



**Esho (Suing as the legal representative of the Estate of Reteti Ole Esho) v Esho & 2 others (Land Case E026 of 2025) [2026] KEELC 1602 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1602 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
LAND CASE E026 OF 2025  
LN GACHERU, J  
MARCH 19, 2026**

**BETWEEN**

**DICKSON ESHO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF RETETI OLE ESHO) ..... PLAINTIFF**

**AND**

**DOUGLAS SIMPANO ESHO ..... 1<sup>ST</sup> DEFENDANT**

**LAWRENCE SALAON ESHO ..... 2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, NAROK ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The matter for determination is the Notice of Preliminary Objection dated 22<sup>nd</sup> October 2025, filed by Douglas Simpano Esho and Lawrence Salaon Esho, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein, raising the objection that the Plaintiff lacks the requisite locus standi to institute and/or maintain the suit on behalf of the Estate of the late Reteti Ole Esho, as the only authority relied upon is the Limited Grant of Letters of Administration Ad Litem dated 15<sup>th</sup> June 2020, issued in Narok Succ No. 16 of 2020, which is restricted in scope and does not confer continuing authority to institute or prosecute fresh proceedings.
2. They deponed that Limited Grant Ad Litem only confers authority to represent the estate in specifically defined legal proceedings thereby rendering the entire proceedings incompetent and unsustainable in law.
3. Further, the objectors argued that the substantive reliefs sought in the Plaint pertain to the administration and distribution of the deceased's estate which fall within the purview of Probate and Succession law, such that the proper forum is a probate court and not the Environment and Land Court, which consequently lacks jurisdiction, rendering the entire proceedings fundamentally



misconceived, legally untenable, a nullity ab initio and liable to be struck out with costs to the Defendants.

4. The Preliminary Objection was canvassed by way of written submission. The Defendants/Objectors filed their written submission dated 26<sup>th</sup> November 2025, through Tobiko, Njoroge & Co. Advocates and submitted that the Plaintiff lacks the requisite locus standi to institute and/or maintain the suit on behalf of the Estate of the late Reteti Ole Esho. They raised the following issues for determination;
  - i. Whether the Preliminary Objection raises pure point of law.
  - ii. Whether the Plaintiff has the requisite locus standi to institute and sustain these proceedings.
  - iii. Whether the court has jurisdiction to hear and determine this suit.
5. On whether the Preliminary Objection raises pure points of law, the Defendants/ Objectors submitted that the objection meets the strict threshold established in the celebrated decision of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, wherein it was held that a proper Preliminary Objection must raise a pure point of law; founded on uncontested facts; capable of disposing off the matter without recourse to evidence or discretion.
6. It was the Defendants/Objectors argument that their objection satisfies this standard, as it arises clearly from the pleadings; requires no factual inquiry; and raises pure questions of law. They emphasized that the Plaintiff pleads and relies upon a Limited Grant of Letters of Administration Ad Litem dated 15<sup>th</sup> June 2020, and the legal effect and scope of that Grant, not its existence, is the issue for determination. This question is purely one of law arising from the *Law of Succession Act*.
7. The Defendants/Objectors also submitted that the second limb of their objection, which pertains to the lack of jurisdiction, is quintessentially a pure point of law. They argued that whether the Environment and Land Court has jurisdiction to determine prayers that are, in substance, succession matter is a question of constitutional and statutory interpretation, not a matter depending on disputed facts.
8. On whether the Plaintiff has the requisite locus standi to institute and sustain these proceedings, the Defendants/ Objectors submitted that the Plaintiff expressly relies on Limited Grant of Letters of Administration Ad Litem issued in 2020. They argued that such a grant is inherently restrictive, purpose-limited, and time-limited, often until a decree or suit finalization.
9. The Defendants/Objectors also argued that a Limited Grant Ad Litem cannot confer authority in respect of a cause of action that did not exist, was not pleaded, and could not have been anticipated at the time the grant was issued. They contended that the Plaintiff could not, in 2020, have obtained capacity to institute a suit that would only arise in 2025, as such authority is not contemplated under the Fifth Schedule of the *Law of Succession Act*.
10. The Defendants/Objectors further argued that reliance on a Limited Grant requires close scrutiny of its terms and purpose, and the mere existence of such a Grant does not automatically confer a free-standing, perpetual capacity to bring unrelated suits.
11. They submitted that the Plaintiff's reliance on the 2020 Limited Grant to file a new cause of action in 2025, is legally untenable, as it eviscerates the statutory scheme and undermines the policy and purpose of Limited Grants. They emphasized that litigation conducted without proper capacity is a legal nullity, rendering the Plaintiff's suit fatally defective and liable to be struck out.
12. On whether the court has jurisdiction to hear and determine this suit, reliance was sought in the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, and the



