the Deceased herein. The Applicant filed a Summons dated **20th April 2021** seeking to revoke the confirmed grant issued to the Administrator. The 5th Respondent then filed this Notice of Preliminary Objection against the Summons dated **20th April 2021**.

ANALYSIS AND DETERMINATION

5. I have carefully considered this Notice of Preliminary Objection as well as the written submissions filed by both parties.
6. The definition of a Preliminary Objection was given in the case of **MUKHISA BISCUITS MANUFACTURING COMPANY LTD -VS- WEST END DISTRIBUTORS LTD [1969] E.A** as follows:-

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submissions that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

7. In the same case **Sir Charles Nebbold**, JA stated that:-

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”.

8. In **AVIATION & ALLIED WORKERS UNION KENYA -VS- KENYA AIRWAYS LIMITED & 3 Others [2015] eKLR** the **Supreme Court of Kenya** stated as follows:-

“a preliminary objection may only be raised on a “pure question of law” To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed as they are prima facie presented in the pleadings on record.”

9. Therefore in order for a preliminary objection to succeed the following must be satisfied:-

(i) The Preliminary Objection should raise a pure point of law.

(ii) The Preliminary Objection must be argued on the assumption that all the facts pleaded are correct.

(iii) The Preliminary Objection cannot be raised if any fact is to be ascertained or if what is being sought is the exercise of judicial discretion.

(iv) A valid Preliminary Objection ought if successful dispose of the entire suit.

10. In this Preliminary Objection the 5th Respondent takes issue with the Summons for revocation of Grant filed by the Applicant on two grounds.

(1) That the Applicant has no locus standi in this matter.

(2) That the application is sub-judice.

(1) Locus Standi

11. The term **Locus Standi** is a latin phrase which literally means '**Place of standing**' It refers to the capacity or authority of a person to be heard in a Particular suit. This is a succession cause. The persons who have proper locus standi would be the genuine heirs of the Deceased.
12. The persons who have proper 'Locus standi' in a succession case are the legal heirs/beneficiaries of the Deceased, as set out in **Section 66** of the **Law of Succession Act**.
13. The Applicant states that she is a widow to **Evantus Maina** who was a son to the Deceased in this cause. The said **Evantus Maina** passed away on **5th May 2017**.
14. In this case the deceased was survived by several biological children one of whom was **Evantus Gikandi Maina**. The said **Evantus Maina** unfortunately passed away on **5th May 2017**. Grant of letters of Administration in respect of the late **Evantus Maina** were on **7th June 2017** issued to **Miriam Waithira Irungu** (the Applicant herein) vide Nyeri High Court **P & A No. 516 of 2013**.

15. The Applicant was a widow of **Evantus Maina** and had three children with him. These are uncontroverted facts. As holder of a Grant the Applicant is the legal representative of the estate of her late husband. As such she has the authority to represent the interest of the estate of **Evantus Maina** in these proceedings in order to protect the portion of the estate due to their children.
16. Daughters in law can inherit from their parents in law only when their beneficiary spouses are deceased and they take up the share due to the deceased's son. In **re Estate of Stephen Kiplagat Mutai (Deceased) (Succession) [2012] eKLR** the daughter in law of the deceased therein was found to have locus and recognizable stake as she was filling the position of her deceased husband, a son of the deceased and a beneficiary to the deceased's estate as his legal representative.
17. In the case of **In Re Estate of Catherine Nduku Malinda (Deceased) (2020) eKLR Odunga J** (as he then was)
- "176. In my view a daughter in law may lay a claim as a beneficiary not in her own right but as**

a legal representative of a deceased son. In other words, the legal representatives of a deceased's dependants may properly stake a claim to the estate of a deceased person on behalf of legally recognized dependants.....”

[Own emphasis]

18. Again in **RE ESTATE OF FRANCIS ANDACHILA LUTA (Deceased) [2022] eKLR Hon. Justice William Musyoka** held that

“..... In intestate succession, the estate passes to the kindred of the deceased, that is to say the blood relatives of the deceased, except for the surviving spouse of the deceased. In-laws, be they parents-in-laws or children-in-laws, are not blood relatives of their children-in-law or father-in-law. They have no right or entitlement to the intestate estate of their dead-in-law. The Law of Succession Act does not recognize them or their rights. Indeed, the Law of Succession Act does not even mention

them. They can only claim on behalf of others. A daughter-in-law, for example, can only claim the share due to her late husband, otherwise she has no direct right. For her to access the share due to her late husband, she has to obtain representation to his estate first, by way of a grant of letters of Administration Intestate. Pursuing the interest of her late husband without first obtaining the grant in his estate would amount to intermeddling, and her activities would run afoul of Section 45 of the Law of Succession Act.” [Own emphasis]

19. I am satisfied that although she is the daughter-in-law of the Deceased the Applicant by virtue of the Grant issued to her in respect of the estate of her late husband does have proper locus standi in this succession cause. That ground of the Preliminary Objection is found to have no merit and is dismissed.

20. The Respondents have claimed that this matter is sub-judice given the existence of **Nyeri P & A No. 516 of 2013** which is also pending in the High Court in Nyeri.
21. The Subjudice rule is codified in **Section 6** of the **Civil Procedure Act, Cap 21 Laws of Kenya** as follows;-
- “No Court shall proceed with the trial court of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties whom they or any of them claim litigation under the same title where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”**
22. This suit relates to the estate of **MAINA GIKANDI alias TARASICIO MAINA GIKANDI**. The suit referred to by the Respondents being **P & A No. 516 of 2013** relates to the estate of **EVANTUS GIKANDI MAINA**. The fact that the latter is the son of the former does not make the two cases similar or identical. Each suit relates to separate and distinct

persons with separate and distinct beneficiaries and estates.

This matter does not in any way offend the sub-judice rule.

23. Finally I find no merit in this Preliminary Objection. The same is dismissed in its entirety. Costs will be met by the 5th Respondents.

Dated in Nyeri this 28th day of November 2025.

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MAUREEN A. ODERO
JUDGE