



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ELCLC CASE (OS) No. E012 OF 2025**

**JOAKIM KIMANI NGANGA.....**  
**APPLICANT**

**VERSUS**

**JOSEPH KANGETHE NGANGA.....1<sup>ST</sup>**  
**RESPONDENT**

**THE LAND REGISTRAR, KIAMBU COUNTY.....2<sup>ND</sup>**  
**RESPONDENT**

**MILKAH WANJIKU NJENGA, CHIEF KAMUCHEGE**  
**LOCATION.....3<sup>RD</sup>**  
**RESPONDENT**

**RULING**

- 1) The matter before this Court for determination is a Preliminary Objection dated 2/10/2025 and filed by the 1<sup>st</sup> Respondent.
- 2) The Objection is raised on points of law, with the 1<sup>st</sup> Respondent praying that the Applicant's Application dated 28th July 2025 be upheld and struck out with costs. I am, therefore, called upon to determine the Preliminary Objection on the following grounds:

1. That the Applicant lacks *locus standi* to institute this suit or prosecute the present application regarding Land Parcel Nos. **Gatamaiyu/Kamuchege/1927, 1931, and 1932** on behalf of the estate of the late **Michael Nganga Muhia**, as no letters of administration have been issued in his favour as required under Section 82 of the Law of Succession Act (Cap 160 Laws of Kenya). It is further noted that the Applicant's quest for a limited grant was dismissed by the High Court of Kiambu in **HCF P&A NO E041 of 2025**.
2. That the application is fatally defective as it offends the mandatory provisions of the Law of Succession Act, which vests the power to sue or be sued on behalf of a deceased's estate solely in duly appointed personal representatives.
3. That the 1<sup>st</sup> Respondent is the registered proprietor of the Land Parcel Nos. **Gatamaiyu/Kamuchege/1927, 1931, and 1932**.
4. That the Applicant's father died testate, having subdivided his parcel of land **Gatamaiyu/Kamuchege/355** into seven (7) portions during his lifetime, involving both the Applicant and the 1<sup>st</sup> Respondent as beneficiaries.
5. That, consequently, the parcel of land described as **Gatamaiyu/Kamuchege/355** no longer exists.

6. That the contempt proceedings as instituted are incompetent in law, having been commenced by a party without legal standing and in a forum lacking jurisdiction, contrary to the principles set out in ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696.***
7. That the entire application is misconceived, incompetent, and an abuse of the Court process, and ought to be struck out *in limine* with costs to the Respondent.
- 3) Prior to filing of the Preliminary Objection, the Applicant, Joakim Kimani Nganga had filed a Notice of Motion dated 08/04/2025 and the Court had issued a temporary injunctive order barring any dealing with the suit property waiting the hearing of the application inter partes on 14/05/2025.
- 4) When parties appeared in Court on 14/5/2025 the Counsel for the 1<sup>st</sup> Respondent informed the Court that they had filed a Replying Affidavit to the Application dated 08/04/2025 and also Grounds of Opposition dated 17/04/2025. In addition, they had also filed a Notice of Motion Application dated 12/05/2025.
- 5) At the next Mention in Court the Applicant had yet filed another Application dated 11/08/2025 seeking to have the 1<sup>st</sup> and 2<sup>nd</sup> Respondents cited for contempt but the Counsel of the 1<sup>st</sup> Respondent informed the Court that they had filed a Preliminary Objection.

- 6) This necessitated the Court to prioritize the hearing of the Preliminary Objection because hearing of Preliminary Objections (POs) over other filed applications if properly raised and the Preliminary Objection is based on a pure point of law, it can immediately terminate a lawsuit, rendering further litigation unnecessary and saving the Court and parties time and costs. Unlike other applications that may require assessing merits or evidence, a PO is a lethal weapon that addresses threshold issues like jurisdiction or legal limitation, in the nature of a demurrer.
- 7) The parties agreed to canvass the PO by way of written submissions and on 23/02/2026 the Court directed that the Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent who had not filed the submissions to comply within 3 days.
- 8) The Applicant in support of the Preliminary Objection filed written submissions dated 24/10/2025 and stated that he moves this Honourable Court to uphold the Preliminary Objection dated 2/10/2025 and strike out the Applicant's Contempt Application in its entirety. The 1<sup>st</sup> Respondent contends that the application is not only misconceived and an abuse of the Court process but is fundamentally incompetent and fatally defective on pure points of law. Central to this argument is the assertion that the Applicant, Joakim Kimani Nganga, lacks the requisite *locus standi* to institute or maintain these proceedings in relation to Land