- Objectors reiterated that jurisdiction is everything, and a court without jurisdiction must down its tools immediately. The Objectors further submitted that the Plaintiff on the face of the Plaint expressly pleads that he brings the present action as a Personal Representative of the estate of the deceased by virtue of a 'Limited Grant Ad Litem' issued in 2020.
13. It was submitted that these averments disclose, loudly and unmistakably, that the gravamen of the Plaintiff's case is succession in character, notwithstanding its attempt to wear the clothing of a land dispute. Citing further the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, they reiterated that jurisdiction is everything, and a court without jurisdiction must down tools immediately.
  14. In conclusion, the Defendants/Objectors submitted that the Plaintiff's suit is fatally defective due to lack of locus standi and jurisdictional flaws. They urged the Court to uphold the Preliminary Objection dated 22nd October 2025 and strike out the Plaintiff's suit with costs awarded to the Defendants/Objectors.
  15. The Plaintiff filed their written submissions dated 1<sup>st</sup> December 2025, through Ombati D.B & Co. Advocates and raised two issues for determination;
    - i. Whether the Plaintiff has locus standi to prosecute this suit.
    - ii. Whether this court has jurisdiction to entertain this suit.
  16. On whether the Plaintiff has locus standi to prosecute this suit, it was submitted that the Limited Grant of Letters of Administration Ad Litem issued in Narok Succession Cause 16/2020, was valid and operational, allowing him to file the suit to protect the estate of the deceased, Reteti Ole Esho.
  17. The Plaintiff cited the case of Re Estate of Henry Kithia Mwitari (Deceased) (2021) eKLR and Re Estate of Helena Waangechi Njoroge (Deceased) (2015) eKLR, to support the claim that the Grant was not time-bound, and had not been revoked. Additionally, the Plaintiff relied on the case of Re Estate of Joseph King'oo Kyema (Deceased) Succession Cause No. E893/2021, to argue that the Grant was issued for the specific purpose of protecting the estate and was still valid.
  18. On whether this court has jurisdiction to entertain this suit, the Plaintiff contended that the Environment and Land Court, has jurisdiction under Article 162(2)(b) of *the Constitution* of Kenya 2010 and Section 13 of the *Environment and Land Court Act*. The Plaintiff argued that the case involves the cancellation of titles due to alleged intermeddling with the deceased's property, which falls under the jurisdiction of the Environment and Land Court.
  19. To support this argument, the Plaintiff cited the following cases; Zubeda Nasser Mbarak & 3 Others v Amina Sheik Mohamed & 4 Others, ELC No. 71/2021 and Peter Mwangi Karobia v Betha Wanja Karobia, ELC Appeal No. E024/2024, which established that disputes regarding the validity of land titles fall under the Environment and Land Court's jurisdiction.
  20. The Plaintiff also challenged the validity of the Defendants' Preliminary Objection, arguing that it has not meet the legal threshold established in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696. The Plaintiff further submitted that the Objection raises contentious issues of fact requiring evidence, which cannot be determined as a pure point of law.
  21. Furthermore, the Plaintiff alleged that the Defendants/Objectors had intermeddled with the deceased's estate by subdividing and transferring the suit parcels of land without obtaining letters of Administration. Citing Section 45 of the *Law of Succession Act*, and the cases of Veronica Njoki Wakagoto (Deceased) [2013] eKLR, and Re Estate of M'Ngarithi M'Miriti [2017] eKLR, the Plaintiff emphasized the seriousness of intermeddling and its legal consequences.



