

**REPUBLIC OF KENYA**

**IN THE MAGISTRATE'S COURT AT NAROK**

**HCFA NO. E001 OF 2025**

**(CORAM: CHARLES KARIUKI – J)**

*(Being an Appeal against the Ruling of Hon. H.M. Nyaberi – CM in the Chief Magistrate's Court at Narok delivered on 4<sup>th</sup> February, 2025 in Success Case No. 40 of 2019)*

**ERASTUS GEORGE MANYAGI NDEKERE (Suing as the administrator ad litem of the estate of DANIEL MUGO OLE.....  
APPELLANT**

**-VERSUS-**

**ANDREW MWAURA KUNGU.....RESPONDENT**

**JUDGMENT**

1. The Appellant applied for a grant of Probate of a written will, claiming to have a will of the deceased that indicated he was the sole beneficiary of the deceased's estate. The will indicated that there were only two properties in the deceased's estate. The grants of Probate of the will were confirmed, but the Respondent came to learn after the grant of Probate had been confirmed that his plot, which he holds title to, Narok CIS MARA NKARETA/591, had been bequeathed to the Petitioner through a will. This led the Respondent to apply for the revocation of the will and the nullification of the resulting grant.

2. This attracted a Preliminary Objection dated 2/9/2024, principally based on the ground that the Respondent is a busybody having no locus standi by virtue of Section 29 of the Laws of Succession Act, Cap 160, Laws of Kenya.
3. The trial court, relying on the case of *Adenga vrs Odumura (2003) S.C.*, held that the (Respondent) Objector demonstrated sufficient interest in the proceedings to pursue his right in the matter.
4. This attracted instant appeal in which two grounds of appeal have been set out, namely: -
  - i. **The trial court did not appreciate the Appellant's Submissions.**
  - ii. **The Court wrongly dismissed the Preliminary Objection.**
5. The parties were directed herein to canvass the appeal via Submissions. The Appellant's Submission is that the Respondent is a total stranger to the estate of the deceased, nor has he tendered evidence to demonstrate that he is a beneficiary of the deceased's estate prior to his demise. Thus, he has no locus standi in the matter by virtue of Section 29 Laws of the Succession Act, Cap 160 Laws of Kenya.

6. On the Respondent's side, the Submission is that the application is the only recourse and pathway to protect his property from being illegally transferred in the name of the Petitioner/Appellant.

**Determination:**

7. The Court relied on the case of *Jamleck Maina Njoroge vrs Mary Mwangi (2015) e KLR*, which established that any person with a stake in an estate - legal or beneficial-has standing to seek revocation. This Precedent underscores the Court's reasoning and emphasizes the importance of legal consistency.

8. The Respondent's claim based on ownership of property (land) registered in his name highlights his legitimate interest, fostering a sense of fairness and respect for legal rights. The estate of the deceased has not demonstrated ownership of the same, reinforcing the importance of protecting individual property rights.

9. Thus, this Court makes the orders: -

**(1) In light of the foregoing, the Court finds that the appeal lacks merit and therefore dismisses it, upholding the trial court's ruling and confirming the original judgment. The matter is remitted back to the trial court for hearing on merit.**

**(2) Costs in the central Trial Court.**

DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS THIS

28<sup>TH</sup> DAY OF NOVEMBER, 2025

.....

**CHARLES KARIUKI**

**JUDGE**