

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ELC JUDICIAL REVIEW NO. 3 OF 2021

BETWEEN

JULIUS NTETE KALEIYA (Suing as the Legal
Representative and beneficiary of the late KALEIYA
TUMPES AND LASOI KALEIYA TUMPES)

APPLICANT

VERSUS

TOM OLE KALEIYA **1ST RESPONDENT**
LAND REGISTRAR KAJIADO COUNTY **2ND**
RESPONDENT

AND

AMREF HOUSING DEVELOPMENT
COMPANY LIMITED **1ST INTERESTED**
PARTY
DANILE SOLITEI NAMADI **2ND INTERESTED**
PARTY

RULING

(In respect of the Preliminary Objection by the 1st Respondent dated 1st October 2025 seeking to have the present suit struck out on the premise that the ex parte Applicant lacks locus standi to institute and maintain these proceedings)

Introduction

1. Before this Court for determination is the Notice of Preliminary Objection dated 1st October 2025. The Preliminary Objection was raised by the 1st Respondent, Tom Ole Kaleiya. The 1st Respondent seeks orders for the judicial review proceedings to be dismissed and/or struck out with costs.

2. The foundational ground for the objection is that the ex parte Applicant, Julius Ntete Kaleiya, lacks *locus standi* to institute and maintain these proceedings. The ex parte Applicant purports to act as the Legal Representative of the late Kaleiya Tumpes and Lasoi Kaleiya Tumpes and instituted the proceedings as such.
3. The 1st Respondent's objection is supported by written submissions dated 17th February 2026 whereby he submits that the ex parte Applicant relied on a Limited Grant of Letters of Administration *ad colligenda bona*, which is strictly for the collection and preservation of a deceased's estate and does not confer the legal capacity to institute or maintain court proceedings.
4. The Ex-parte Applicant opposes the Preliminary Objection through written submissions dated 27th February 2026 whereby he contends that holding a valid Limited Grant of Letters of Administration *ad colligenda bona* confers on him the requisite *locus standi* to institute and maintain legal proceedings, particularly when those proceedings are aimed at preserving the estate of the deceased.

Directions

5. The preliminary objection was canvassed by way of written submissions, the submissions of which have been duly considered in the writing of this ruling.

Analysis and Determination

6. Before delving into the merits of the objection, the Court must be satisfied that the objection raised qualifies as a Preliminary Objection in law. The guiding precedent on this issue remains the celebrated case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696*, where Law JA authoritatively stated verbatim:

"So far as I am aware, 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 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."

In the same breath, Sir Charles Newbold P. added that:

"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 has to be ascertained or if what is sought is the exercise of judicial discretion."

7. The issue of *locus standi* goes to the very root of a court's jurisdiction. If a party lacks the capacity to sue, no valid proceedings exist. I am therefore satisfied that the 1st Respondent's Notice of Preliminary Objection raises a pure point of law capable of disposing of the suit in limine.
8. In the case of Alfred Njau –Vs- City Council of Nairobi [1983] KLR 625 the Court of Appeal, held inter alia that;

"...Locus standi" literally means a place of standing and refers to the right to appear or be heard in Court or other proceedings and to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding".

9. In the case of Julian Adoyo Ongunga –vs- Francis Kiberenge Abano Migori Civil Appeal No.119 of 2015, Justice A. Mrima had this to say on the issue of a party filing a suit without having obtained a limited grant;

“Further, the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a Court acting without jurisdiction. Since it all amounts to null and void proceedings. It is also worth noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.”

10. The core issue for determination is whether a Limited Grant of Letters of Administration *ad colligenda bona* vests the holder with the capacity to institute Judicial Review proceedings on behalf of a deceased's estate.

11. Section 82 of the **Law of Succession Act (Cap 160)** outlines the powers of personal representatives to enforce causes of action, but introduces a critical caveat, stating verbatim:

*"Personal representatives shall, **subject only to any limitation imposed by their grant**, have the following powers— (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative..."*

12. The nature of the Applicant's grant is *ad colligenda bona* (for the collection of goods).

This type of limited grant is issued under Section 67 of the Law of Succession Act (as read with Rule 36 of the Probate and Administration Rules) specifically for situations of urgency to collect and preserve an estate from wastage.

13. The Applicant submits that instituting a Judicial Review falls under "preservation" of the estate. I respectfully disagree. Kenyan jurisprudence has consistently and strictly construed the boundaries of limited grants. The Court of Appeal decisively settled this issue in the case of *Morjaria v. Abdalla [1984] KLR 490*, a precedent subsequently relied upon in *Zahul Mohamed Rehmtulla v The Public Trustee & two others [2010] eKLR*. In resolving the exact question of locus standi under an *ad colligenda bona* grant, the Court held verbatim:

"In Morjaria -Vs- Abdalla, the Court of Appeal held that the purpose of a grant of letters of administration ad colligenda bona is to collect the property... Such a grant, it was held, cannot give the person... the right to institute a suit on behalf of the estate. It is clear that a limited grant can only be for the purpose of: 'collecting and getting in and receiving the estate and doing such things as may be necessary for the preservation of the same until further representation be granted'."

14. To institute legal proceedings to protect an estate prior to the confirmation of a full grant, the legally prescribed vehicle is a **Limited Grant Ad Litem** (for the purpose of a suit). A grant *ad colligenda bona* does not empower an administrator to engage in adversarial litigation.

15. By attempting to institute Judicial Review proceedings without a Full Grant of Letters of Administration or a Limited Grant *Ad Litem*, the Applicant acted outside the strictly confined legal mandate of his grant. Consequently, the Applicant lacked the requisite *locus standi* at the time of filing the suit.
16. Where a suit is instituted by a party without the legal capacity to do so, the proceedings are incompetent and fatally defective. It is not an irregularity that can be cured by the overriding objective or by an amendment; it is a jurisdictional nullity *ab initio*. Simply put, a party without *locus standi* in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists.
17. In light of the foregoing analysis, the 1st Respondent's Notice of Preliminary Objection dated 1st October 2025 is hereby upheld. Consequently, this matter is struck out in its entirety for want of *locus standi* with costs to the 1st Respondent.

Ordered accordingly.

Dated, Signed and Delivered Virtually this 23rd Day of April, 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Shem Dickson for the 1st Respondent/Objector

Mr. Gichunge for the 2nd Interested Party

Ms. Wangare h/b for Mr. Mahinda for the 1st Interested Party

Ms. Njagi h/b for Mr. Njenga for the ex parte Applicant

N/A by the 2nd Respondent

Court Assistant: Peninah

M.D. MWANGI
JUDGE

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