22. Finally, the Plaintiff argued that the titles held by the Defendants/Objectors were obtained through intermeddling and should be cancelled. The Plaintiff further relied on the case of Peter Mwangi Karobia v Betha Wanja Karobia, ELC Appeal No. E024/2024, to emphasize that a transfer of land cannot be effected after the proprietor's death, and that such transfers are considered null and void.
23. In conclusion, the Plaintiff submitted that the instant Preliminary Objection as raised by the Defendants/Objectors was misconceived and intended to delay the fair and expeditious disposal of the case. Consequently, the Plaintiff prayed for the dismissal of this Preliminary Objection with costs.
24. The above are the grounds for and against the instant Notice of Preliminary Objection, and the rival written submissions, which this court has carefully read and considered. The court renders itself as follows;
25. It obvious that the Defendants/Objectors herein has raised a Preliminary Objection which is a formal challenge, raised on a pure point of law, and if upheld, it is capable of disposing of the entire suit without the need for a full trial on its merits. See the case of Quick Enterprises Ltd vs Kenya Railways Corporation; Kisumu HCCC No 22 of 1999;
26. From various decisions coming from our courts, it is clear that a valid Preliminary Objection must satisfy several criteria as established in the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969), which criteria have been upheld to date. The court held as follows:

“ A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”
27. The basic principles to be considered are; the Preliminary Objection must raise pure point of Law: The Preliminary Objection must be based solely on legal principles, and it should not require the court to investigate or ascertain new facts. See the case of Kuria & 27 others v Mott & 12 others (Environment & Land Case 23 of 2021) [2024] KEELC 4220 (KLR) (14 May 2024) (Ruling), where the court stated as follows:

“ It is clear that a Preliminary Objection arises on a point of law only. The Court needs only to examine the pleadings and compare the issues raised therein with the law in issue and make a finding as to whether the failure to comply with what the law requires or provides is so fundamental that it goes to the root of the claim, defence, petition or plaint. This is what this Court will do in regard to the objection raised.”
28. Further, it must stem or be based on Pleadings: The Preliminary Objection must arise directly from the filed pleadings or by clear implication from them; See the case of SUSAN WAIRIMU NDIANGUI V PAULINE W. THUO & ANOTHER [2005] eKLR, where the court stated as follows:-

“ A Preliminary Objection should not be drawn in a manner that is vague and non-disclosing of the point of law or issue that is intended to be raised. It should clearly inform both the court and the other party or parties in sufficient details what to expect.”



29. Further, there must be assumption of truth: it is clear that for the purpose of the objection, all facts pleaded by the opposing party are assumed to be correct. There should be No Judicial Discretion: A Preliminary Objection cannot be raised if the court is required to exercise its own discretion to make a determination. See the case of *Oraro vs Mbaja* 2005 1 KLR 141
30. The Defendants/Objectors herein have raised the issue of locus standi, based on the Letters of Administration Ad Litem, and Lack of jurisdiction.
31. Locus standi is capacity to plead or to appear in Court. This is a legal point or requirement, and thus a pure point of law. Further, the issue of jurisdiction goes to the root of the suit, and jurisdiction is everything, and without it, the court has no option but to down its tools. See the case of *Owners of the Motor Vessel 'Lillian S' vs Caltex Oil (K) Ltd* [1989] KLR
32. Therefore, the two points or issues raised by the Defendants/Objectors are pure points of law, which stem from the pleadings. Thus the instant Preliminary objection meets the criteria of a valid Preliminary objection, as was held in the case of *Mukisa Biscuit's case* (supra).
33. The first point of objection is that the Plaintiff lacks requisite locus standi to institute this suit on behalf of the estate of Reteti Ole Esho because the only authority relied upon is the Limited Grant of Letters of Administration Ad Litem dated 15<sup>th</sup> June 2020, which was restricted in scope to the specific purpose to which it was granted.
34. It was the Defendants/Objectors claim that the Limited Grant Ad Litem only conferred authority to represent the estate in specifically defined legal proceedings, and did not include the present suit. They argued that the Plaintiff has filed this suit as the legal representative of the estate of Reteti Ole Esho.
35. Further that the Plaintiff derived his authority to file this suit from the Limited Grant Ad Litem which was issued on 15<sup>th</sup> June 2020, for purposes of prosecuting a suit as personal representative. The suit to be prosecuted was not named or cited.
36. What is the purposes of Limited Grant Ad litem? A Limited Grant Ad Litem is a specialized, temporary grant, which is issued by the court, and it allows an individual to represent a deceased person's estate specifically for prosecuting or defending a lawsuit. The Limited Grant Ad Litem is used to initiate, continue, or defend legal proceedings—such as a claim in property dispute, pending the appointment of a full administrator.
37. Therefore, it is clear that Limited Grant Ad Litem allows the holder of the same Locus Standi in Litigation, as it provides legal standing to the holder to sue or be sued on behalf of the deceased when no full representation exists. See the case of *Helena Wangechi Njoroge (deceased)* [2015] eKLR
38. The Plaintiff herein holds Limited Grant Ad Litem for purposes of prosecuting suit on behalf of the estate of Reteti Ole Esho. He has filed this suit against the Defendants, in his capacity as a legal representative of the said estate. He derives his authority from the said 'Limited Grant Ad Litem,' which Limited Grant is a specific legal authority, which is issued specifically for litigation purposes, such for recovery of land or any other claim on behalf of the estate. See the case of *Henry Albert Moore (Deceased) (Probate & Administration)* [2025] KEHC 3946 (KLR):
39. This Limited Grant Ad Litem has restricted powers, as it does not grant authority to administer the entire estate or distribute its assets. Typically, it allows only for the filing of a suit; Therefore, it is clear that further specific authority may be required to prosecute the suit or collect proceeds. See the case of *Karega & 2 others v Kiama & 2 others (Succession Cause 6 of 2019)* [2022] KEHC 9880



