



**Cheruiyot (Suing as the administrator of the Estate of Taputany Cheptonui Chumo - Deceased) and Charles Kikwai Chumo alias Kikwai Arap Chuma - Deceased) & another v Lel Timber Products Enterprises Limited (Environment and Land Appeal E020 of 2024) [2025] KEELC 8564 (KLR) (4 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8564 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT AND LAND APPEAL E020 OF 2024**

**LA OMOLLO, J**

**DECEMBER 4, 2025**

**BETWEEN**

**NEHEMIAH KIPSANG CHERUIYOT (SUING AS THE ADMINISTRATOR OF THE ESTATE OF TAPUTANY CHEPTONUI CHUMO (DECEASED) AND CHARLES KIKWAI CHUMO ALIAS KIKWAI ARAP CHUMA - DECEASED) ..... 1<sup>ST</sup> APPELLANT  
JESCA CHEPNGENO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**LEL TIMBER PRODUCTS ENTERPRISES LIMITED ..... RESPONDENT**

*(Being an appeal arising from the ruling of Hon. Charles Obulutsa CM delivered on 19th November, 2024 in Kericho CM ELC Case No. E026 of 2024)*

**JUDGMENT**

**Introduction.**

1. By a Memorandum of Appeal dated 25<sup>th</sup> November, 2024 the Appellants challenge the decision of Hon Charles Obulutsa CM in Kericho CM ELC Case No. E026 of 2024 delivered on 19<sup>th</sup> November, 2024.



## **Factual Background.**

2. In the subordinate Court, the Appellants filed the Complaint dated 8<sup>th</sup> March, 2024 against the Respondent seeking the following orders;
  - a. An order of eviction against the Defendant from the land parcels L.R NO. Kericho/ Kipchimchim/ 1096 and Kericho/ Kipchimchim/ 1275.
  - b. An order directing the Defendant to restore the land to as near its original state by removing all the wastes, trucks, lorries, scrap metals, and structures at its cost.
  - c. An order of permanent injunction restraining the Defendant, its directors, employees, agents, servants, subtenants and others whosoever claiming through it from entering, trespassing, saw milling, wasting and/or in any other manner howsoever dealing with the land parcels L.R NO. Kericho/ Kipchimchim/ 1096 and Kericho/ Kipchimchim/ 1275.
  - d. The rent arrears of Kshs 755,000/= and the accrued unpaid utility bills arrears totaling (sic) Kshs 40,661.96.
  - e. Costs of this suit and interest.
3. As at the time the Learned Trial Magistrate was delivering his ruling, the Respondent had not filed its Statements of Defence.
4. The Respondent filed a Notice of Preliminary Objection dated 18<sup>th</sup> March, 2024 which was on the following grounds;
  - a. That the Plaintiff's suit is fatally and incurably defective for want of a legal Plaintiff, as the Plaintiff lacks the locus standi in the suit thus the pleadings filed therein are improper, irregular and illegal and violates the provisions of the Law of Succession Act and the Civil Procedure Act and Rules.
  - b. That the Plaintiff having brought this suit in his capacity as the Administrator of the estate of Tabutany Cheptonui Chumo and Charles Kikwai Chumo Alias Kikwai Arap Chuma and having filed pleadings without the pre-requisite legal documentation then the suit is and was a non - starter, an illegality and null and void ab initio thus no amendment can cure the same.
  - c. That we pray that the Honourable Court upholds the Preliminary Objection and dismiss the application and the entire suit with costs to the Defendant.
5. The Learned Trial Magistrate delivered a ruling on 19<sup>th</sup> November, 2024 and allowed the Preliminary Objection.
6. The Appellants being aggrieved by the said ruling approached this Court by way of Appeal.
7. The Appeal was admitted for hearing on 12<sup>th</sup> March, 2025. The Court then issued directions that the appeal be heard by way of written submissions.
8. The Appeal was mentioned severally and on 15<sup>th</sup> July, 2025 it was reserved for judgement.