Parcel Nos. **Gatamaiyu/Kamuchege/1927, 1931, and 1932.**

- 9) The 1<sup>st</sup> Respondent emphasizes that these parcels were lawfully registered in his name following a lifetime subdivision by the deceased, Michael Nganga Muhia, which effectively rendered the original parcel, **Gatamaiyu/Kamuchege/355**, non-existent.
- 10) In addressing the nature of this Objection, the 1<sup>st</sup> Respondent relies on the *locus classicus* of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696**, where Law JA held that a Preliminary Objection consists of a point of law which, if argued, may dispose of the suit. This is further reinforced by the observations of Sir Charles Newbold P in the same case, who likened a Preliminary Objection to a demurrer that assumes the truth of the opponent's pleadings while raising a decisive legal bar. The 1<sup>st</sup> Respondent submits that the challenges of *locus standi*, jurisdiction, and competence raised here meet this threshold perfectly.
- 11) On the substantive question of standing, the 1<sup>st</sup> Respondent invokes the mandatory provisions of the Law of Succession Act (Cap 160, Laws of Kenya). Specifically, he cites Section 82(a), which stipulates that the power to enforce causes of action on behalf of an estate survives only in the personal representatives. The 1<sup>st</sup> Respondent further argues that the Applicant's actions constitute criminal

intermeddling under Section 45(1) of the Act, as no Letters of Administration have been issued in his favour. To support this position, the 1<sup>st</sup> Respondent quotes the Court of Appeal in **Trouistik Union International & Another v Jane Mbeyu & Another [1993] eKLR**, which clarified that only personal representatives have the capacity to act for an estate, and the decision in **Otieno v Ougo & Another [1986-1989] EA 468**, which held that an action brought by an administrator before taking out Letters of Administration is incompetent from its inception.

12) The 1<sup>st</sup> Respondent concludes that since the High Court of Kiambu in **HCF P&A No. E041 of 2025** already dismissed the Applicant's bid for a Limited Grant, the Applicant remains a legal stranger to the estate. Citing **Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama [2014] eKLR**, he reiterates that *locus standi* is a primary point of law, and any suit instituted without it is void *ab initio*. Furthermore, as established in **Virginia Edith Wambui Otieno v Joash Ochieng Ougo & Another [1982-1988] 1 KAR 1049**, such a defect cannot be cured retrospectively. Consequently, the 1<sup>st</sup> Respondent prays that this Court finds the application to be a nullity, uphold the Objection, and strike out the proceedings with costs.

13) In opposing the Preliminary Objection, the Applicant, Joakim Kimani Nganga, filed his submissions dated 29/10/2025 and submits that the 1<sup>st</sup> Respondent's Objection

is misconceived, premature, and a calculated abuse of the Court process designed to frustrate the enforcement of lawful orders issued on 9/04/2025.

- 14) The Applicant contends that the Objection fails the classic test established in **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969] EA 696**. He argues that a valid Preliminary Objection must consist of a pure point of law that can dispose of the suit without the Court having to ascertain facts or exercise judicial discretion.
- 15) Citing **Margaret Nyiva Gatambia & Others v. Peninah Ngige Njanga & Others (ELC 38 of 2010)**, the Applicant submits that because this Objection involves contested factual claims such as whether the land was fraudulently subdivided and whether the Applicant has underlying rights it cannot be sustained as a Preliminary Objection and must be dismissed at the threshold.
- 16) Regarding the 1<sup>st</sup> Respondent's challenge to his *locus standi*, the Applicant argues that the matter is *sub judice* under Section 6 of the Civil Procedure Act. He points out that an appeal is pending against the Ruling in **HCF P&A No. E041 of 2025**.
- 17) That the deceased's widow, Teresia Wangari Michael, has an active application for a Limited Grant Ad Litem scheduled for hearing on 27/11/2025. Consequently, the Applicant maintains that the 1<sup>st</sup> Respondent is improperly

attempting to pre-empt issues currently before the Family Division and the Court of Appeal.

