



**Kirui & another (Suing in their Capacities as the Personal Representatives of Musa Kipkirui Chumo alias Kipkirui arap Chumo alias Musa K Chumo (Deceased)) v Nyamara & 9 others (Environment and Land Case E012 of 2023) [2025] KEELC 5330 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5330 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT AND LAND CASE E012 OF 2023**

**LA OMOLLO, J  
JULY 17, 2025**

**BETWEEN**

**ROBERT KIPRONO KIRUI ..... 1<sup>ST</sup> PLAINTIFF**

**VINCENT CHERUIYOT KIRUI ..... 2<sup>ND</sup> PLAINTIFF**

**SUING IN THEIR CAPACITIES AS THE PERSONAL REPRESENTATIVES OF  
MUSA KIPKIRUI CHUMO ALIAS KIPKIRUI ARAP CHUMO ALIAS MUSA K  
CHUMO (DECEASED)**

**AND**

**JOSHUA MOSOTI NYAMARA ..... 1<sup>ST</sup> DEFENDANT**

**VINCENT CHEPKWONY ..... 2<sup>ND</sup> DEFENDANT**

**PETER WAWERU WANJIRO ..... 3<sup>RD</sup> DEFENDANT**

**EVANS KIPKOECH KORIR ..... 4<sup>TH</sup> DEFENDANT**

**TIKSOWOODS COMPANY LIMITED ..... 5<sup>TH</sup> DEFENDANT**

**JOSHUA MOSOTI NYAMARA ..... 6<sup>TH</sup> DEFENDANT**

**SELINA CHEPNGETICH ..... 7<sup>TH</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 8<sup>TH</sup> DEFENDANT**

**THE DIRECTOR OF SURVEY ..... 9<sup>TH</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 10<sup>TH</sup> DEFENDANT**



## RULING

### Introduction.

1. This ruling is in respect of the 1<sup>st</sup>, 3<sup>rd</sup> to 7<sup>th</sup> Defendants/Applicants Notice of Motion application dated 18<sup>th</sup> June, 2024. It is expressed to be brought under Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 2 Rule 15 and Order 3 Rule 7 of the Civil Procedure Rules.
2. The application seeks the following orders;
  - a. That this Honourable Court be pleased to strike out the Plaintiffs' suit and the Notice of Motion application dated the 12 April 2023.
  - b. That costs be granted to the Defendants/Respondents herein.
3. The application is based on the grounds on its face and the supporting affidavit of the 1<sup>st</sup> Defendant/Applicant Gideon Omare Mbaka.

### Factual Background.

4. The Plaintiffs/Respondents commenced the present proceedings vide the Complaint dated 12<sup>th</sup> April, 2023 wherein they seek the following orders:
  - a. A declaration that the sub-division of all that property known as LR No. Kericho/Manaret S.S/910 into LR No. Kericho Manaret S.S/1080 -1081, 1141-1142, 1171-1172, 1318-1319, 1392-1396, 1427-1429 resting (sic) with LR No's Kericho/Manaret S.S/1433-1439, was a consequence of illegality, irregularity and/or fraud.
  - b. An order directing the Land Registrar in custody of the registers in respect of the titles to the properties known as LR No. Kericho/Manaret S.S/910 into various portions that is, LR Kericho Manaret S.S/1080-1081, 1141-1142, 1171-1172, 1318-1319, 1392-1396, 1427-1429 resting (sic) with LR No's Kericho/Manaret S.S/1433-1439, to forthwith cancel them and restore the register in respect of the parcel of land known as LR No. Kericho/Manaret S.S/910; in the manner it was, before its purported sub-division.
  - c. That the Defendants are illegal occupants and/or trespassers on the deceased's property known by reference as LR No. Kericho/Manaret S.S/910.
  - d. A permanent injunction does issue restraining the Defendants, their agents and/or servants from any further trespass and/or interference with the quiet possession, use and enjoyment of the parcel of land comprised in LR No. Kericho/Manaret S.S/910 by the beneficiaries of the deceased's estate.
  - e. Costs of, and incidental to this suit.
5. The 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Defendants/Respondents filed their Statement of Defence on 19<sup>th</sup> September, 2023. They deny the averments in the Complaint and urge the Court to dismiss the Plaintiffs/Respondents suit with costs.
6. As at the time of writing of this ruling, the 1<sup>st</sup> to 7<sup>th</sup> Defendants/Respondents have not filed their Statement of Defence.



