



**Matu v Mugweru & 2 others (Environment and Land Case  
351 of 2017) [2026] KEELC 1956 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1956 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 351 OF 2017**

**LG KIMANI, J**

**MARCH 5, 2026**

**BETWEEN**

**FRANCIS MUCHIRI MATU ..... PLAINTIFF**

**AND**

**WINNIE WANGU MUGWERU ..... 1<sup>ST</sup> DEFENDANT**

**LOISE WAIRIMU MUGWERU ..... 2<sup>ND</sup> DEFENDANT**

**RUTH WANJIRU MUGWERU ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

**Background**

1. For context, the main suit was commenced via an Amended Complaint dated 21<sup>st</sup> June 2017. The Plaintiff, Francis Muchiri Matu, sued the Defendants: Winnie Wangu Mugweru, Loise Wairimu Mugweru & Ruth Wanjiru Mugweru, who were all administrators of the estate of Maaka Mukuhi Mugweru (deceased) in Succession Cause No. 250 of 2007 consolidated with Milimani Succession Cause No. 525 of 1997; estate of Simon Mugweru Waithirwa (deceased) [hereinafter referred to as ‘the succession cause’].
2. The crux of the matter was that the Plaintiff claimed that the property Land Reference No. 13041/2 (Grant No. 85810) situated in Nairobi comprising approximately 2.704 hectares [hereinafter referred to as ‘the suit property’] was sold to him at a cost of Kenya shillings Three Million Five Hundred Thousand [Ksh 3,500,000/-] only by the deceased on 3<sup>rd</sup> December 2004.
3. In the Amended Complaint, the Plaintiff stated that he had completed the process on his end, and it was for the deceased [who had, before his death, nominated Danson Waweru to act in her stead on the matter] to transfer the property to him; which transfer and registration were never completed.



4. In the succession cause earlier stated, the suit property was included as part of the estate of the deceased; hence, the present suit. The Plaintiff prayed that the court declare him the proprietor of the suit property and that, by an order of specific performance, the administrators be directed to transfer the property to him.

#### **The Plaintiff's Case**

5. The Plaintiff has approached this court via Notice of Motion under Certificate of Urgency dated 2<sup>nd</sup> May 2025. The application is supported by an Affidavit sworn by the Plaintiff on a date even.
6. The Plaintiff prayed:
  1. Spent;
  2. Spent;
  3. THAT Martin Magweru, acting as the Administrator for Winnie Wangu Mugweru (deceased), be struck off as the 1<sup>st</sup> Defendant;
  4. Spent; and
  5. THAT costs be provided for.
7. In the Supporting Affidavit dated 2<sup>nd</sup> May 2025, the Plaintiff swore that the 1<sup>st</sup> Defendant, Winnie Wangu Mugweru, was deceased and was no longer an administrator in the succession cause.
8. In that regard, the deponent attested that Martin Mugweru had no locus standi in the case and is a vexatious and frivolous litigant.
9. In opposition, one Martin Mugweru who claimed to be an administrator in the estate of the late Winnie Wangu Mugweru; filed a Notice of Preliminary Objection dated 8<sup>th</sup> July 2025 stating mainly that the application was premature, incompetent and bad in law as by a consent recorded as an order of the court on the 22<sup>nd</sup> of February 2023 in the succession cause, he had been named administrator in the estate of the late Winnie Wangu Mugweru and was a proper party to these proceedings.
10. In a Ruling dated 10<sup>th</sup> July 2025, Judy Omenge J dismissed the Preliminary Objection to abide the outcome of the main suit.
11. The Plaintiff filed a Further Supporting Affidavit dated 7<sup>th</sup> July 2025 to produce a copy of a rectified Letters of Administration dated 27<sup>th</sup> March 2025 from the succession cause, stating that only the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants remained as administrators in the succession cause.

#### **The 1<sup>st</sup> Defendant's case**

12. The 1st Defendant filed two Replying Affidavits dated 8th July 2025 and 4th October 2025, both sworn by Martin Mugweru.
13. In the Replying Affidavit dated 8th July 2025, the deponent states that he is the 1st Defendant and the duly appointed administrator of the estate of his late mother, Winnie Wangu Mugweru (deceased), and therefore competent to swear the affidavit and participate in the proceedings on behalf of the estate.
14. He deposes that pursuant to the outcome of the succession proceedings in which the suit property forms part of the estate, he is entitled to a share of the said property and consequently has a beneficial interest in the subject matter of the suit. On that basis, he contends that he is properly before the court.