- 18) The Applicant asserts that the Court's contempt jurisdiction, derived from Section 5 of the Judicature Act and Order 40 Rule 3 of the Civil Procedure Rules, is intended to uphold the dignity of the seat of justice. Relying on **Econet Wireless Kenya Ltd v. Minister for Information & Communication [2005] eKLR** and **Teachers Service Commission v. KNUT & 2 Others [2013] eKLR**, he argues that obedience to Court orders is mandatory.
- 19) He distinguishes this matter from **Virginia Edith Wambui Otieno v. Joash Ochieng Ougo (1987) eKLR** and **Trouistik Union International v. Jane Mbeyu (1993) eKLR**, noting that he is not seeking to distribute the estate, but rather to enforce obedience to existing orders.
- 20) As he concludes, the Applicant invites the Court to consider the 1<sup>st</sup> Respondent's contemptuous conduct, alleging that he has consistently disobeyed Court orders, intimidated witnesses, and blocked mediation. He submits that the 1<sup>st</sup> Respondent cannot be allowed to benefit from his own misconduct by using procedural technicalities to escape accountability.
- 21) The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, in their written submissions dated 23/02/2026 concerning the Preliminary Objection align themselves with the 1<sup>st</sup> Respondent's prayer to strike out the entire suit and proceedings. They contend

that the Applicant's lack of *locus standi*, occasioned by the absence of a grant of letters of administration over the estate of the late Michael Nganga Muhia, constitutes a fundamental legal hurdle that must be resolved with priority as it is capable of disposing of the entire matter.

22) In justifying the procedural propriety of the objection, the Respondents rely on the authoritative test in **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696**. They emphasize the holding of Law JA that a Preliminary Objection must consist of a pure point of law arising from the pleadings which, if argued, may dispose of the suit. They further draw the Court's attention to the observations of Sir Charles Newbold P in the same case, who likened such an objection to a demurrer, raising a pure point of law on the assumption that all facts pleaded by the opposing side are correct, provided no facts need to be ascertained and no judicial discretion is required.

23) On the substantive issue of the Applicant's capacity, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents submit that the Law of Succession Act, specifically Section 82(a), mandates that only personal representatives possess the power to enforce causes of action that survive the deceased or arise out of their death. This is bolstered by **Section 2 of the Civil Procedure Act**, which defines a legal representative as the person who in law represents the estate of a deceased

person. The Respondents further cite the holding of Nyamweya J (as she then was) in **Alexander Mutunga Wathome v Peter Lavu Tumbo & Another [2015] eKLR**, which clarified that a party can only represent a deceased's estate once a grant of representation has been issued under the Law of Succession Act, noting that a personal representative is strictly defined under Section 3 as an executor or administrator.

24) The Respondents further address the procedural limitations of succession matters by citing Rule 63 of the Probate and Administration Rules, which lists specific orders of the Civil Procedure Rules that are imported into succession proceedings. They rely on the decision in **In Re Estate of Maringa Kiondo (deceased) [2018] eKLR**, where Muchemi J held that the Civil Procedure Rules are only applicable to a limited extent in succession causes and that the Probate and Administration Rules serve as the primary procedural guide. Consequently, the Respondents argue that the Applicant has failed to produce or annex any authority, such as a grant *ad litem* or a confirmed grant, to justify his standing.

25) In conclusion, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents submit that the Applicant's status as a self-represented litigant does not exempt him from the mandatory requirements of the law. They argue that the Applicant has bypassed the critical legal process defining his standing and that his reference to his

mother's pending application for letters of administration cannot aid his case, as she is not the Plaintiff herein. Accordingly, the Respondents pray that the Preliminary Objection be upheld in the interest of the law.

### **Analysis and Determination**

26) Having considered the Notice of Preliminary Objection, the responses thereto, and the rival submissions filed by the parties, the Court identifies the following two issues as being central for determination:

- i. Whether the Preliminary Objection as raised meets the threshold of a pure point of law as contemplated in the *locus classicus* of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696**.
- ii. Whether the Applicant, in the absence of a Grant of Representation, possesses the *locus standi* to institute and maintain the present suit and contempt proceedings regarding the estate of the late Michael Nganga Muhia.