## **The Appeal.**

9. The grounds of appeal are as follows;



- a. That the learned trial Magistrate misapprehended the law in holding that the 1st Appellant was required to obtain a full grant or grant of letters of administration ad litem to sustain the suit yet he had obtained Grant of Letters of Administration Intestate.
  - b. That the learned trial Magistrate erred in law and fact in finding that the 1<sup>st</sup> Appellant's acquisition of Grant of Letters of Administration did not confer him the locus standi to sustain the proceedings on behalf of the estates of the deceased.
  - c. That the learned trial Magistrate erred in law and fact in failing to appreciate that the Grants of Letters of Administration Intestate, obtained in Kericho Chief Magistrate's Court, Succession Cause Number E205 of 2022, Estate of the late Taputany Cheptonui Chumo (deceased) and in Kericho Chief Magistrates' Court, Succession Cause Number E302 of 2023, Estate of the late Charles Kikwai Arap Chumo alias Kikwai Arap Chumo (deceased) adduced by the 1st Appellant constituted full Grants of Letters of Administration.
  - d. That the learned trial Magistrate erred in law and fact by disregarding the provisions of Section 82 of the [Law of Succession Act](#) which empowers a personal representative to represent/enforce a suit on behalf of the estate of a deceased person when a grant of representation has been made in respect of the estate.
  - e. That the learned trial Magistrate erred in law and fact in placing more weight on the Respondent's Submissions and ignoring the Appellants' Submissions and thus was heavily prejudicial and biased against the Appellants.
  - f. That the learned trial magistrate erred in law in upholding the Preliminary Objection culminating in the striking out of the suit with costs.
10. The Appellants pray for orders that;
- a. That the appeal be allowed.
  - b. That the Ruling and Order of the Chief Magistrate Court at Kericho (Hon. Charles Obulutsa, CM) in Kericho MC (sic) ELC Case No. E026 of 2024 delivered on 19<sup>th</sup> November, 2024 be reversed and set aside.
  - c. That the Preliminary Objection dated 18<sup>th</sup> March 2024 be dismissed with costs to the Appellants and the suit be remitted back to the Chief Magistrates Court for hearing and determination before any other magistrate other than Hon. Charles Obulutsa, CM
  - d. That costs of this appeal be borne by the Respondent.

**Issues for Determination.**

11. The Appellants filed their submissions on 22<sup>nd</sup> June, 2025 while the Respondent filed its submissions on 15<sup>th</sup> July, 2025.
12. The Appellants submit on the following issues;
  - a. Whether or not the 1<sup>st</sup> Appellant was clothed with locus standi to file a suit having obtained the grant of letters of administration. (sic)
  - b. Whether or not the appeal is merited.
13. The Appellants rely on the judicial decision of Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR as was cited in Prime Steel Company



