

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC CASE NO 34 OF 2018

MWANAMWINYI NASORO ABDALLA

(SUIING ON BEHALF OF THE ESTATE OF MWANATUMU RIZIKI MWINYI-DECEASED.)

PLAINTIFF

VERSUS

REALTY BROKERS LIMITED **1ST**
DEFENDANT

THE CHIEF LAND REGISTRAR **2ND**
DEFENDANT

RULING

1. In the application dated 19th November 2024, the plaintiff seeks the following prayers:

- a. **Spent.**
- b. **A temporary injunction against the 1st defendant restraining it from in any manner interfering with the plot number 30/IV/MN CR No 7234 measuring approximately 185 acres pending the hearing of the application;**
- c. **In the alternative, an order be issued directing the 2nd defendant to maintain the status quo in respect of the plaintiff being the registered proprietor of the suit property pending the hearing of the instant application or suit;**
- d. **A temporary injunction against the 1st defendant restraining it from in any manner interfering with the plot number 30/IV/MN CR No 7234 measuring approximately 185 acres pending the hearing of the suit;**
- e. **Costs of this application be provided for.**

2. The application which is supported by the sworn affidavit of the plaintiff, is premised on the grounds that: the plaintiff is the personal representative of the estate of the deceased who was the daughter of the late Bwana Riziki Bin Mwenye who was the beneficial and/or registered owner of the suit land (registered jointly with others) and that the plaintiff is his great daughter. The deceased died in 1993. The plaintiff has been in possession of the suit property. In September 2023 the plaintiff noted activity on the suit land by unknown persons who claimed ownership of a portion of the suit land; upon a search at the land registry the plaintiff learnt that the 1st defendant was the registered as a proprietor of 5 acres of the suit land pursuant to a transfer registered in 1995; that the plaintiff also learnt that there had been an application for an office copy pursuant to an Gazetted Notice No 10847 of 15th November 2029; that the gazette notice is not in existence; that its copy in the land registry is unsigned and lacks a number; that the registration of the 1st defendant was in bad faith; that the plaintiff has also learnt from the proceedings in **Malindi ELC No E048 Of 2023** that the 1st defendant has a search showing that it is the owner of the entire parcel yet the plaintiff has neither subdivided the land or transferred it in the 1st defendant's favour.

Responses

3. The 1st defendant filed a Notice of Preliminary Objection dated 21/1/2025 as follows:

a. The plaintiff is forum shopping;

- b. The plaintiff had filed a similar suit ELC LAND CAUSE NO E048 OF 2023 which was struck out;**
- c. The plaintiff lacks locus standi;**
- d. The plaintiff's recourse lay in an appeal or review;**
- e. The postal search attached by the plaintiff shows the 1st defendant indeed owns the entire land;**
- f. That the suit land has never devolved to the plaintiff;**
- g. That without some grant *ad litem* in respect of Mwana Riziki Bi Mwenye the plaintiff lacks *locus standi* to lodge suit on her own behalf or on behalf of the estate of the deceased;**
- h. The grant of letters attached is made to another person not the plaintiff and the court has issued a disclaimer that the grant is both limited and revocable;**
- i. That the grant was obtained from a court lacking jurisdiction;**
- j. That the letters were obtained contrary to the Judicature Act and the Law of Succession Act in regard to the powers of the magistrate's courts;**
- k. The letters of administration are incurably defective and do not create a nexus between the plaintiff the suit property and any registered owner;**
- l. The plaintiff suit seeks to deprive the defendant of their constitutional rights to property as protected by Article 40 of the constitution and Article 60(1)(b);**
- m. The suit is frivolous and vexatious and fails to disclose a cause of action since the plaintiff lacks any registrable interest in the suit land.**

4. These grounds were further amplified in the affidavit of **James Abiam Mugoya Isabirye** the 1st defendant's director/shareholder, dated

21/1/2025 which supported an affidavit of the 1st defendant seeking an order that the plaint and notice of motion, both dated 19th November 2023, be struck out for being fatally and incurably defective. The same grounds are also replicated at the foot of that application dated 21/1/2025. They are also in the replying affidavit of **James Abiam Mugoya Isabirye** dated 10/6/2025 and filed in respect of the motion dated 19/11/2024.