15. The deponent further avers that the application filed by the Plaintiff is premature, incompetent and bad in law as it seeks to exclude him from proceedings in which he has a substantial legal interest by virtue of his position as both administrator and beneficiary of the deceased's estate.
16. He also asserts that the question of administration of the estate is already the subject of proceedings before the Family Court, and that the present suit involves the same subject matter and parties, thereby rendering the matter sub judice.
17. The deponent maintains that his involvement in the administration of the estate has been lawful and undertaken pursuant to court orders. He therefore contends that the application is frivolous, vexatious and an abuse of the court process, and that it seeks to defeat substantive justice and to unjustly deprive him of his right to a fair hearing as guaranteed under Article 50(1) of *the Constitution*.
18. It is further his contention that the Plaintiff seeks to exclude him from the proceedings on the basis of an alleged creditor's claim that remains unverified and whose objective, according to him, is to unlawfully benefit from the estate in the succession cause.
19. Consequently, the deponent urges the court to dismiss the application with costs on the ground that it constitutes an attempt to interfere with the lawful administration of the deceased's estate.
20. In the Replying Affidavit dated 4th October 2025, the deponent reiterates the contents of his earlier affidavit. He maintains that as an administrator and beneficiary of the deceased's estate, the court is properly seized of the matter as it concerns the suit property forming part of the estate.
21. He further deposes that the 2nd and 3rd Defendants are intermeddling with the suit property despite the fact that their grants were revoked in the succession proceedings.
22. In conclusion, the deponent prays that the application be dismissed with costs. In the alternative, he urges the court, in order to avoid prejudice, to stay the present land proceedings pending the hearing and determination of the summons for revocation of grant in the succession cause.

### **The 2<sup>nd</sup> and 3<sup>rd</sup> Defendant's case**

23. The 2nd Defendant swore an Affidavit dated 27th August 2025 in support of the Plaintiff's application dated 2nd May 2025, stating that she also represented the interests of the 3rd Defendant.
24. She deposed that their late mother, Maaka Mukuhi Matu, remains the registered proprietor of the suit property and that the Defendants were sued in their capacity as administrators of her estate.
25. She further averred, on the advice of counsel, that no substitution had been effected to replace the 1st Defendant, who died on 22nd May 2017, and that Martin Mugweru lacked locus to be enjoined in the proceedings since there are two surviving legally appointed administrators.
26. She also asserted that his purported assumption of title as an administrator of the deceased's estate was false and misleading.

### **The Plaintiff's submissions**

27. Counsel filed submissions dated 4<sup>th</sup> October 2025 on behalf of the Plaintiff. Counsel submitted that the Plaintiff did not sue the Late Winnie Wangu Mugweru in her personal capacity but as an Administrator to the Estate of Maaka Mukuhi Mugweru (deceased), whose role relinquished upon her death.



28. It was Counsel's submission that the 1<sup>st</sup> Defendant, since deceased; is no longer an Administrator to the succession cause. Therefore, the son of the deceased lacked locus standi in this matter.
29. Counsel cited the Court of Appeal case James Teko Lopoyetum versus Rose Kasuku Watia & 4 others [2021] eKLR, which cited another that defined the term locus standi as "a right to appear in court".
30. Counsel also cited Sheila Nkatha Muthee versus Alphonse Mwangemi Munga & Another [2016] eKLR that,
 

"Locus standi is a primary point of law, almost similar to that of jurisdiction, since the lack of capacity to sue renders the suit incompetent."
31. Counsel thus posited that Martin Mugweru had no legal capacity to be a party in this case; neither was he a party to the Sale Agreement, the subject matter of this suit.
32. Counsel put forward that the succession case and his status in the succession case had no bearing on the land case.

### **The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' submissions**

33. Counsel filed submissions dated 27<sup>th</sup> October 2025 on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
34. Counsel submitted that the only issue for determination was whether Martin Mugweru had locus standi to participate in this suit.
35. It was Counsel's submission that under section 81 of the *Law of Succession Act*, upon the death of any administrator, all powers and duties would vest in the surviving administrator(s). In that regard, Counsel cited the case of Meshack Otieno Aidah & another versus Sharon Atieno Aidah & 7 others [2020] KECA 299 (KLR). Counsel also referred to section 82 (a) of the *Law of Succession Act* and cited the cases of Trouistik Union International & Another versus Jane Mbeyu & another [1993] KECA 89 (KLR) and Marira & 2 others versus Mutiso & 4 others (Civil Appeal E112 of 2022) [2025] KECA 1437 (KLR) (31 July 2025) (Judgment).
36. Counsel then put forward that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants would remain administrators, leaving no entry for Martin Mugweru to substitute the deceased. His claim was therefore illegal and without basis.
37. Because Martin Mugweru lacked locus standi in this case, Counsel prayed that the application be allowed as prayed.

