

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
MISC. APP. NO. E044 OF 2025

MWAHUNGA MTANA KALAMA
APPLICANT

VERSUS

DAWAGI INVESTMENT LIMITED
RESPONDENT

RULING

1. By a notice of motion application dated **9th September 2025**, the Applicant sought orders that pending the hearing and determination of the main suit, a mandatory order of injunction do issue compelling the Respondent whether by themselves or their representatives, servants, agents and/or assigns from however selling, alienating, trespassing onto and/or in any other manner whatsoever interfering with or otherwise dealing with the properties known as Land Reference Plot No. Kilifi/Chembe Kibabamshe/366 and that costs of this application be borne by the Respondent.
2. The application, supported by an affidavit sworn by the Applicant on even date, was premised on the grounds that he is the son of the late **Joshua Mutana Kalama**, who was allocated Plot No. **Kilifi/Chembe Kibabamshe/366 (the suit property)** in **2013** and who had been in occupation thereof for a period exceeding **12** years. He stated that his late father's efforts to obtain title were never realized, only for him to later discover that the same had been issued to the Respondent. The Applicant contended that the Respondent has undertaken developments

on the suit property, subdivided it, and disposed of portions thereof to third parties. He averred that the Respondent's actions have rendered him landless.

3. The application is opposed through grounds of opposition dated 23rd September 2025; a replying affidavit and further affidavit sworn by **Anthony Safari Kitsao** on 6th October 2025 and 8th October 2025 respectively; and a notice of Preliminary Objection dated 23rd September 2025. The objection is based on the grounds that the Plaintiff does not have requisite *locus standi* to bring and maintain the suit, and that the jurisdiction of the court is not properly invoked, the suit being one that concerns property alleged to belong to a deceased person.
4. In the affidavits, the deponent maintained that the Applicant lacks *locus standi* having failed to demonstrate that he has obtained letters of administration to represent his late father's estate; that the suit property has been a subject of determination by the National Land Commission which returned a verdict in favour of the Respondent. He exhibited copies of affidavit and submissions filed by NLC in **ELC No. E052 of 2025 Sudhaben Amritlal Shah Alias Sudha Amritlal Shah (Suing in her capacity as the executor of the Estate of Amritlal Rupshi Shah (Deceased) & Another -vs- The Chief Land Registrar & 4 Others.** He averred that the determination of the NLC was to be appealed to this court within **14** days. He added that this court also upheld the decision of

the NLC in **Malindi ELC No. 20 of 2021, Mayungu Real Estates Limited -vs- Dawagi Investments Limited & 4 Others.**

5. The deponent further stated that the letters exhibited by the Applicant, dated 11th June 2013 and 21st June 2013 and 28th June 2013 were forged and he listed the particulars of such fraud. To him, the applicant does not place before the court any credible documentation to prove root of title.
6. The application was heard through written submissions and I have considered the arguments preferred by both parties.
7. The preliminary issue raised by the Respondent, which the court must first address, is the question of *locus standi*. *Locus standi* signifies a party's legal capacity to move the Court and be heard. It is a jurisdictional threshold which, if not established, conclusively bars a party from seeking any form of relief, irrespective of the perceived merit of their claim. The requirement is elemental such that without *locus standi*, a litigant cannot properly invoke the Court's jurisdiction, and the Court is stripped of the authority to entertain, consider, or pronounce itself on the matter.
8. In the case of **Law Society of Kenya -v- Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000** the Court held that:

“Locus Standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of Alfred Njau and Others.Vs.. City Council of Nairobi (1982) KAR 229, the Court also held that; -
“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi

means that he has no right to appear or be heard in such and such proceedings”.

9. In the context of claims touching on the estate of a deceased person, *locus standi* is not a matter of discretion but a strict statutory requirement. **Section 82(a)** of the **Law of Succession Act** vests the power to institute proceedings relating to the estate exclusively in a duly appointed personal representative. It follows, therefore, that no person may agitate rights, interests, or claims on behalf of a deceased’s estate without first obtaining a grant of representation. Courts have consistently affirmed this position, holding that any suit filed by a person lacking a grant is incompetent and fatally defective. In **Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama** **[2014] KECA 250 (KLR)**, the Court of appeal stated:

“That may well be the case, but in our view the position in law as regards *locus standi* in succession matters is well settled. A litigant is clothed with *locus standi* upon obtaining a limited or a full grant of letters of administration in cases of intestate succession. In *Otieno v Ougo* (supra) this Court differently constituted rendered itself thus:


“... an administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”

10. In the present case, the Applicant averred that the suit property was allocated to his late father and it is therefore clear that any claim he asserts arises solely through the deceased. He has, however, not demonstrated that he holds a grant of letters of administration, whether

full or limited for purposes of instituting these proceedings. In the absence of such authority, the Applicant has no legal capacity to litigate on behalf of the estate or to challenge the Respondent's title. His claim, being wholly derivative of the deceased's interests, is therefore rendered incompetent *ab initio*, and the application and suit cannot stand.

11. In the foregoing, the application dated 9th September 2025 and the entire suit vide the Amended Plaint dated 18th September 2025 are hereby struck out with costs.

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

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE
JUDGE, ELC, MALINDI**