7. The application under consideration first came up for hearing on 19<sup>th</sup> June, 2024 when the Court gave directions that it be served upon the Respondents.
8. On 16<sup>th</sup> July, 2024 the Court issued directions that the application be canvassed by way of written submissions.
9. The application was mentioned for submissions severally and was on 28<sup>th</sup> January, 2025 finally reserved for ruling.

**The 1<sup>st</sup>, 3<sup>rd</sup> to 7<sup>th</sup> Defendants/Applicants Contention.**

10. The supporting affidavit is sworn by Gideon Omare Mbaka the 1<sup>st</sup> Defendant/Applicant on 18<sup>th</sup> June, 2024.
11. He contends that the Plaintiffs/Respondents commenced the present proceedings which challenge the alleged illegal subdivision of land parcel No. Kericho/Manaret S.S/910. They allege that the said parcel belongs to the estate of the late Musa Kipkurui Chumo.
12. He also contends that the Plaintiffs/Respondents state that they are bringing the suit on behalf of the estate of their late father Musa Kipkurui Chumo.
13. He further contends that in order to represent the estate of the deceased, the Plaintiffs/Respondents must have the requisite legal authority.
14. It is his contention that the Plaintiffs/Respondents filed the Notice of Motion application and the present suit on behalf of the estate of the deceased by relying on a grant of letters of administration dated 19<sup>th</sup> January, 2021 and yet there are no succession proceedings filed with respect to the estate of the late Musa Kipkurui Chumo. (sic)
15. It is also his contention that the succession proceedings with respect to the estate of the late Musa Kipkurui Chumo were dismissed for want of prosecution on 29<sup>th</sup> November, 2022 before the application and the suit were filed on 17<sup>th</sup> April, 2023.
16. It is further his contention that the Plaintiffs/Respondents did not therefore have the requisite locus standi to institute the present proceedings.
17. He contends that there is no substantive administrator who can exercise the mandate under Section 82 of the *Law of Succession Act* and Order 3 Rule 7 of the Civil Procedure Rules.
18. He also contends that the estate of the deceased has not been distributed and therefore the Plaintiffs/Respondents have no basis for claiming beneficial interest.
19. He further contends that a litigant has locus standi upon obtaining a limited or a full Grant of Letters of Administration or Grant of Letters of Administration Ad Litem.
20. It is his contention that the 1<sup>st</sup> Plaintiff/Respondent comes from the late Musa Kipkirui Chumo's first house and that he has come to learn from one Peter Kirui, who is from the second house, that they were not involved in the purported succession proceedings. He goes on to state that that was the reason why the Plaintiffs/Respondents herein were unable to file and/or prosecute the summons application to confirm Letters of Administration (sic) which led to the dismissal of the entire cause for want of prosecution.



21. It is also his contention that the Plaintiffs/Respondents commenced the present proceedings without Letters of Administration and therefore the suit and/or application are void ab initio and cannot be cured by the Plaintiffs/Respondents in any way.
22. It is further his contention that he is advised by his advocates on record that the Court of Appeal in *Alfred Njau & others vs City Council of Nairobi* [1982-88] 1 KAR 229 and *Trouistik Union International & another v Jane Mbeyu & another* (2008)1KLR (G&F) 730 held that locus standi is a primary point of law similar to that of jurisdiction. The Court also held that lack of capacity to sue or be sued renders a suit fatally defective.
23. He contends that the issue of lack of locus standi cannot therefore be termed as a mere technicality since it is a pure point of law that goes to the root of any suit. A suit is rendered fatally defective if the parties who have instituted it do not have locus standi.
24. He also contends that a party who lacks locus standi in a civil suit lacks the right to institute and/or maintain a suit even where a valid cause of action subsists.
25. He ends his deposition by stating that since the present proceedings were instituted by persons who lack legal capacity, the proceedings are a nullity and ought to be struck out with costs to the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants/Applicants.

