



**Nyawade v Odhiambo & another (Environment and Land Case  
E015 of 2025) [2026] KEELC 2739 (KLR) (11 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2739 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIRONMENT AND LAND CASE E015 OF 2025**

**AE DENA, J**

**MAY 11, 2026**

**BETWEEN**

**JOEL NDEDA NYAWADE ..... APPLICANT**

**AND**

**GEORGE OUMA ODHIAMBO ..... 1<sup>ST</sup> RESPONDENT**

**VERONICA AKOTH OKEYO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Background**

1. This suit was commenced by way of Originating Summons dated 15<sup>th</sup> May 2025. In the Originating Summons, the Applicant describes the Respondents as persons sued as the legal representatives of the estate of Jenifer/Jenipher Nyangao Hajula, deceased. The Applicant seeks determination of whether he has been in actual, open, hostile, continuous and uninterrupted possession of the parcel known as North Gem/Lundha/1417 for a period exceeding twelve years, and whether the title to the same ought to be vested in him. The Originating Summons also seeks an order directing the Land Registrar to register the Applicant as proprietor of the suit property.
2. In response to the suit the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein filed a Notice of Preliminary Objection dated 2<sup>nd</sup> February 2026 on the following grounds:
  1. That the Applicant's Suit by the way of Originating Summons dated the 5<sup>th</sup> day of May, 2025 as filed is bad in law, incompetent, misconceived, an abuse of the court's time and judicial process.
  2. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have no locus standi to be sued as the legal administrators of the estate of Jenipher Nyangao Hajula (deceased) since the and 2<sup>nd</sup> Respondent have not taken out Letters of Administration intestate of the aforementioned respective estates pursuant to Section 65 and Section 65 (a) of the *Law of Succession Act* Cap 160, Laws of Kenya.



3. That the said Originating Summons as presently instituted are incurably defective and ought to be dismissed with costs to 1<sup>st</sup> and 2<sup>nd</sup> Respondent.

### **The Applicant's Originating Summons**

3. The Applicant's case, as can be gleaned from the Supporting Affidavit sworn in support of the Originating Summons, is that he entered into occupation of the suit land in or about the year 2008, after allegedly purchasing a portion of land from the late Jenifer/Jenipher Nyangao Hajula.
4. The Applicant avers that the original land parcel was North Gem/Lundha/1374, which was allegedly subdivided into two parcels, namely North Gem/Lundha/1416 and North Gem/Lundha/1417, with the latter measuring approximately 0.45 hectares and being the parcel claimed by the Applicant.
5. The Applicant further avers that the deceased commenced the process of subdivision and transfer but died before the transfer of parcel No. North Gem/Lundha/1417 could be completed in his favour. He states that the Respondents later obtained a grant of letters of administration and a confirmed grant in respect of the estate of the deceased.
6. On that basis, the Applicant contends that he properly sued the Respondents as legal representatives of the estate of the deceased.

### **Respondents Replying Affidavits**

7. The Respondents contend that the Originating Summons is incompetent because they are not duly appointed legal administrators, executors or representatives of the estate of Jenifer/Jenipher Nyangao Hajula.
8. They argue that an estate of a deceased person is not, in itself, a legal person capable of suing or being sued, unless represented through a duly appointed administrator or personal representative.
9. In their Replying Affidavits, the Respondents also raise several factual responses to the Applicant's claim. They contend that the Applicant's claim is founded on an alleged purchaser's interest and not adverse possession; that the Applicant has not proved occupation of the specific parcel claimed; that no survey report has been produced; and that the claim ought to have been pursued as a claim against the estate rather than by way of adverse possession.
10. The Respondents further contend that the Applicant's pleadings refer to parcel No. North Gem/Lundha/1416 in some parts and North Gem/Lundha/1417 in others, thereby raising uncertainty as to the parcel claimed.

### **Submissions**

11. The Respondents submit that Section 82 of the *Law of Succession Act* confers power to sue or be sued on personal representatives, and that where no personal representative exists, a suit against an estate is incompetent.
12. They rely on authorities including *Trouistik Union International & Another v Jane Mbeyu & Another*, *Virginia Edith Wambui Otieno v Joash Ochieng Ougo & Another*, and *Alfred Njau & Others v City Council of Nairobi*, for the proposition that locus standi is a fundamental legal requirement and that absence of capacity renders a suit incompetent.
13. The Applicant, in opposition to the Preliminary Objection, submits that the Respondents have in fact been sued in their capacity as administrators of the estate of Jenifer/Jenipher Nyangao Hajula.



14. The Applicant specifically relies on paragraphs 5, 7 and 9 of his Supporting Affidavit, where he avers that the deceased commenced the subdivision process, died before transfer could be completed, and that the Respondents subsequently obtained letters of administration which were confirmed on 30<sup>th</sup> May 2023.
15. The Applicant therefore submits that the Respondents, having obtained letters of administration and a confirmed grant, are capable of suing and being sued on behalf of the estate.

### **Analysis And Determination**

16. Having considered the Preliminary Objection, the pleadings, the affidavits, the rival submissions and the applicable law, it is my view that the following issues arise for determination:
  - a. Whether the Preliminary Objection meets the legal threshold of a proper preliminary objection and if yes
  - b. Whether the same is merited
  - c. Whether the Originating Summons is incurably Defective
  - d. Who should bear the costs of the Preliminary Objection?