5. The 1st defendant also filed a **Notice of Preliminary Objection** dated 21/1/2025 setting out grounds as follows:

- a. **The suit is *res judicata* Malindi ELC Land Cause No E048 of 2023;**
- b. **The suit is fatally defective as it contravenes Section 2 of the Civil Procedure Act as to who constitutes as valid legal representative as the grant of letters obtained by the plaintiff do not confer a legal or beneficial interest over the suit property and no nexus exists between the plaintiff and the suit property;**
- c. **The plaintiff lacks *locus standi* as she has no grant *ad litem* with respect to the deceased;**
- d. **The suit has been filed in contravention so Section 48 of the Law Of Succession Act;**
- e. **The court that issued the grant lacks pecuniary jurisdiction;**
- f. **The grant of letters of administration is limited;**
- g. **The court lacks jurisdiction to recognize the plaintiff as a legal representative of the estate of the deceased, or grant him the right to act on behalf of any of the estates or recognize the suit property as the property of any of the**

- estates; or to give the plaintiff any right to sue or effect any transfer of the estate to unknown beneficiaries;**
- h. The suit fails to adhere to the principles set out in sections 24, 25 and 26 of the Land Registration Act No 3 of 2012;**
 - i. The suit is defective as it fails to sue all previous title holders expressly listed in the entry section of the certificate of title whom the property has over the years been transferred contrary to order 1 rule 3 of the CPR;**
 - j. The suit offends Article 50 of the Constitution of Kenya and section 47 of the fair administrative actions act**
 - k. The entire suit is contrary to article 40 of the Constitution of Kenya 2010 protecting the 1st defendant from arbitrary deprivation of its property and the registered rights of the 1st defendant as secured by Article 60(1) (b) of the Constitution of Kenya;**
6. The two motions and the Notice of Preliminary Objection were disposed of by way of written submissions. Only the 1st defendant filed submissions as ordered by court. its submissions are dated 10/6/2025.
7. This court needs only address the most important limb of the preliminary objection raised by the 1st defendant because it may dispose of the suit and the motion for injunctive orders *in limine: res judicata*.
8. There is a ruling that was delivered in **MALINDI ELC E 048 of 2023** delivered by my brother Hon Justice Makori on 24th October 2024. Notably the order striking out the suit arose from the issue of *locus standi*. In that case the Judge held as follows:

“20. From the pleadings, the Plaintiff expressly admitted that she is not the registered proprietor of the suit property. She has further failed to

express in her pleadings what registrable interest she has over the suit property. She has just alleged that she is the great-granddaughter of someone who allegedly has a beneficial interest in the suit property but has not indicated in the pleadings what specific beneficial interest this alleged person holds. Furthermore, nothing in the pleadings demonstrates that the alleged great-grandmother holds a beneficial interest in the suit property.

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23. When raised, a Preliminary Objection aims to determine a matter *in limine*. It is based on a pure point of law. The Court must only look at the pleading; no other evidence is required. The special grant of administration *ad colligenda bona* issued to the Plaintiff dated 6th June 2023 was limited to:

“Collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate without power of distribution.”

24. According to the authorities cited by the 1st Defendant, the grant did not empower the Plaintiff to file suit. If that was the intention, the grant should have disclosed the same. By the Plaintiff's invitation, the words – “such other acts as may be necessary for the preservation of the estate” as to -including filing suit, with due respect, is erroneous. The Plaintiff needed to obtain a specific grant tailored to file suit.

25. To the extent, and without considering the other Objections raised here and since *locus standi* goes to the root of the matter, the Preliminary Objection succeeds, the Court downs tools to the extent that the entire suit and the application for an injunction are struck out with costs to the 1st Defendant.

26. The Plaintiff will be at liberty, subject to the limitation of actions, to bring fresh suit when clothed adequately with the necessary *locus standi*.”

9. It appears that the plaintiff has finally determined that she now has the proper *locus standi* and she has therefore filed the present suit; nevertheless, the same issue of her lack of *locus standi*, by reason of which the earlier suit was struck out, has returned to haunt her.

