



**Waitimu & another v Githeiya (Environment and Land Appeal
20 of 2023) [2025] KEELC 8440 (KLR) (2 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8440 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL 20 OF 2023**

**JM ONYANGO, J
DECEMBER 2, 2025**

BETWEEN

PETER KAMURWA WAITIMU 1ST APPELLANT

HAHNNAH WANJIKU KAMURWA 2ND APPELLANT

AND

WILSON WAIYAKI GITHEIYA RESPONDENT

(Being an appeal from the judgment and decree of Senior Principal Magistrates Court at Kikuyu in MELC Case No. 38 of 2022 delivered on 21st February, 2023 by Hon. S. Mwayuli Senior Resident Magistrate.)

JUDGMENT

1. The question of locus standi looms large over this appeal as, the suit in the lower court was filed against the legal representative of the estate of Simon Kamwaru Waitimu without naming the said representative. The obvious reason is that at the time of filing suit, the family of Simon Kamura Waitimu- Deceased who owned land parcel number Karai/Gikambura/43 which is at the centre of the dispute herein, had not obtained a Grant of letters of administration. Much as the court would like to delve into the 15 grounds raised in the Memorandum of Appeal the issue of locus standi obliterates all the other grounds of appeal.
2. A brief background of the case is necessary in order to put the matter into perspective. The appeal arises from the judgment of Hon. S. Mwayuli in Kikuyu MCELC Case No. 38 of 2022 delivered on 21st February 2023. In the said case, the Respondent herein who was the plaintiff sued “ The legal representative of the estate of Simon Kamurwa Waitimu”, (1st the Defendant) together with the Attorney General and the Land Registrar, Kiambu seeking various reliefs including an order of eviction against the defendant or in the alternative, an order that the 1st defendant be ordered to compensate the



- Respondent the amount equivalent to the value of the suit property to be assessed by an independent valuer appointed by both parties.
3. The Respondent alleged that he entered into two sale agreements dated 14th February 1997 and 2nd April 1997 with Simon Kamurwa (now deceased) for the sale of a portion of land known as parcel number Karai/ Gikambura/43 measuring a quarter of an acre and 28 ft by 88ft respectively for a total sum Kshs. 73,000. The Respondent paid the Kshs. 23,000 for the parcel measuring 28ft by 88ft and Kshs 50,000 for the parcel measuring ¼ an acre leaving a balance of Kshs. 10,000.
 4. At the time of sale, the suit property was registered in the name of Waitimu Mugi (Deceased,) the father of Simon Kamurwa Waitimu, and the vendor promised to take out a grant of letters of administration in respect of the estate of his late father.
 5. It was the Respondent's case that he took possession of the suit property and continued to cultivate the same until 2018 when the family of Simon Kamurwa Waitimu stopped him from accessing the land.
 6. The family of the late Simon Kamurwa subsequently obtained a Grant of letters of administration but failed to transfer the suit property to the Respondent. The Respondent also learnt that the only asset that was mentioned in the said grant was land parcel number Karai/Gikambura/345 which was in the same location as the suit property.
 7. The 1st Defendant entered appearance and filed a Statement of Defence dated 25th July 2022 denying the plaintiff's claim in its entirety.
 8. The case was set down for hearing and the plaintiff testified and closed his case. The 1st Defendant who participated in the hearing opted not to call any witness. The Land Registrar Kiambu and the Attorney General who were sued as the 2nd and 3rd Defendants did not file any documents or participate in the proceedings. However, the Appellant and Respondents both parties filed their written submissions as directed by the court, after which the court delivered its judgment.
 9. In her judgment the trial magistrate found in favour of the plaintiff and directed the Appellant to give vacant possession of the suit property to the Respondent within 120 days from the date of the judgment failing which an eviction order would issue. She also issued a permanent injunction to restrain the Appellant from interfering with the suit property.
 10. Aggrieved by the said judgment ,the Appellant filed this appeal citing 16 grounds. The appeal was canvassed by way of written submissions and both parties filed their submissions which I have considered in arriving at my decision.

Analysis And Determination

11. I have carefully considered the Judgment, Memorandum of Appeal and the entire Record of Appeal and in my view the appeal turns on a single issue; whether the suit in the lower court was competent.
12. The suit in the lower court was instituted against the estate of the Simon Kamurwa Waitimu as the 1st Defendant. It is not in dispute that at the time the suit was filed , no Grant of letters of administration had been issued in respect of the estate of the late Kamurwa Waitimu and therefore the estate had no locus standi to be sued.
13. According to Black's Law dictionary Locus standi is the right to sue or bring an action in court.
14. It is trite law that in order to sue or be sued in a court of law one must have the right or capacity to do so. If one is sued as a representative of the estate of a deceased person, he or she must have either a limited or full Grant of letters of administration. The question of locus standi is so fundamental as it



goes to the Court’s jurisdiction to entertain the suit by the parties before it. The courts have on various occasions pronounced themselves on the question of locus standi.

15. In the case of *Trousitic Union International & Ingrid Ursula Heinz v Jane Mbeyu & Another* Civil Appeal No. 269 of 1997, the court held that a suit that is instituted by parties who have no letters of administration is incompetent as the right to sue or be sued only materializes upon issuance of a Grant of letters of administration.

16. Similarly in the case of *Daykio Plantations Limited v National Bank Limited & Another* (2019) eKLR the court pronounced itself as follows:

“It is therefore evident that locus standi is the right to appear and be heard in court or other proceedings and literally means a place of standing. Therefore, if a party is found to have no locus standi then it means he/she cannot be heard even on whether he has a case worth listening to. It is further evident that if the court was to find that the Applicant has no locus standi, then the Applicant cannot be heard and that point alone may dispose of the suit.”

17. Further, in the case of *Julian Adoyo Ongunga & Another v Francis Kiberenge Bondeva* (Suing as the administrator of the estate of *Fanuel Evans Amudavi, Deceased*, (2016) eKLR, *Mrima J* held as follows:

“The issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put a party without locus standi in a civil suit lacks the right to institute and maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of the party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is also worth noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases, the estate involves several other beneficiaries.”

18. What can be discerned from the above authorities is that a person who has not obtained a grant of letters of administration has no locus standi to sue or be sued. The suit that was instituted in the lower court against an unnamed legal representative of the estate of *Simon Kamwaru Waitimu* was therefore incurably defective and it ought to have been dismissed. In my humble view, the substitution of the Respondent on appeal to bring in *Wilson Waiyaki Githeiya* as the administrator of the estate of *Simon Kamurwa Waitimu* did not cure the defect as the suit that had proceeded in the lower court was a nullity in the first place and it could not be cured by a belated substitution of the Respondent.

19. On this this ground alone, it is my finding that this appeal is merited and I allow it. I do not find it necessary to delve into the other grounds of appeal.

20. Consequently, the judgment of the lower court is set aside and substituted with an order dismissing the Plaintiff’s case.

21. In view of the circumstances of this case, each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 2ND DAY OF DECEMBER 2025

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J. M ONYANGO

JUDGE

In the presence of:



Mr Mbogo for Mr Gitau for the Appellants

No Appearance for the Respondent

Court Assistant: Hinga