40. The ‘Limited Grant Ad Litem’ is temporary in nature, and remains in force only until the specific litigation is concluded or until a full grant of representation is issued. See the case of Estate of Henry Kithia Mwitari (Deceased) [2021] KEHC 13569 (KLR)
41. The above are the characteristics of a Limited Grant Ad Litem. The Defendants have not pointed out the specific character that the instant ‘Limited Grant Ad Litem’ held by the Plaintiff has offended. It is clear that the said Limited Grant Ad Litem was issued for purposes of prosecuting a suit on behalf of the estate of Reteti Ole Esho. The Plaintiff has filed the suit as the legal administrator of the said estate. The Limited Grant Ad Litem in issue did not have a time limit, and has not expired. Without time limit, the court cannot find and hold that a Limited Grant Ad Litem issued in 2020 cannot be used in a suit filed in 2025.
42. Therefore, this court finds and holds that the Plaintiff herein has locus standi to institute this suit derived from the Limited Grant Ad Litem issued to him on 15<sup>th</sup> June 2020.
43. On the issue of Jurisdiction, the Defendants averred that the issues raised herein falls under the Probate and Succession Court, and not this court, as the Jurisdiction of this court is spelt out in Section 13 of the ELC Act, as follows; -
- “ (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
- a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - b. relating to compulsory acquisition of land;
  - c. relating to land administration and management;
  - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - e. any other dispute relating to environment and land.
44. The Plaintiff in response to the Objection on jurisdiction submitted that the suit herein is seeking for cancellation of the titles which were issued contrary to the law, and that the suit is not related to the distribution of the estate of the deceased, Retiti Ole Esho.
45. The court has seen the orders sought in the Plaintiff’s claim, and among them is; a declaration that the transfer or subdivision of the suit parcels of land named thereon is null and void, and the same should be cancelled.
46. Indeed, the claim falls squarely under the provisions of Sections 13(2)(a), (e) and 5(f) and (g), which mandate the court to deal with the claims over title to land, land planning and tenure. It is clear that the claim as filed by the Plaintiff herein is related to title to land, and it falls within the jurisdiction of this court and not probate court, as alleged by the Defendants. See the case of Estate of Fraciah Wanjiru Kariuki (Deceased) [2024] KEHC 5811 (KLR)
47. The court will concur with the submissions made by the Plaintiff that the issue of cancellation of title falls under the jurisdiction of this court, and not succession court as was held in the case of Zubeda Nasser Mbarak and Another vs Amina Sheik Mohamed & 4 others (supra).



48. Having found that the claim herein is related to title to land and cancellation of titles, which falls under the jurisdiction of ELC, this court finds and holds that it has jurisdiction to hear and determine this suit. Therefore, the Preliminary Objection herein on Jurisdiction is not merited, and the same is dismissed.
49. This court having considered the instant Preliminary Objection and the rival written submissions and the cited authorities, finds and holds that the said Preliminary Objection is not merited, and the same is dismissed entirely with costs to the Plaintiff.
50. Let the suit be heard and determined on merit. The Defendants to file and serve their Defence, and the parties to comply with Pre- trial directions expeditiously so that the issues in disputes can be resolved at once.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 19<sup>TH</sup> DAY OF MARCH 2026.**

**L. GACHERU**

**JUDGE**

Delivered online in the presence of

Elijah Meyoki - Court Assistant

N/A for Plaintiff

M/s Katao for 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Objectors

Mr. Ochako for 3<sup>rd</sup> Defendant

