

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ELCLA No. E013 OF 2024

**AGNES MORAA NYARIKI & FELISTAS NYARIKI (Suing as the administrators of estate of HENRY NYARIKI OKARA APPELLANTS
VERSUS**

**BILLAH KEMUNTO SANI
1ST RESPONDENT
THE COUNTY LAND REGISTRAR,
NYAMIRA COUNTY
2ND RESPONDENT
THE AREA CHIEF, NYANSIONGO LOCATION 3RD
RESPONDENT
THE DEPUTY COUNTY LAND REGISTRAR,
NYAMIRA COUNTY 4TH
RESPONDENT
ELIJAH SANI
5TH RESPONDENT**

(Being an appeal from the judgment and decree of the Chief Magistrate’s Court at Keroka (C. Ombija, Senior Resident Magistrate) delivered on 20th November 2024 in Keroka MCELC No. E001 of 2023)

RULING

1. This is a concluded appeal in which judgment was delivered on 4th February 2026. The Court found no merit in the appeal and the cross appeal and accordingly dismissed both with no order as to costs.

2. Thereafter, the Appellants filed Notice of Motion dated 19th February 2026, seeking stay of execution of the judgement and decree pending hearing and determination an appeal to the Court of Appeal. The application was heard and determined through ruling delivered on 11th March 2026. It was dismissed with costs to the First and Fifth Respondents.
3. There is yet another application for determination through this ruling: Notice of Motion dated 9th March 2026 which was filed by Isaac Peter Ongare (hereinafter “Applicant”). The ruling is also in respect of Notice of Preliminary Objection dated 10th March 2026, through which the First and Fifth Respondents responded to the application.
4. The following are the prayers in the application:
 - i. That the application herein be certified as extremely urgent and the same be heard ex-parte in the first instance due to its nature.*
 - ii. That the Honorable Court be pleased to stay its Judgment and Decree herein dated the 4th day of February 2026 pending the hearing of this application inter partes.*
 - iii. That the Honorable Court be pleased to review, vary and/or set aside its judgment and decree dated the 4th day of February 2026.*

iv. *That the Honorable Court be pleased to set aside the judgment and decree of the subordinate court as it affects land parcel Gesima Settlement Scheme/52 registered and or belonging to a party who was not a party to the proceedings before the Magistrate Court and deceased one THOMAS ONGARE NYASETIA.*

v. *That costs of this application be provided for.*

5. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the Applicant. He deposed that Thomas Ongare Nyasetia (deceased) who was the registered owner of land parcel number Gesima Settlement Scheme/52 died on 19th February 2003 and was not a party in the proceedings in the Subordinate Court. He added that it would be a grave error to condemn a party unheard and that the decree of the Subordinate Court could be executed at any moment.

6. The Notice of Preliminary Objection is pleaded as follows:

TAKE NOTICE that the 1st and 5th Respondents will raise a preliminary objection to the Application as filed on the following grounds;

1. The Applicant herein lacks the locus standi to move to this court as he is a stranger to the proceedings herein and therefore has no legal standing to seek substantive orders in the matter.

2. *The Honourable Court is fucus (sic) officio and therefore has no jurisdiction to entertain the Applicant's application.*

3. *The application is frivolous, misconceived, incompetent and an abuse of the court process.*

4. *That the orders sought cannot issue after the determination of the appeal.*

REASONS WHEREFORE the 1st and 5th Respondents pray that the Applicant's application dated 9th day of March 2026 be dismissed with costs.

7. The First and Fifth Respondents also filed a Replying Affidavit sworn by Elijah Sani, the Fifth Respondent. He deposed that land parcel number Gesima Settlement Scheme/52 was never the subject of this appeal and that the Applicant did not annex any grant of representation in respect of the deceased's estate. He added that the Applicant had filed a similar application dated 3rd December 2025 at the Keroka Law Courts which was dismissed.

8. The application and the preliminary objection were canvassed together through written submissions. The First and Fifth Respondents filed submissions dated 16th March 2026. They submitted that the Applicant lacked *locus standi* since he did not annex any grant of representation in respect of the deceased's estate. They relied on the cases of **Julian Adoyo**

Ongunga & Another -vs- Francis Kiberenge Bendera (suing as Administrator of the Estate of Fanuel Evans Amudavi, Deceased) [2016] eKLR and Daykio Plantations Limited v National Bank of Kenya Limited & 2 others [2019] eKLR in support of that contention and urged the Court to dismiss the application.

9. The First and Fifth Respondents further submitted that having rendered its final decision, the Court is *functus officio* and ceased to have jurisdiction over the matter. Relying on the cases of **Odinga v Independent Electoral & Boundaries Commission & 3 others (Petition 5, 4 & 3 of 2013) [2013] KESC 8 (KLR) (Civ) (24 October 2013) (Ruling), Telkom Kenya Limited v Ochanda (Suing on his own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Limited) [2015] KESC 18 (KLR), and Kenya Airports Authority v Mitu-Bell Welfare Society & 2 others [2016] eKLR**, they urged the Court to hold that it cannot entertain the application. They also submitted that the application is an abuse of the court's process and that it ought to be dismissed with costs.
10. On his part, the Applicant submitted that he had never been a party either in the proceedings before the Subordinate Court or in this appeal and that to the extent that the judgment of the Subordinate Court mentioned land parcel number Gesima Settlement Scheme/52, there was an error on the face of the

record which this Court has jurisdiction to *ex debito justitiae*. That in the circumstances, the issues of *locus standi* and *functus officio* do not arise since the Court could be moved to render justice even on the basis of a letter.