### **The 1<sup>st</sup> Defendant's (Martin Mugweru) submissions**

38. Martin Mugweru filed submissions dated 4<sup>th</sup> October 2025 and laid out his submissions on the issue of whether the application had merit.
39. It was Martin Mugweru's submission that, as a duly appointed co-administrator through a consent order, he had locus standi. In this regard, he cited the Court of Appeal case of Brooke Bond Liebig (T) Limited versus Mallya [1975] EA 266 on the weight that a consent recorded as an order of the court was proper.
40. Martin Mugweru submitted that as a beneficiary of the deceased, he had a present interest in the suit. He cited the case of Alphonse Mwangemi Munga & 2 Others v Saferoad Company Limited [2018] eKLR where the Court of Appeal affirmed that a party with a direct legal interest in the subject matter of litigation is a necessary party whose absence would render any judgment ineffective. The 1<sup>st</sup>



Defendant's interest is not contingent; it is a present, legally recognised interest confirmed by a court of competent jurisdiction.

41. Martin Mugweru opined that the present application was overtaken by events, as there was a parallel application challenging the confirmation of the grant and praying for revocation of the grant. He cited the case of *Niazsons (K) Ltd v China Road & Bridge Corporation* [2001] KLR 12, where the court held that where a matter in issue is also pending in another court, a stay may be granted to avoid the possibility of contradictory judgments.
42. Martin Mugweru submitted that this court was mandated to include the 1<sup>st</sup> Defendant's participation in the suit under Article 162 (2) (b) of *the Constitution* and the *Environment and Land Court Act*. He posited that, as this matter concerned land and the principles surrounding land and responsible stewardship, it was only his right that he should be a party to the suit.
43. Martin Mugweru concluded that the authorities were clear and unanimous: a party with a direct interest must be heard; a grant tainted by fraud was a nullity; and the principles of sustainable development required the protection of the interests of all stakeholders, including future beneficiaries.
44. He prayed that the application be dismissed with costs. In the alternative, to avoid prejudice, the court directs that this land matter be stayed pending the hearing and determination of the summons for revocation of the grant in the succession cause.

### **Analysis and Determination**

45. Having considered the Notice of Motion dated 2nd May 2025, the affidavits on record, and the rival submissions, the sole issue for determination is:

#### **Whether Martin Mugweru has locus standi to participate in these proceedings as the 1st Defendant in his alleged capacity as administrator of the estate of Winnie Wangu Mugweru (deceased).**

46. The application herein and the responses thereto have dealt extensively with issues of succession and sale and purchase of land. It is important to restate the jurisdiction of this court which is articulated in Article 162 (1) of *the Constitution* as a Superior Court. Under sub-article (2) (b), a Court with the same status as the High Court is to hear and determine disputes related to the environment and the use and occupation of, and title to land; thus, the Environment and Land Court is established under section 4 of the *Environment and Land Court Act*. The jurisdiction of the court is outlined in section 13 of the Act in accordance with the Constitutional provision in Article 162 (2) (b).
47. Judicial authority is expounded in Articles 150, 160 & 165 of *the Constitution*, sections 18 & 19 of the *Environment and Land Court Act* and sections 1A, 1B, 2 [under 'court'] & 3A of the *Civil Procedure Act*.
48. It is worth noting that from the pleadings, Martin Mugweru is not stipulated as a party in the Amended Plaintiff. He filed a Notice to Act in Person dated 1<sup>st</sup> October 2025 in a capacity he describes as "the Administrator of the Estate of the late Winnie Wangu Mugweru (a lawful beneficiary of the estate of Maaka Mukuhi Mugweru)"
49. It is not in dispute that this suit was instituted against Winnie Wangu Mugweru, Loise Wairimu Mugweru and Ruth Wanjiru Mugweru in their capacity as administrators of the estate of Maaka Mukuhi Mugweru (deceased) in Succession Cause No. 250 of 2007 consolidated with Milimani Succession Cause No. 525 of 1997.



