



**Ruiru v Kionge & another (Environment and Land Case
76 of 2013) [2026] KEELC 1552 (KLR) (18 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1552 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 76 OF 2013**

**CK NZILI, J
MARCH 18, 2026**

BETWEEN

JACKSON RUIRU PLAINTIFF

AND

JOSEPH KIONGE 1ST DEFENDANT

ROSE WAMBUI KINYANJUI 2ND DEFENDANT

RULING

1. By an application dated 4/11/2025, the court is asked to
 - (a) Strike out the names of the defendants from this suit, on the basis that they were improperly joined in the suit, and
 - (b) That the orders issued on 6/11/2024 be set aside and replaced with the dismissal of the suit with costs.
2. The reasons are contained on the face of the application and in a supporting affidavit of Rose Wambui Kinyanjui, sworn on 4/11/2025. The applicants depose that the basis of their substitution was due to letters of grant intestate to the respective estates issued in Succession Cause No. E132 of 2022 and E136 of 2022 are attached as annexure RWK-1(a) and (b).
3. The applicants depose that under Section 71 of the *Law of Succession Act*, Cap 160, a grant of letters of administration is only effective upon confirmation by the court, which must be sought within 6 months, and in this case, neither of the two grants was ever confirmed within the 6 months or at any other time.
4. The applicants depose that with respect to Succession Cause No. E136 of 2022, it came up for a Notice to Show Cause on 12/8/2025, when it was dismissed, and the file was closed as per annexure marked



- RWK-(2), making the grant void ab initio, and therefore the defendants have no lawful authority to act as administrators of the estate.
5. As to the second succession cause, the applicants depose that upon issuance of the grant on 17/5/2023, it automatically lapsed in November 2023, and therefore confers no legal authority upon the applicants to represent the estate. The applicants depose that since they hold no valid grant of representation in respect of either estate, they are not lawful administrators, hence lack locus standi to be sued.
 6. The applicants depose that the respondent's insistence on prosecuting this suit against them as purported administrators is fundamentally flawed, legally untenable, and amounts to an abuse of the court process, and that the continued inclusion is prejudicial and offends the principles of justice and due process.
 7. The application is opposed by a replying affidavit of Jackson Ruiru, sworn on 9/12/2025, terming it as having been brought in bad faith. It is deposed that the applicants used the two grants to their advantage and have come to court with unclean hands.
 8. It is deposed that it was the 1st applicant who applied to substitute as an administrator in place of Mary Wambui Kinyanjui, as per the confirmed grant on 12/6/2003, attached as JR-(1), after which on 21/11/2023, she applied for the confirmation of grant, whereafter, they subdivided the property in dispute as per a subsequent certificate of confirmation attached as JR-(2).
 9. The respondent deposes that pursuant to the same grant, the 1st applicant proceeded to file Kitale CMC Land Case No. E164 of 2024, against his caretaker as per annexure marked JR-(3) and (7). The respondent deposes that an order of injunction was issued thereto, which he used to evict him from the land as per annexure JR-(4).
 10. Further, the respondent deposes that a preliminary objection was filed by him on the suit as annexure JR-(5), which, upon dismissal, he filed an appeal as per annexure JR-(6). The respondent deposes that after failing to apply for letters of administration, a citation was lodged and a grant issued as per JR-(8).
 11. The respondent deposes that after discovering the grant, the applicants filed Kitale CMC P&A No. 132 of 2021, whereafter they obtained a grant on 17/5/2023 as per annexure JR-(9), whereby they used the same to apply for revocation of the one issued to John Maina Muchiri, vide an application dated 15/9/2023, attached as JR-(10), which application was allowed by the High Court on 3/10/2025 by consent.
 12. Equally, the respondent deposes that the grant being used is the one issued to the applicants in Succession Cause No. 132 of 2021 and not the one in Succession Cause No. 136 of 2022, hence the applicants have not done their ground work well to find the true position.
 13. In a further affidavit sworn on 15/12/2025, the respondent deposes that the grant issued to John Maina Muchiri was revoked on 18/6/2024 as per annexure marked JR-(1), and the one he is using is the one in Kitale CMC Succession Cause No. 132 of 2021.
 14. The respondent relies on written submissions dated 13/12/2025, stating that the grant issued to the applicants on 17/5/2023 in Kitale CMC No. 132 of 2021 is still valid; otherwise, the applicants did not conduct due diligence before filing this application. The respondent submits that the applicants are using delaying tactics.
 15. Striking out of a suit has been termed as a drastic step that ought to be sparingly used. In *D.T. Dobie & Co. (K) Ltd -vs- Muchina & Another [1980] eKLR*, that court held that no suit should be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is beyond redemption or curable by way of an amendment.