27) Having considered the Notice of Preliminary Objection, the responses thereto, and the rival submissions filed by the parties, the Court identifies the following two issues as being central for determination:

- i. Whether the Preliminary Objection as raised meets the threshold of a pure point of law as contemplated in the

*locus classicus* of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696.**

ii. Whether the Applicant, in the absence of a Grant of Representation, possesses the *locus standi* to institute and maintain the present suit and contempt proceedings regarding the estate of the late Michael Nganga Muhia.

28) Regarding the first issue, the Court must determine if this Objection is capable of terminating the suit at the threshold. **Black's Law Dictionary** defines a Preliminary Objection as an automated resistance to a claim on a point of law. The **Halsbury's Laws of England** further clarify that such an objection must not require the Court to embark on an inquisitive journey into contested facts. In the **Mukisa Biscuit Case (supra)**, Law JA succinctly stated:

***"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."***

Sir Charles Newbold P added that it is in the nature of a demurrer and cannot be raised if any fact has to be ascertained.

29) The Applicant argues that the subdivision of Land Parcel No. **Gatamaiyu/Kamuchege/355** is a contested fact. However, the Court observes that the question of *locus*

*standi* the legal capacity to sue is a threshold issue of law. If a party lacks the standing to even knock at the doors of justice, the factual merits of the case become a moot point. In **Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama [2014] eKLR**, the Court of Appeal held that:

***“Locus standi is a point of law. If a person has no standing to sue, the Court has no jurisdiction to hear him.”***

30) Consequently, this Court finds that the Objection on standing is a pure point of law properly raised.

31) On the second issue of *locus standi*, the law in Kenya is settled and uncompromising. Section 82(a) of the Law of Succession Act (Cap 160) restricts the power to enforce causes of action on behalf of a deceased person solely to personal representatives. This is bolstered by Section 45 of the same Act, which prohibits intermeddling with the estate of a deceased person without legal authority. The Court of Appeal in **Trouistik Union International & Another v Jane Mbeyu & Another [1993] eKLR** was emphatic that:

***“To determine who may sue on behalf of the estate of a deceased person, one must look at the Law of Succession Act ... only personal representatives have capacity to act in that regard.”***

32) The Applicant admits he has no Grant of Representation. His argument that his mother has applied

for a Grant *Ad Litem* does not clothe him with capacity. Capacity is not transferable by proxy; it must be held by the person whose name appears on the face of the pleadings. In the celebrated case of **Virginia Edith Wambui Otieno v Joash Ochieng Ougo & Another [supra]**, the Court held that a suit filed by a person without a grant is a nullity *ab initio* and cannot be cured by a subsequent Grant. As Justice Nyamweya noted in **Alexander Mutunga Wathome v Peter Lavu Tumbo & Another [2015] eKLR**:

***“In law, one can only represent the estate of a deceased person when a grant of representation has been made... a personal representative is the executor or administrator.”***

- 33) Furthermore, while the Applicant seeks to enforce contempt orders, the High Court in **In Re Estate of Maringa Kiondo (Deceased) [2018] eKLR** reminded litigants that the **Probate and Administration Rules** govern succession procedural steps, and the lack of capacity to sue for the estate effectively paralyzes any ancillary applications, including those for contempt. The Applicant’s plea that the matter is *sub judice* under **Section 6 of the Civil Procedure Act** is equally unhelpful; *sub judice* prevents concurrent litigation of the same issues, but it cannot breathe life into a suit that is stillborn for lack of capacity.

34) This Court finds that without a Grant of Representation, the Applicant is a busybody in the legal sense, notwithstanding his biological relationship to the deceased. To allow this suit to proceed would be to sanction a violation of the mandatory provisions of the Law of Succession Act.

35) My final determination is that the Preliminary Objection dated 2/10/2025 is hereby upheld. Since the Applicant lacks the *locus standi* to sue on behalf of the estate of Michael Nganga Muhia, the Notice of Motion dated 28/07/2025 and the entire suit are found to be incompetent and are hereby struck out with costs to the Respondents.

Orders Accordingly.

**DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS  
29<sup>TH</sup> DAY OF APRIL, 2026.**

.....  
**MOGENI J**  
**JUDGE**

**In the presence of: -**

Mr. Joakim Kimani – Applicant in person

Ms. Njeri holding brief for Ndungu Mwaura for 1<sup>st</sup> Respondent

Mr. Moturi for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Mr. Melita - Court Assistant

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**MOGENI J**  
**JUDGE**