11. The Applicant cited the cases of **Misnak International (UK) Limited v 4MB Mining Limited C/O Ministry of Mining, Juba Republic of South Sudan & 3 others [2019] KECA 471 (KLR)** as well as **Naikuni v Naikuni & 7 others; Manyuele (Applicant) [2025] KEELC 3064 (KLR)** and submitted that the contention that the application is an abuse of the court process cannot hold since he was simply informing the Court that orders were wrongly made. He concluded by submitting that the application is meritorious and urged the Court to allow it with costs.
12. The rest of the parties neither responded to the application nor filed submissions.
13. I have carefully considered the application, the affidavit in support, the preliminary objection and the submissions. The issues that arise for determination are whether the Court has jurisdiction and if so, whether the reliefs sought should issue.
14. The law on preliminary objections is settled. A preliminary objection consists of a pure point of law which is pleaded, or which arises clearly from the pleadings, and which if successful can dispose of the suit or proceedings in respect of which it is

brought. See **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**. Essentially, a preliminary objection raises an issue of jurisdiction.

15. The vital role played by jurisdiction must be emphasised. Jurisdiction means the authority or power of a court to determine a dispute submitted to it. See **National Social Security Fund Board of Trustees vs. Kenya Tea Growers Association & 14 Others [2023] KECA 80 (KLR)**.

16. As has often been restated by the Courts, jurisdiction is the entry point in any matter that the Court is called upon to determine and is the very life and soul of any proceedings. Without it, the proceedings come to a certain end and the Court cannot take any further step. See **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR**.

17. The Applicant has contended that the Court cannot be held back in its quest to do justice by such issues as *locus standi* and *functus officio*. I am afraid that is a misleading position. Jurisdiction is the entry point. Without it, the proceedings surely transform from a hallowed arena of justice to a poisoned chalice of sure injustice notwithstanding any noble intention to render justice.

18. As the Supreme Court clearly held in **Samuel Kamau Macharia & another v Kenya Commercial Bank Limited**

& 2 others [2012] eKLR, the issue of jurisdiction is not one of mere procedural technicality but goes to the very heart of the matter. Jurisdiction cannot be acquired through judicial craft or innovation.

19. On its part, the Court of Appeal held thus in **National Social Security Fund Board of Trustees vs. Kenya Tea Growers Association & 14 Others** (supra):

Where a Court is drained of the jurisdiction to entertain a matter, the proceedings flowing from it, no matter the quantum of diligence, dexterity, artistry, sophistry, transparency and objectivity injected into it, will be marooned in the intractable web of nullity.

20. One way through which the Court can lose jurisdiction is when it has conclusively determined the matter before it. The adage “litigation must come to an end” remains valid and has been refined in the doctrine of *functus officio*. While discussing the doctrine in **Raila Odinga & Others vs. IEBC & Others [2013] eKLR**, the Supreme Court cited, with approval, a paper by **Daniel Malan Pretorius**, titled **The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law**,” (2005) 122 SALJ 832, where the author discussed the concept as follows:

“The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter.... The [principle] is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.”

21. Judgment having been delivered in this appeal on 4th February 2026, the Court discharged its mandate and became *functus officio*. the Court has no jurisdiction to set aside its judgment or the judgment of the Subordinate Court as sought in the present application. By his own admission, the Applicant is a stranger both to this appeal and to the proceedings before the Subordinate Court since he was not a party.

22. Another aspect of the issue of jurisdiction is *locus standi*. *Locus standi* is defined in **Black’s Law Dictionary**, 9th Edition (page 1026) as “*the right to bring an action or to be heard in a given forum.*”

23. The law is that a cause of action vested in or against the estate of a deceased person can only be validly agitated by or

against the personal representative of the estate. See **Trouistik Union International & another v Jane Mbeyu & another [1993] eKLR** and **CKM v ENM & another (Civil Appeal 250 of 2019) [2024] KECA 293 (KLR) (8 March 2024) (Judgment)**. The term “legal representative” is defined at **Section 2** of the **Civil Procedure Act** as meaning “a person who in law represents the estate of a deceased person, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.”

24. In **Rugiri v Kinuthia & 3 others [2024] KECA 1601 (KLR)**, the Court of Appeal held as follows regarding the consequence of filing a case in respect of a deceased’s estate without a grant of representation:

Decided cases are in agreement that where a suit is filed relating to a deceased’s estate without a grant of representation, the proceedings are null and void for want of locus standi. (See Virginia Edith Wamboi vs. Joash Ochieng Ougo & Another [1982-88] 1 KAR and Trouistik Union International & Another vs. Jane Mbeyu & Another Civil Appeal No. 145 of 1990). It follows, therefore, that for a party to have locus standi to institute or defend a case for and on behalf of a deceased person, he or she must first obtain a

grant of letters of administration empowering him or her to administer the deceased's estate or a limited grant limited for the purpose of filing or defending the suit.

25. The Applicant styled himself in the heading of the application as a representative of the deceased's estate. He neither annexed a grant of representation in respect of the deceased's estate nor stated that he has any such grant. In the absence of a grant of representation, he lacks *locus standi* to pursue any cause of action vested in the estate. The Court has no jurisdiction to entertain the Applicant on matters concerning the deceased's estate when he is not a legal representative of the said estate.

26. In view of the foregoing discourse, this Court lacks jurisdiction to hear and determine Notice of Motion dated 9th March 2026 since the Court is *functus officio* and the Applicant lacks *locus standi*. I strike out the application with costs to the First and Fifth Respondents.

Dated, signed, and delivered at Nyamira, this 8th day of April 2026.

**D. O. OHUNGO
JUDGE**

Delivered in the presence of:

Mr Mokuia for the Applicant

No appearance for the Appellants

Ms Mosomi for the First and Fifth Respondents

Mr Ndiritu for the Second to Fourth Respondents

Court Assistant: B Kerubo