- Limited v Rop & another (Appeal EOO2 of 2021) [2023] KEELRC 1675 (KLR) and submit that this Court sitting as a first appellate Court has a duty to examine both issues of fact and law and draw its own conclusions.
14. The Appellants rely on Section 82 (a) of the Law of Succession Act, Rule 2 of the Probate and Administration Rules, the judicial decisions of Rajesh Pranjivan Chudasama vs Sailesh Pranjivan Chudasama [2014] eKLR, Joseph Muriuki Kithinji v Peterson Ireri Mwaniki & 3 Others [2021] eKLR and submit that the 1<sup>st</sup> Appellant is the legal representative of the estate of Taputany Cheptonui Chumo (deceased).
  15. The Appellants also submit that the 1<sup>st</sup> Appellant was issued with the grant of the said estate in Kericho CM Succession Cause No. E205 of 2022 on 13<sup>th</sup> March, 2023.
  16. The Appellants further submit that the 1<sup>st</sup> Appellant is also the legal representative of the estate of Charles Kikwai Arap Chumo alias Kikwai Arap Chumo (deceased).
  17. It is the Appellants submissions that the 1<sup>st</sup> Appellant was issued with the grant of the said estate in Kericho CM Succession Cause No. E302 of 2023 on 20<sup>th</sup> February, 2024.
  18. It is also the Appellants submissions that the Learned Trial Magistrate acknowledged in his ruling that the 1<sup>st</sup> Appellant had attached copies of grant of Letters of Administration for the estates of Taputany Cheptonui Chumo (deceased) and Charles Kikwai Arap Chumo alias Kikwai Arap Chumo (deceased).
  19. It is further the Appellants submissions that the Learned Trial Magistrate erred in holding that the 1<sup>st</sup> Appellant ought to have obtained a full grant or a grant of letters of administration ad litem in order to sustain the suit.
  20. The Appellants submit that the Learned Trial Magistrate erred in finding that the two grants of letters of administration were not full grants as they had not been confirmed.
  21. The Appellants rely on the judicial decision of Re Estate of Henry Kithia Mwitari (Deceased) [2021] eKLR and submit that the 1<sup>st</sup> Appellant was not required to obtain a limited grant of letters of administration after obtaining a full grant.
  22. The Appellants also submit that the law does not envisage a situation where a limited grant runs alongside a full grant. The Appellants rely on the judicial decision of Re Estate of the late Peter Muraya Chege (deceased) [2019] eKLR in support of their submissions.
  23. The Appellants further submit that the Learned Trial Magistrate erred in finding that it is a Certificate of Confirmation of Grant that constitutes a full grant of letters of administration.
  24. It is the Appellants submissions that the grant of letters of administration is the full grant and not the Certificate of Confirmation of Grant. Therefore, the 1<sup>st</sup> Appellant had the requisite locus standi to file the said suit.
  25. The Appellants rely on the judicial decision of Re Estate of Kiberenge Mukwa (Deceased) [2021] eKLR in support of their submissions.
  26. It is also the Appellants submissions that the 2<sup>nd</sup> Appellant sued the Respondent in his capacity as the beneficial owner of land parcel No's Kericho/Kipchimchim/1096 and 1275.
  27. It is further the Appellants submissions that the 2<sup>nd</sup> Appellant had purchased the said parcels of land from Taputany Cheptonui Chumo (deceased) and Charles Kikwai Chumo alias Kikwai Arap Chuma (deceased).



28. The Appellants submit that this is a question of fact which cannot be determined through a preliminary objection.
29. On the second issue the Appellants submit that their appeal has merit and the prayers sought in their Memorandum of Appeal dated 25<sup>th</sup> November, 2024 should be allowed as prayed.
30. The Appellants conclude their submissions by urging the Court to allow their appeal with costs.
31. The Respondent relies on Kericho HCELC No. 64 of 2003 (sic), the judicial decision of Gideon Sitelu Konchellah versus Julius Lekakeny Ole Sunkuli & 2 Others [2018] eKLR and submits that since the Appellants did not file a response to the Preliminary Objection, the submissions they filed were useless.
32. It is the Respondent's submissions that a party who has a temporary grant of letters of administration cannot institute a suit unless the reason for such a temporary grant is specifically stated.
33. It is also the Respondent's submissions that limited grants are issued for different purposes and in the present matter, the Appellants ought to have obtained a limited grant for purposes of instituting a suit.
34. The Respondents then submit on the following issues;
  - a. Whether the suit herein is fatally and incurably defective for want of a legal Appellant (sic) and/or whether the Appellant has the locus standi to file this suit (sic).
  - b. Who should bear costs.
35. The Respondent relies on Orders 8 & 11 of the Civil Procedure Rules, the judicial decisions of Mukisa Biscuit Manufacturers Ltd v West End Distributers Limited (1969) EA 696, Raila Amolo Odinga & another vs IEBC & 2 Others [2017] eKLR and submits that the preliminary objection that it filed before the trial Court raised a pure point of law as it challenged the Appellants locus standi to institute the suit.
36. The Respondent also submits that the estate of a deceased person can only be represented in legal proceedings by a person duly authorized to do so.
37. The Respondent relies on Sections 80(2) & 82 of the *Law of Succession Act*, the judicial decisions of Julian Adoyo Ongunga v Francis Kiberenge Abano Migori Civil Appeal No. 119 of 2015, Virginia Edith Wamboi Otieno v Joash Ochieng Ougo & another, Marjaria v Abdalla (citation not given), Trouistik Union International & another vs Jane Mbeyu & another Civil Appeal No. 145 of 1990 and submits that the Appellants did not have the requisite locus standi to file the suit before the subordinate Court. The said suit was therefore incompetent and could not be salvaged through any amendments.
38. The Respondent concludes its submissions by relying on Section 27 of the *Civil Procedure Act* and urges the Court to dismiss the appeal with costs.