16. In *Yaya Towers Ltd -vs- Trade Bank Limited (In liquidation)* Civil Appeal No. 35 of 2000, the court said that a plaintiff is entitled to pursue his case unless the defendant can demonstrate that the claim is bound to fail or is otherwise an abuse of court process.
17. In the *Co-operative Merchant Bank Ltd -vs- George Fredrick Wekesa* Civil Appeal No. 54 of 1999, the court termed striking out a suit as a draconian act, which is only resorted to in plain cases, since oral evidence would be necessary to disprove what either of the parties says.
18. The power to strike out a suit is discretionary and has to be exercised with the greatest care and caution, since rules of justice require that the court must not drive away a litigant, however weak his case is, from the seat of justice.
19. In *Crescent Construction Co. Ltd Vs Delphis Bank Ltd (2007) eKLR*, the court held that while the act is draconian, at the same time, it is unfair to drag a person to the seat of justice when the case is purportedly brought against him, as it is a non-starter. In *Black's Law Dictionary, 9th Edition*, page 1026, locus standi refers to the right to bring an action or to be heard in a given form. See also *Alfred Njau & Others -vs- City Court of Nairobi, 1982] KAR 229*.
20. A cause of action denotes a combination of facts that entitle a plaintiff to obtain a remedy in court from another person and includes a right of a person that has been violated or threatened with violation by such other person. See *Karl Wehner Claasen -vs- Commissioner of Lands & 4 others [2019] eKLR*.
21. A legal administrator is defined by Section 82 of the [Law of Succession Act](#) as one who has powers to enforce by suit or otherwise, all causes of action by law, which survive the deceased or arise out of the death, and who has been granted letters of administration. See *Trouistik Union International & Another -vs- Jane Mbeyu & Another [1993] eKLR*.
22. The powers of a legal representative are donated by Sections 79 and 82 of the [Law of Succession Act](#). They include agitating any suit on behalf of the estate. See *Re the Estate of Thiong'o. Nginyayu Muthiora (Deceased) Succession Cause Number 2131 of 2011*. The applicants deny that they are the legal representatives of the deceased's estate.
23. The respondent, on the other hand, relies on annexures marked JR-(1) - (10) to say that the applicants have the capacity to represent such estates and that as recent as 5/11/2024, the 2nd applicant verified a plaint in affidavit in Kitale CMC No. 164 of 2024, that she was a legal administrator of the estate of Peter Mburu Kinyanjui through a certificate of confirmation of grant dated 21/11/2023, regarding title L.R. No. 5564/4 (I.R. 6444/1) registered under the deceased's name, where she had sued the caretaker of the plaintiff, and obtained temporary orders of injunction which orders have led to Appeal No. E036 of 2025, before this court.
24. In a statement of defence attached hereto, paragraph 6 thereof mentions the instant suit and its relationship with the referenced lower court case. An amended grant of letters of administration issued on 11/4/2024 showing that the 2nd applicant is a permanent representative of the estate of Mary Wambui Kinyanjui, as issued in Kitale CMC Succession Cause No. 136 of 2022.
25. An application for revocation and amendment of the grant dated 15/9/2023 is made by the 2nd applicant seeking to be issued with the grant as the daughter and grandson of the late Mary Wambui Kinyanjui.
26. He who alleges must prove. The applicant has not verified the existence of annexures JR-(1)-(9), and their relationship with the subject matter herein. The applicants are denying the existence of certain



facts. The deponent to the supporting affidavit has not filed a supplementary affidavit to refute her nexus to the deceased and the suit land.

27. A party that states something else on oath and wants to say otherwise later is barred under the doctrine of estoppel from denying the existence of those facts. Full disclosure of facts is what is expected in a court of law.
28. The upshot is that I find no basis laid why the suit should not be sustained. The application is dismissed with costs.
29. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18TH DAY OF MARCH 2026.

In the presence of:

Court Assistant – Dennis

Ndarwa for Munialo for the plaintiff present

Awuor for the defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