50. The Plaintiff's claim relates to Land Reference No. 13041/2 (Grant No. 85810) situated in Nairobi, which was allegedly sold to him by the deceased on 3rd December 2004. The administrators were sued strictly in their representative capacity.
51. It is equally not disputed that Winnie Wangu Mugweru is deceased.

### **Effect of the Death of an Administrator**

52. The 2nd and 3rd Defendants, as well as the Plaintiff, have relied on Section 81 of the *Law of Succession Act*, which provides that upon the death of one or more administrators, all powers and duties of the deceased administrator vest in the surviving administrator(s). It states as follows;

Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

The Court of Appeal in *Meshack Otieno Aidah & another v Sharon Atieno Aidah & 7 others* [2020] eKLR affirmed that where there are surviving administrators, the estate continues to be represented by them and no fresh grant is required unless circumstances dictate otherwise

53. Further, in *Trouistik Union International & Another v Jane Mbeyu & another* 1993] KECA 89 (KLR), the Court of Appeal underscored that only a personal representative duly appointed under a grant has the capacity to sue or be sued on behalf of an estate.
54. Accordingly, where an administrator dies, and there are surviving administrators, representation of the estate does not lapse; it automatically vests in the survivors.

### **Whether Martin Mugweru Has Capacity in This Suit**

55. Martin Mugweru's case is that: He was appointed administrator of the estate of the late Winnie Wangu Mugweru by consent order in the succession cause; and that he is a beneficiary with a direct interest in the suit property; He further claims that his exclusion would violate his right to be heard under Article 50(1) of *the Constitution*.
56. However, the critical question is not whether Martin Mugweru is an administrator of the estate of Winnie Wangu Mugweru. Rather, the issue is whether he is an administrator of the estate of Maaka Mukuhi Mugweru (deceased) — the estate whose administrators were sued herein.
57. In his affidavit, he states that he was duly appointed a Co-Administrator of the Estate of the late Simon Mugweru Wathirwa (consolidated with the Estate of Maaka Mukuhi Mugweru) by a Consent Order of Hon. Justice Muchelule dated 22nd February 2022, and the order has never been set aside. He further states that on 26th September 2025, he filed a Summons for Revocation of Grant in Succession Cause No. 525 of 1997, challenging the grant under which the 2nd and 3rd Defendants derive their authority.
58. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendant/Respondents, on their part, claim that the said consent order was stayed by the Hon. Lady Justice Thande and the stay has never been set aside.
59. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have also demonstrated that the Succession Court issued a Certificate of confirmation of grant on 27<sup>th</sup> March 2025, with their names being the only legally appointed administrators of the consolidated estates of Maaka Mukuhi and Simon Mugweru Wathirwa.



60. The Plaintiff sued the Defendants in their representative capacity as administrators of the estate of Maaka Mukuhi Mugweru. The cause of action arises from an alleged sale agreement between the Plaintiff and the deceased proprietor. The suit is therefore against the legal representatives of that estate.
61. The Court has seen the Certificate of Full Confirmation of Grant dated 27th March 2025, which indicates that only the 2nd and 3rd Defendants remain administrators in the succession cause concerning the estate in question. The fact that Martin Mugweru has filed an application to revoke the grant does not affect the legality of the Certificate before this Court until this Court is served with an order of revocation.
62. Under Section 81 of the *Law of Succession Act*, the powers of the deceased administrator (Winnie Wangu Mugweru) vested in the surviving administrators. There is no evidence before this Court that Martin Mugweru was appointed administrator of the estate of Maaka Mukuhi Mugweru to clothe him with capacity in this suit.
63. In the Court's view, his appointment, if any, as administrator of the estate of Winnie Wangu Mugweru does not automatically confer upon him the status of administrator in the estate that is the subject of this litigation.