### **Analysis and Determination.**

39. The issues that arise for determination are as follows;
  - a. Whether the Learned Trial Magistrate erred in finding that the Appellants did not have locus standi to file the suit before the subordinate Court.
  - b. Who should bear costs of the appeal.



**A. Whether the Learned Trial Magistrate erred in finding that the Appellants did not have locus standi to file the suit before the subordinate Court.**

40. The role of the Appellate Court was stated by the Court of Appeal in the judicial decision of *Gitobu Imanyara & 2 others Vs Attorney General* [2016] eKLR. It was held as follows;

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.” (Emphasis mine)

41. In *Abok James Odera T/A A.J Odera & Associates Vs John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR the Court held as follows;

“This being a first appeal, we are reminded of our primary role as a first Appellate Court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

42. The Appellants submit that the Learned Trial Magistrate erred in holding that the 1<sup>st</sup> Appellant ought to have obtained a full grant or a grant of letters of administration ad litem in order to sustain the suit filed before the subordinate Court.

43. The Appellants also submit that the 1<sup>st</sup> Appellant is the legal representative of the estates of Charles Kikwai Arap Chumo alias Kikwai Arap Chumo (deceased) and Taputany Cheptonui Chumo (deceased).

44. The Appellants further submit that the 1<sup>st</sup> Appellant filed before the subordinate Court Grants of Letters of Administration Intestate that were issued to him.

45. The Appellants submit that the Learned Trial Magistrate erred in holding that the said grants were not full grants and he therefore did not have locus standi to file the suit.

46. The Respondents submit that the Appellants did not have the locus standi to file the said suit and therefore the suit filed before the subordinate Court was incompetent.

47. The Learned Trial Magistrate at pages 6, 7 and 8 of his ruling delivered on 19<sup>th</sup> November, 2024 held as follows;

“The Court record shows that the first plaintiff has brought the case describing himself as the administrator of the estate of Taputany Cheptonui and Charles Kikwai. In the supporting affidavit he has annexed a copy of a grant of letters of administration intestate dated 13 March 2023 in respect of the estate of the late Tabantany (sic) and another one dated 20 of (sic) February 2024 in respect of the estate of the late Charles Kikwai.

The argument by the Defendant is that the grant of letters of administration intestate do not entitle the Plaintiffs to file suit (sic) since they have not been made full grants through confirmation. The position taken by the plaintiff is that the 1<sup>st</sup> Plaintiff having taken out grant of letters of administration intestate he is clothed with locus standi to file suit.



The Court has considered the Rajesh Chudasama case cited above where the Court of appeal stated that locus standi arises from one having a limited grant or full grant of letters of administration intestate. By way of elimination, it is apparent the (sic) grant of letters of administration presented are not full grants having not been confirmed. Do they qualify to be limited grants as stated in the authority?

A limited grant would be in the nature of one under rule 36 of the Probate and Administration Rules for ad colligenda bona for purposes of collection and preservation of the estate. Another limited grant would be in the nature of grant ad litem under Paragraph 14 of the 5<sup>th</sup> schedule of the *Law of Succession Act*. In the case of Re Estate Of Helena Wangechi Njoroge (Deceased) [2015] eKLR the Court referring to a Grant Ad litem held that:-

“It was limited to the purpose of filing suit to preserve the three assets of the estate. It is what is called a grant of letters of administration ad litem. The suit envisaged to be filed on the strength of a grant ad litem is not a probate or succession case, or an interlocutory application within a probate or succession cause, but rather a civil suit.

