



REPUBLIC OF KENYA



KENYA LAW
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**Atika v Atika & another (Land Case E017 of 2025)
[2025] KEELC 5577 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5577 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
LAND CASE E017 OF 2025**

**M SILA, J
JULY 23, 2025**

BETWEEN

BENJAMIN ATIKA PLAINTIFF

AND

JAMES RATEMO ATIKA 1ST DEFENDANT

LAND REGISTRAR KISII COUNTY 2ND DEFENDANT

RULING

1. What is before me is a preliminary objection dated 9 June 2025 filed by the 1st defendant seeking that this suit be struck out on the following grounds :
 - i. The suit and action brought against the 1st defendant is time barred under section 7 of the *Limitation of Actions Act*, which provides, "An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."
 - ii. The Plaintiff/applicant lacks locus in the estate of the late George Samuel Atika without first obtaining the necessary letters of administration and therefore incompetent to institute this present suit.
 - iii. This Court, therefore, lacks jurisdiction to hear and determine this application and the suit.
2. By way of background, this suit was commenced through a plaint dated 13 May 2025. The plaintiff pleaded to be son of George Samuel Atika (deceased), who in turn was son of Stephen Mosioma Atika (deceased). He pleaded that the land parcels Nyaribari Masaba/Kiamokama/1040 formerly known as Nyaribari Masaba/Kiamokama/539 and Nyaribari Masaba/Bonyamosicho/588 were registered in name of his grandfather, the late Stephen Mosioma Atika. It is pleaded that he died intestate and no succession proceedings have been undertaken in respect of his estate. In respect of the estate of



his late father, George Samuel Atika, he pleaded that succession proceedings were initiated by Ann Kemunto Atika in 1989 but were never completed. He sued James Ratemo Atika as 1st defendant and the Land Registrar, Kisii County, as 2nd defendant. He pleaded that on 30 June 2011, the 1st defendant fraudulently obtained registration of the land parcels Nyaribari Masaba/Kiamokama/539 and Nyaribari Masaba/Kiamokama/1040 in his names without going through a succession process. In the suit, he more or less seeks revocation of the titles of the 1st defendant and have the same revert to the estate of Stephen Mosioma Atika.

3. Together with the plaint, the plaintiff filed an application inter alia seeking orders of interlocutory injunction. After this preliminary objection was filed, he filed a supplementary affidavit within that application wherein he inter alia deposed that he has filed an application for Letters of Administration Ad Litem “in the High Court of Kenya at Kisii Environment and Land Court Case No. MCSUCCMISC/E086/2025” seeking to be appointed as the legal representative of the estate of Stephen Mosioma Atika.
4. There are two limbs to the preliminary objection. The first is that the suit is time barred. I opt not to delve deeply into this because in suits based on fraud, time starts running when the fraud is discovered. That needs evidence which can only be addressed at the hearing of the suit. I will narrow down on the second limb of the preliminary objection which is that the plaintiff had no locus standi to file suit.
5. It is apparent that when the plaintiff filed this suit, he had not obtained a grant of letters of administration in respect of the estate of Stephen Mosioma Atika. This is indeed borne out by the plaintiff’s own supplementary affidavit. It would appear that he filed suit then later sought a grant ad litem when he realized that he has no grant. Without a grant of letters of administration, he had no capacity to file suit.
6. In *Trouistik Union International & another v Jane Mbeyu & another* [1993] eKLR, the Court of Appeal affirmed that one cannot file suit on behalf of the estate of a deceased without a grant of letters of administration. In reaching this conclusion, the court made reference to the 1987 case of *Otieno v Ougo* and stated as follows :

“The question at issue in that appeal was the right of a widow to bury her intestate husband when she obtained no letters of administration to his estate. The Court gave vent to an important principle of law of universal application with respect to the right of a party to fulfil the role of an administrator of an intestate without obtaining letters of administration. The court, inter alia, observed:

“The administrator is not entitled to bring an action as administrator before he has taken letters of administration. If he does, the action is incompetent at the date of its inception”.
7. It is trite that without a grant of letters of administration, one cannot purport to file suit in respect of the estate of a deceased person. This cannot be cured by a subsequent application and issue of a grant. It is the time of filing suit which is material. If one does not hold a grant of letters of administration at the time that he files suit, the suit is a nullity ab initio. It cannot be cured if the plaintiff later obtains a grant of letters of administration.
8. In our case, the plaintiff filed suit without a grant of letters of administration for the estate of the late Stephen Atika Mosioma. The fact that he has applied for a grant does not cure the fact that the suit was filed at a time that he had no capacity to do so.



9. Thus, solely for reason that the plaintiff filed suit without first having a grant of letters of administration, this suit is a non-starter and must be struck out. It is hereby struck out with costs to the defendants.

10. The preliminary objection succeeds to that extent.

11. Orders accordingly.

DATED AND DELIVERED THIS 23 DAY OF JULY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Onkendi for the plaintiff

Mr. Mochiemo for the defendant

Court Assistant – Michael Oyuko

