

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC NO. E042 OF 2024

JOSEPHINE NDUNGE WAMBUA (Suing as the Administrator and Legal Representative of the Estate of Mwikali Solomon Ivali)PLAINTIFF

-VERSUS-

**DAVID
MUTUKUDEFENDANT**

RULING

1. This is a ruling in respect of an application by the Defendant/Applicant in which he seeks dismissal of the Plaintiff/Respondent's suit on the ground that the Respondent does not have locus standi to bring this suit and that the suit is frivolous, vexatious and an abuse of the process of court.
2. The Applicant contends that the suit property that is Makueni/Unoa/1274 was a subdivision of Makueni/Unoa/1298 which was registered in the name of Solomon Wambua Ivali who died on unknown dates (deceased). The deceased was the husband of Mwikali Solomon Ivali who died on 1st January, 2022 (Mwikali).
3. Mwikali became the registered owner of the suit property on 21st April, 2016. The Plaintiff who is daughter of Mwikali obtained grant of letters of administration ad litem in respect of her mother's estate on 3rd December, 2024 and proceeded to file this suit.
4. It is the Applicant's contention that as there were no succession proceedings in respect of the estate of the deceased, the root of the grant and title in favour of Mwikali is fraudulent and is therefore null and void and that therefore the Plaintiff has no locus standi to bring this suit.
5. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 6th November, 2025. The Respondent contends that the

Applicant's application is neither a notice of motion nor a chamber summons and is not shown under which provisions of law it is brought under.

6. The Respondent further contends that the application is frivolous, vexatious and is an abuse of the process of court which should be dismissed with costs. The Respondent states that she is the legal representative of Mwikali having obtained a grant of letters of administration ad litem.
7. The title to the suit property was registered in the name of Mwikali on 21st April, 2016. The Respondent states that the annexure to the Applicant's affidavit in support of his application relating to Makueni/Unoa/2079 and 2080 have nothing to do with this case and that whereas the Applicant claims that the root of title to the suit property is tainted with illegality, he goes on to state that he purchased the suit property from Mwikali.
8. The parties were directed to file written submissions. The Applicant filed written submissions dated 23rd December, 2025. The Respondent filed submissions dated 18th November, 2025.
9. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submission by the parties. The only issue for determination is whether the Respondent has locus standi to bring this suit.
10. There is no contention that the title to the suit property was registered in the name of Mwikali on 21st April, 2016. Mwikali died on 1st January, 2022 according to the death certificate, though the grant of letters of administration ad litem shows that she died on 1st January, 2020. Be that as it may, the fact remains that as at the time she died, the title to the suit property was in her name.
11. The Respondent applied for grant of letters in respect of her estate which grant was issued on 3rd December, 2024. The Respondent subsequently filed this suit in December, 2024. The Respondent therefore had locus standi to file this suit.

12. This court is not investigating how Mwikali was registered as owner of the suit property. Whether there were succession proceedings in respect of the estate of the deceased or not is not an issue to be determined by this court. The issue is whether the Respondent obtained grant of letters of administration in respect of the estate of Mwikali which I have found in the affirmative. I therefore find that the Applicant's application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 12TH DAY OF MARCH, 2026.**

IN THE PRESENCE OF:

Mr. Mutua for Defendant/Applicant

Mr. Muendo for Mr. Muthiani for Plaintiff/Defendant

Court assistant – Musyoki and Nyaanga