What the plaintiffs have filed is a civil land case. It is expected they (sic) should have obtained a grant of letters ad litem which is the procedure to enable them file suit on behalf of the estate of the deceased. The grant of letters of administration intestate used does not fall within the category given in the Rajesh Chudasama case at the Court of appeal.

Having considered the preliminary objection, response, submissions and authorities, the Court is satisfied that the preliminary objection has merit and is allowed with costs. The suit as filed is invalid. The 1st plaintiff is required to obtain a full grant or grant ad litem to sustain the suit.

Right of appeal of 30 days.”

48. In the judicial decision of *Kirombi v Juliana; Njiru (Applicant)* [2022] KEHC 16320 (KLR) the Court held as follows;

“19. Sections 54 and 55 of the *Law of Succession Act* provide as follows:

“54. A Court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.

55

(1) “No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71.”

20. The Fifth Schedule referred to in Section 54 provides at Paragraph 14 as follows:

14. When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person



entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.

21. The above provisions are clear that such a limited grant is normally issued due to the exigencies arising in relation to the estate of the deceased person and which could not wait for issuance of full grant through the normal process.”
49. It is apparent that a limited grant is issued when urgent issues arise in relation to the estate of a deceased person which issues cannot await the issuance of a full grant.
50. It is therefore trite law that a party can either apply for a limited grant or a full grant.
51. In the present matter, it is not disputed that the 1<sup>st</sup> Appellant was issued with Letters of Administration Intestate with respect to the estates of Taputany Cheptonui Chumo (deceased) and Charles Kikwai Arap Chumo alias Kikwai Arap Chumo (deceased). The 1<sup>st</sup> Appellant is therefore the personal representative of the said estates.
52. Section 82 of the Succession Act provides for the powers of personal representatives. Section 82(a) in particular provides as follows;
  - “ a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative.”
53. The Court of Appeal in *Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama* [2014] KECA 250 (KLR) held as follows;

“A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession.”
54. It is this Court’s view that the 1<sup>st</sup> Appellant having been issued with grants of letters of administration intestate in respect of the estates of Taputany Cheptonui Chumo (deceased) and Charles Kikwai Arap Chumo alias Kikwai Arap Chumo (deceased) had the capacity to institute the suit before the trial Court.
55. This Court notes that the Learned Trial Magistrate at the last paragraph of page 6 and the first paragraph of page 7 of his ruling, held that the grant of letters of administration that had been availed in Court were not full grants as they had not been confirmed.
56. In the judicial decision of *In re Estate of Juma Omwanda (Deceased)* [2025] KEHC 9837 (KLR) the Court held as follows;
  - “ 5. A certificate of confirmation of grant is not a grant of representation...
  6. A certificate of confirmation of grant is a Court paper, which extracts the orders that the Court makes, under Section 71 of the *Law of Succession Act*, after hearing and allowing a summons for confirmation of grant. It is a



certificate, mined from the orders of confirmation of the grant, specifying the terms of the distribution of the estate approved by the Court.”

57. In the above cited judicial decision, the Court held that a Certificate of confirmation of grant is not a grant of representation. It is therefore evident that it was not necessary for the 1<sup>st</sup> Appellant to obtain confirm action of the said grants before instituting the suit before the trial Court.
58. Consequently, I find that the Learned Trial Magistrate erred in allowing the Respondent’s preliminary objection and finding that the 1<sup>st</sup> Appellant ought to have obtained a full grant or grant ad litem in order to sustain the suit.

**B. Who should bear costs of the appeal.**

59. The general rule is that costs shall follow the event in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

**Disposition.**

60. In the result, I find that the appeal succeeds and order as follows:
- a. The ruling and order in Kericho CM ELC Case No. E026 of 2024 delivered on 19<sup>th</sup> November, 2024 is hereby set aside.
  - b. The Appellants shall have costs of the appeal.
61. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 4<sup>TH</sup> DAY OF DECEMBER, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Kirui Evanson for the Appellants

Mr. Kogo for the Respondent

Court Assistant; Mr. Joseph Makori.