### **On Beneficial Interest**

64. Martin Mugweru further argues that, as a beneficiary with a share in the suit property, he has a direct interest.
65. It is a trite law that a beneficiary, absent a grant of representation, has no capacity to sue or defend proceedings on behalf of an estate. In *Trouistik Union International (supra)*, the Court of Appeal was categorical that a beneficiary must first obtain a grant before litigating on behalf of an estate.
66. In the present case, however, it is not disputed that a grant was issued and subsequently confirmed. Upon confirmation under Section 71 of the Act, the shares of the beneficiaries crystallise and become vested, subject only to transmission. A Certificate of Confirmation of Grant is not a mere administrative instrument; it constitutes a judicial determination of the mode of distribution of the estate.
67. The Court must therefore distinguish between legal title and beneficial interest. While legal title to estate property remains vested in the administrator pending transmission and registration in accordance with the *Land Registration Act*, confirmation of grant confers upon the beneficiary a definite and enforceable beneficial interest in the allocated property.
68. The present proceedings concern the enforcement of an alleged sale agreement for Land Reference No. 13041/2 (Grant No. 85810) situated in Nairobi, and orders of specific performance against administrators. The Certificate of confirmation of grant shows that the estate of Winnie Wangu Mugweru (deceased), who was the 1<sup>st</sup> Defendant in this suit as one of the Administrators sued, is a beneficiary of the estate's subject matter of the confirmed grant.
69. The suit Property L. R. 13041/2 is among the properties distributed in the certificate of confirmation of grant, and in particular, the estate of Winnie Wangu Mugweru is one of the beneficiaries and has a share in the suit property.
70. The Certificate states as follows concerning the suit property, among other properties;

Properties be sold by the Administrators, subject to the agreed terms by the beneficiaries and court approval beforehand and proceeds to be used to clear the estate debts, offset rates



and land rent for the estate properties. Clear all taxes, settle fees for all professionals and for service rendered to the estate, reimburse expenses by Administrators conduct of their duties and distribute the net proceeds to the beneficiaries.”

71. From the foregoing, it cannot be said that Martin Mugweru, as administrator of the estate of Winnie Wangu in her capacity as a beneficiary of the consolidated estates of Maaka Mukuhi Mugweru and Simon Mugweru Wathirwa, has no interest in the suit property.
72. However, it must be clarified that the said interest does not mean the replacement of Winnie as Administrator of the estate of Maaka Mugweru and as sued in this suit.
73. Further, the court finds that the filing of a Notice to Act in Person without having applied for and obtained leave of the court to be joined in the suit renders his presence in the suit improper. An application for leave will allow the court to determine whether or not the interests of the estate of Winnie Wangu Mugweru, as a separate estate from the one of Maaka Mukuhi Mugweru, as shown above, warrant joinder of the Administrator as a party to the present suit, since such joinder would mean that all beneficiaries have a right to be joined to the present suit.
74. The Court will say no more on this since the application for joinder is not before it at the moment.

### **On Sub Judice and Stay**

75. Martin Mugweru has urged that the matter is sub judice and alternatively sought a stay pending the determination of revocation proceedings in the succession cause, citing *Niazsons (K) Ltd v China Road & Bridge Corporation* (supra).
76. However, the question presently before this Court is whether he is properly a party. The succession proceedings concern the administration of the estate, while this suit concerns the enforcement of contractual rights over land. The two proceedings are distinct, though related. The mere pendency of revocation proceedings does not, in itself, clothe him with locus standi in this suit.
77. From the foregoing, this Court finds:
  - A. The deceased 1<sup>st</sup> Defendant Winnie Wangu Mugweru (deceased) was sued in her capacity as administrator of the estate of Maaka Mukuhi Mugweru (deceased).
  - B. Upon her death, pursuant to Section 81 of the *Law of Succession Act*, her powers vested in the surviving administrators, that is, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
  - C. There is no evidence that Martin Mugweru has been appointed administrator of the estate of Maaka Mukuhi Mugweru.
  - D. ]Martin Mugweru did not apply for and obtain leave of the Court to be joined as a party to this suit in whichever capacity legally available to him and thus lacks the requisite locus standi to participate in these proceedings as the 1st Defendant or in any other capacity.

### **78. Final Orders**

1. Prayer (iii) of the Notice of Motion dated 2nd May 2025 is hereby allowed.
2. Martin Mugweru is struck out from these proceedings as improperly joined.
3. All pleadings filed by Martin Mugweru are expunged from the court record.
4. A priority date be given for directions; and



5. Costs of the application shall abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI, THIS 5<sup>TH</sup> DAY OF MARCH 2026**

**HON. LADY JUSTICE L.G. KIMANI**

**JUDGE**

In the Presence of:-

M/S Mwaniki together with M/S Wangu holding brief for Nakona for  
for the Plaintiff

Martin Mugweru the 1<sup>st</sup> Defendant in person

M/S Gitau for the 2<sup>nd</sup> and 3<sup>rd</sup> DefendantsBottom of Form

