

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 127 OF 2020

**MINNIE WANJIKU NJENGA (Suing on behalf of the estate of
HARRIET KARURA alias HARRIET KARURA NDUNGI 1ST**

PLAINTIFF

FREDRICK GICHUHI NJENGA 2ND

PLAINTIFF

VERSUS

EDITH NJERI MWAURA 1ST DEFENDANT

DISTRICT LAND REGISTRAR, KIAMBU.....2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. By a Chamber Summons dated 4th February 2025, the Applicant filed an application seeking to be granted leave to substitute Minnie Wanjiku Njenga (deceased) who passed away on 23rd November 2023. In his supporting affidavit, he explained that he is the son of the deceased.
2. The application was opposed by the 1st Respondent through a Notice of Preliminary Objection dated 22nd April 2025 in which he raised the ground that the Application lacked the locus standi to file the application as he had not annexed the requisite Grant of Letters of Administration in respect of the estate of Minnie Wanjiku Njenga (deceased).

3. The application and Preliminary Objection were canvassed together through written submissions.

ANALYSIS AND DETERMINATION

4. Having read and considered the application, Preliminary Objection and the parties' rival submissions, the following issues arise for determination:

- i) Whether the Applicant has the locus standi to bring the application for substitution.
- ii) Whether substitution can be granted in a suit that has abated in the absence of an application to revive the suit.

Locus Standi

5. 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 sues or 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.
6. 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 it 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.”

7. 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.”

8. 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.

9. In the instant case, although the applicant had obtained a limited Grant the same was not annexed to his supporting affidavit. The Respondent has also pointed out that the Grant dated 16th May 2024 which the Applicant seeks to rely on states that it is “Limited for the purpose of representation in **Kikuyu Succession Cause No.159 of 2019 Estate of Elizabeth Ngendo** and **Kiambu High Court Succession Cause No.29 of 2019 Estate of Harriet Karura alias Harriet Karura Ndingi**.”
10. In **Re Estate of Henry Kithia Mwitari (Deceased) (2021 eKLR)**, the court held as follows:

“Therefore, it is clear that a Grant Ad Litem is issued for a specific, limited and finite purpose. Once the purpose for which such a Grant was issued is achieved, the Grant is exhausted and becomes obsolete.”

11. In the instant case, the Applicant has not exhibited a Grant issued to him for purposes of prosecuting this case which would give him the locus standi and enable the court to grant him leave to substitute the deceased.

Substitution

12. The second issue raised by the 1st Respondent touches on the validity of the suit as he alleges that the suit has abated.
13. Order 24 Rule 3 of the Civil Procedure Rules provides as follows:

“3 .Procedure in case of death of one of several plaintiffs of Defendants or of sole plaintiff (Order 24 Rules)

(1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court on an application made in that behalf, shall cause the legal representative to be made a party and shall proceed with the case.

(2) Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned and on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff.

Order 7 provides as follows:

Order 7 Effect of Abatement or dismissal (Order 24 Rule)

(1) Where a suit abates or is dismissed under this order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the trustee or official receiver in the case of a bankrupt plaintiff my

apply for an order to revive a suit which has abated or set aside the order of dismissal and if it is proved that he was prevented by any sufficient cause from continuing the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit”

14. There is no dispute that the deceased died on 23rd November 2023 while the application for substitution was filed on 4th February 2025, more than a year after the date of death. Clearly by the time the application was filed, the suit had abated and no application was made for revival of the same. This means that even if the application for substitution was granted, there would be no valid suit for the court to hear and determine.
15. The upshot is that the Applicant’s application lacks merit and the same is hereby dismissed with costs to the 1st Respondent.

Dated, signed and delivered virtually at Thika this 21st day of January 2026.

J. M ONYANGO

JUDGE

In the presence of:

1. Mr. Fredrick Gichuki Njenga 2nd Plaintiff/Applicant – present in person
2. Mr. Wachira for Mr. Kanyi for the 1st Defendant/Respondent

Court Assistant: Hinga