10. Regarding *locus*, the 1st defendant avers that the plaintiff has failed to establish any nexus between herself and the suit property; that though she claims to be the granddaughter of Mwanatumu Riziki who was

allegedly the daughter of Bwana Riziki Bin Mwenye; that Riziki bin Mwenye was allegedly, jointly with others, the beneficial or registered owner of the suit property, she has failed to establish any nexus between her and those two persons now said to be deceased. The 1st defendant states that the court can only rely on conjecture to make that conclusion. The 1st defendant also avers that the plaintiff is not the registered proprietor of the suit land.

11. I have noted, first, that the plaintiff is not the registered owner. Neither do I find any evidence that any of her two alleged predecessors were registered proprietors of the suit land. Instead, the plaintiff has averred expressly that the 1st defendant is the registered proprietor of the suit land according to a search that she conducted at the land registry. These are the same facts that the court addressed in the earlier case that is MALINDI ELC E 048 of 2023. Even in the present suit nothing has changed. The position remains that the plaintiff has not demonstrated that either her great grandmother Mwanatumu Riziki Mwinyi or her alleged great, great grandfather, Bwana Riziki bin Mwinyi, had any beneficial or registered interest in the land.

12. In view of the foregoing, *res judicata* it is observable that in respect of *locus standi* can only occur if the same grant of letters of administration *ad colligenda bona* earlier relied on is to be used in the present suit. However, now, in contrast to the *ad colligenda* grant in the earlier suit the plaintiff has now presented a grant of letters of administration intestate to

the estate of Mwanatumu Riziki Mwinyi. Locus standi premised on a fresh grant of a different kinds is therefore not res judicata and this court can proceed to examine whether that grant confers on her the appropriate locus.

13. Though the plaintiff has relied on a new grant, she has not presented any grant issued to her or issued earlier on to Mwanatumu under the Law of Succession Act in respect of the estate of Bwana Riziki bin Mwinyi. Consequently, no nexus has been drawn between Mwanatumu and Bwana Riziki bin Mwinyi. In the circumstances, even the grant of letters of administration intestate to the estate of Mwanatumu Riziki Mwinyi does not link the plaintiff to Bwana Riziki Bin Mwinyi.

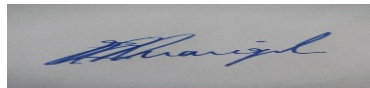
14. Above all, perchance she had established the nexus between the two, the nexus between the said Bwana Riziki bin Mwinyi and the suit land is still yet to be established. Consequently, though a grant in respect of Mwanatumu's estate grants her right to lodge a suit in respect of that estate, any suit so filed must be one in which Mwanatumu's interest can be demonstrated. If it cannot be deciphered from the first pleading, the plaintiff, then there is little likelihood that it can ever be demonstrated at any other stage in the proceedings, that is if the suit were to be allowed to subsist. Not only that, Mwanatumu's interest in the estate of Bwana Riziki Bin Mwinyi has to be demonstrated.

15. With respect to Bwana Riziki Bin Mwinyi's estate, it is just as though the plaintiff has returned to this court with the same species of grant, *ad*

colligenda bona, which was ruled as incapable of enabling her to file the previous suit. She has nothing either to support the alleged nexus between Mwanatumu and Bwana Riziki and she has nothing to rely on to claim on behalf of the estate of Bwana Riziki Bin Mwinyi.

16. It is appropriate thus to state that on the issue of *locus standi* in the present case, as no new material has been provided to distinguish her present status from the previous status in the former suit, the plaintiff finds herself exactly where the striking order in **MALINDI ELC E 048 of 2023** left her. The preliminary objection on *locus standi*, independent of the issue of res judicata, succeeds. As the plaintiff has not yet acquired *locus standi* to enable her lodge the present suit, the plaint as well as the application in this suit, both dated 19/11/2024 are hereby struck out with costs to the 1st defendant.

Dated, signed and delivered at Malindi on this 15th day of December, 2025.



**MWANGI NJOROGE
JUDGE, ELC, MALINDI.**