### **Whether the Preliminary Objection meets the legal threshold**

17. According to the Black Law Dictionary a preliminary objection is defined as:  
In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”
18. In *Nitin Properties Ltd V Singh Kalsi & Another* [1995] eKLR the court stated thus; -  

‘A Preliminary Objection 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.’
19. The court in *Mukisa Biscuits Manufacturing Co Ltd Vs West End Distributors Ltd* (1969) EA 696 described a preliminary objection as hereunder; -  

‘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 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.’
20. Sir Charles Newbold, JA in the same case stated 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 had to be ascertained or if what is sought is the exercise of judicial discretion.
21. The Supreme Court addressed its mind on this issue in the case of “*Aviation & Allied Workers Union Kenya – Versus - Kenya Airways Limited & 3 Others* [2015] eKLR” and stated:



- (14) This Court has had occasion in the past, to consider the nature of a preliminary objection. The Court endorsed the long-standing jurisprudence set in the Mukisa Biscuit case, on the nature of a preliminary objection.
- (15) Thus a preliminary objection may only be raised on a “pure question of law”. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.
22. Arising from the above case law it is clear that a preliminary Objection must be raised on a pure point of law and no fact should be ascertained from elsewhere.
23. The law governing the capacity to sue and be sued on behalf of a deceased person's estate is well-established under Section 82(a) of the Law of Succession Act, Cap 160, Laws of Kenya, which provides:
- 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.
24. The Court of Appeal in *Trouistik Union International & Another v Jane Mbeyu & Another* (2008) 1 KLR (G&F) 730 authoritatively held that the power to agitate a cause of action vested in a deceased person is conferred by Section 82(a) of the Law of Succession Act upon personal representatives and upon them alone. A duly appointed and confirmed personal representative, whether an administrator or executor, is the only entity seized of the legal capacity to either sue or be sued on behalf of a deceased person's estate.
25. The absence of such a confirmed grant renders the estate of the deceased an amorphous legal entity incapable of proper representation in judicial proceedings. The Court of Appeal in *Alfred Njau & Others v City Council of Nairobi* [1982-88] 1 KAR 229: stated that to say a party has no locus standi means “he cannot be heard, even on whether or not he has a case worth listening to.” Locus standi is a primary point of law, akin to jurisdiction, and its absence is fatal to the maintenance of any suit, a position affirmed in *Virginia Edith Wamboi Otieno v Joash Ochieng Ougo & Another* [1982-99] 1 KAR.
26. The question of locus standi is ordinarily a point of law capable of being raised by way of preliminary objection.
27. However, I must add that where the existence or absence of capacity depends on contested factual material, such as whether a grant of letters of administration exists, whether it was confirmed, and whether the Respondents are named administrators, the Court must be cautious not to determine disputed facts at the preliminary stage.
28. In the present case, the Respondents’ objection is that they have not taken out letters of administration in respect of the deceased estate. The Applicant, on the other hand, avers that they discovered that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents secretly moved the succession court, obtained a grant of letters of administration on 28<sup>th</sup> March 2023, and that the grant was confirmed on 30<sup>th</sup> May 2023. That averment is contained in the Supporting Affidavit filed with the Originating Summons though the court noted the grant was not attached.
29. Therefore, the very foundation of the objection, whether or not the Respondents are administrators, is not a pure legal point standing independently of evidence. It requires the Court to interrogate the evidence and also consider the respondents denial.



30. The Respondents' objection therefore invites this Court to embark upon a factual inquiry at a preliminary stage. Precedent has already guided that a preliminary objection must proceed on the assumption that the facts pleaded by the opposite party are correct and must not require ascertainment of contested facts.
31. In the premises, I find and hold that the Notice of Preliminary Objection does not raise a pure point of law. It is predicated on contested factual issues which can only be resolved upon the taking of evidence.
32. Having made the above finding I will not delve into the merits of the preliminary objection.

### **Whether the Originating Summons is incurably Defective**

33. The Respondents have argued that the Originating Summons is incurably defective, bad in law and an abuse of the court process. In support of this contestation, they raise several matters, including the allegation that the Applicant claims purchaser's interest, that adverse possession cannot arise where occupation is premised on purchase, that the parcel claimed is uncertain, and that the Applicant has not produced a survey report or sufficient documentation.
34. In my view the above grounds go beyond the issue of locus standi. They touch on the merits of the adverse possession claim itself. Whether the Applicant entered the land as a purchaser, licensee, trespasser or adverse possessor is a factual question. Whether time began to run in 2008, whether possession was open and hostile, whether it was interrupted, and whether the Applicant occupied the precise parcel known as North Gem/Lundha/1417 are all issues requiring evidence.
35. To pronounce myself on the matters would be equivalent to rendering summary judgement of a claim without hearing the parties. The objection does not disclose a clear, uncontested and pure point of law capable of disposing of the Originating Summons at once.
36. The upshot of the foregoing is that the Preliminary Objection dated 2<sup>nd</sup> February 2026 be and is hereby dismissed with costs to the Plaintiff/Applicant.

**DATED AT SIAYA THIS 11<sup>TH</sup> DAY OF MAY 2026**

**HON. JUSTICE A. E. DENA**

**JUDGE**

**11/05/2026**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

Mr. Ariho Holding Brief for Mr. Ogonda for the Plaintiff

Mr. Oduol for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent

Court assistant: Abuid Wekesa

