



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NYAMIRA  
(CHERERE-J)  
HCCA E045 OF 2025**

**BETWEEN**

**MARIKO AYIENDA ..... APPELLANT  
AND  
FOREST OFFICER  
MASABA NORTH SUB-COUNTY .....1ST RESPONDENT  
AREA CHIEF  
MIRIRI LOCATION (MR. NAFTAL NYAMESA) ..... 2ND RESPONDENT**

**(Being an appeal against ruling and order in Keroka MCCCmisc  
E009 of 2025, by Hon. C. Ombija (SRM) delivered on 23<sup>rd</sup> July 2025)**

**JUDGMENT**

**Background**

1. This appeal arises from the ruling delivered on 23<sup>rd</sup> July 2025 in Keroka MCCCmisc E009 of 2025, whereby the learned trial magistrate dismissed the entire suit on the ground that the Appellant lacked the requisite locus standi to institute the proceedings.
2. The proceedings before the subordinate court were initiated by the Appellant through a Notice of Motion dated 04<sup>th</sup> March 2025, by which he sought orders compelling the Respondents to assess and value trees allegedly destroyed on land parcel EAST KITUTU/MWAMOKAYA/1/604. Interim orders were issued on 23<sup>rd</sup> April 2025 pursuant to that application.
3. Thereafter, the Appellant filed a further application dated 20<sup>th</sup> May 2025 seeking to cite the Respondents for contempt. That application was

compromised on 25<sup>th</sup> June 2025, when the trial court directed the parties to consult the Forest Officer for purposes of compliance with the orders issued on 23<sup>rd</sup> April 2025.

4. Following the directions issued on 25<sup>th</sup> June 2025, the Appellant filed another application dated 07<sup>th</sup> July 2025 seeking contempt-related orders as those in the application dated 20<sup>th</sup> May 2025.
5. Upon hearing the parties on the application dated 07<sup>th</sup> July 2025, the trial court found that the suit land formed part of the estate of Ayienda Machwara. The court then addressed the issue of *locus standi* and held that the Appellant had instituted the proceedings without first obtaining a grant of representation. On that basis alone, the trial court dismissed the entire suit.
6. The Appellant is aggrieved by that decision and has preferred the present appeal. From the Memorandum of Appeal dated 29<sup>th</sup> July 2025, the Appellant contends that:
  - 1) **The learned trial magistrate erred in law and fact by dismissing the suit for lack of locus standi**
  - 2) **The learned trial magistrate erred in law and fact by failing to consider the judgment of the Rigoma Land Disputes Tribunal adopted in 2006 thereby arriving at an erroneous decision.**
7. The appeal was canvassed by way of written submissions. The Appellant filed submissions dated 29<sup>th</sup> July 2025, in which he argued that the learned trial magistrate ought to have considered the judgment of the Rigoma Land Disputes Tribunal, as adopted in 2006, as well as the interim orders

previously issued. He further contended that the destruction of trees could be addressed independently of succession proceedings.

8. The Respondents filed written submissions dated 06<sup>th</sup> February 2026 through the Honourable Attorney General. It was submitted that the trial court correctly dismissed the suit for want of locus standi the suit land forming part of the estate of a deceased person in respect of whom no grant of representation had been obtained. It was further submitted that the judgment of the Tribunal did not confer legal capacity upon the Appellant. Reliance was placed on **Hawo Shanko v Mohamed Uta Shanko [2018] eKLR** **Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) [2016] KEHC 4186 (KLR)** and **Morjaria v Abdalla [1984] KLR 490**.

**Issues for Determination**

9. Arising from the record and grounds of appeal and submissions, the following issues fall for determination:
- 1) Whether the trial court erred in dismissing the suit for lack of locus standi.**
  - 2) Whether the trial court erred in dismissing the suit notwithstanding earlier interim orders.**
  - 3) Whether the trial court erred in failing to consider the Rigoma Land Disputes Tribunal judgment after dismissing the suit for lack of locus standi.**

1) **Whether the trial court erred in dismissing the suit for lack of locus standi**

10. The trial court found that land parcel EAST KITUTU/MWAMOKAYA/1/604 formed part of the estate of the late **Ayienda Machwara** and that the Appellant had not obtained a grant of representation. That finding is borne out by the record and was not disputed. The Appellant's own pleadings before the subordinate court acknowledged that the land constituted his late father's property and that succession proceedings had not been undertaken.

11. Under the Law of Succession Act, only a duly appointed personal representative has capacity to institute proceedings relating to the estate of a deceased person. A beneficiary who has not obtained a grant lacks locus standi.

12. In **Hawo Shanko v Mohamed Uta Shanko** (supra), the Court held that a suit instituted without a grant of representation is incompetent and void ab initio. The same position was reiterated in **Julian Adoyo Ongunga v Francis Kiberenge Abano**(supra), and affirmed by the Court of Appeal in **Morjaria v Abdalla** (supra).

13. The learned trial magistrate therefore correctly identified and determined the issue of locus standi and did not err in dismissing the suit on that basis.

2) **Whether dismissal was erroneous in light of earlier interim orders**

14. The Appellant argued that the dismissal of the suit was inconsistent with earlier interim orders directing assessment of the trees.

15. It is trite law that upon finding that a party lacks *locus standi*, a court must bring the proceedings to an end. Interim orders issued before the determination of that foundational issue cannot confer jurisdiction nor cure the defect. The trial court's dismissal of the suit notwithstanding the existence of earlier interim orders was therefore consistent with settled law.

**3) Whether the trial court erred in failing to consider the Tribunal judgment**

16. The Appellant faulted the trial court for failing to consider the judgment of the Rigoma Land Disputes Tribunal, as adopted in 2006. I have examined the Tribunal proceedings and judgment annexed to the Record of Appeal and it is apparent from the impugned ruling that the suit was disposed of at the threshold on the basis of *locus standi*, without consideration of that judgment.

17. Having found that the Appellant lacked the legal capacity to institute the proceedings, it was neither necessary nor appropriate for the trial court to interrogate the merits of the claim or the effect of the Tribunal judgment. A court that finds proceedings to be incompetent must down its tools at that point.

18. In any event, the Tribunal exercised jurisdiction under section 3(1) of the now repealed Land Disputes Tribunals Act, which did not extend to succession matters or the representation of estates of deceased persons. The Tribunal judgment could not, therefore, vest the Appellant with the capacity to sue.

**Disposition**

19. From the foregoing analysis, this Court is satisfied that none of the matters raised by the Appellant on appeal disclose any misdirection in law, error of principle, or improper exercise of discretion on the part of the trial court. In the circumstances, this Court finds no basis upon which to interfere with the impugned ruling.

20. In the end, the Court makes the following orders:

- 1) The appeal is without merit and is hereby dismissed.**
- 2) The ruling delivered on 23<sup>rd</sup> July 2025 in Keroka MCCCmisc E009 of 2025 is affirmed.**
- 3) The costs of the appeal shall be borne by the Appellant.**

**DELIVERED AT NYAMIRA THIS 12<sup>th</sup> DAY OF February 2026**

**WAMAE.T. W. CHERERE  
JUDGE**

**Appearances**

**Court Assistant - Hilda**

**Appellant - Present in person**

**For Respondents - Mr. Ndiritu for Office of the Attorney General**