#### **The Plaintiffs/Respondents Response.**

26. The Plaintiffs/Respondents filed a Replying Affidavit sworn by Robert Kiprono Kirui the 1<sup>st</sup> Plaintiff/Respondent on 2<sup>nd</sup> October, 2024.
27. He deposes that he has the consent and authority of the 2<sup>nd</sup> Plaintiff/Respondent to swear the affidavit.
28. He admits that they instituted succession proceedings with respect to the estate of their late father Musa Kipkirui Chumo (deceased) in Kericho High Court PA No. 23 of 2020 and deposes that they were granted letters of administration intestate on 19<sup>th</sup> January, 2024.
29. He further deposes that as they were reviewing records pertaining to the properties belonging to the deceased at the Kericho Lands Registry, they became aware of intermeddling on land parcel No. Kericho Manaret S.S/910 by the Defendants. He adds that the said parcel forms a significant portion of the estate of the deceased which led to the filing of the present proceedings.
30. It is his deposition that upon making the said finding, they instructed their advocates on record to make an application in the succession proceedings to have the same held in abeyance pending the hearing and determination of the present proceedings.
31. It is also his deposition that their Advocates on record informed them that the succession proceedings had been held in abeyance until the hearing and determination of the present proceedings.
32. It is further his deposition that unknown to them, the succession cause was in fact dismissed for want of prosecution. He goes on to state that they only became aware of the said dismissal upon service of the application under consideration.
33. He deposes that they took swift action and filed an application seeking to set aside the orders dismissing the succession proceedings. On 24<sup>th</sup> September, 2024 the succession proceedings were reinstated.
34. He also deposes that the objective sought to be achieved by the present application runs counter to the overriding objective of facilitating access to justice under Section 1A of the *Civil Procedure Act* and Article 159 of *the Constitution* of Kenya.



35. He further deposes that if the present suit is dismissed, the said dismissal will impede justice and will impose significant and undue costs as a similar suit will have to be filed.
36. It is his deposition that the Defendants will not suffer any prejudice if the suit proceeds as they will be afforded an opportunity to defend themselves and respond to the claims against them. He adds that, in the interest of justice the matter can be heard and determined on its merits.
37. He ends his deposition by stating that the Court should dismiss the application under consideration as it is only meant to frustrate and delay justice, cause unnecessary hardship to the Plaintiffs/Respondents and unfairly obstruct the resolution of the suit.

#### **Issues for Determination.**

38. The 1<sup>st</sup>, 3<sup>rd</sup> to 7<sup>th</sup> Defendants/Applicants filed their submissions on 29<sup>th</sup> January, 2025, the Plaintiffs/Respondents filed their submissions on 15<sup>th</sup> November, 2024 while the 8<sup>th</sup> to 10<sup>th</sup> Defendants/Respondents filed their submissions on 14<sup>th</sup> November, 2024.
39. The 1<sup>st</sup>, 3<sup>rd</sup> to 7<sup>th</sup> Defendants/Applicants submit on whether the present suit can be sustained given that the Plaintiffs/Respondents did not have the requisite locus standi to commence the proceedings.
40. They rely on Section 82 of the *Law of Succession Act*, Order 3 Rule 7 of the Civil Procedure Rules, the judicial decisions of *Trouistik Union International & another v Jane Mbeyu & another* [1993] eKLR, *Edema & 2 Others v Edema & 5 Others* (Miscellaneous Succession Cause E001 of 2022) [2022] KEHC 9960 (KLR) (6 July 2022) (Ruling), *Benard Wamiri Ngugi – Deceased) v Lands Registrar, Nairobi & another* [2021]eKLR, *Hawo Shanko v Mohamed Uta Shanko* [2018]eKLR, *Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva* (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) [2016] eKLR and submit that for a party to have locus standi to commence proceedings, the party must first obtain a grant limited for that purpose.
41. On who is to bear costs of the application, they rely on the judicial decisions of *Supermarine Handling Services Ltd vs Kenya Revenue Authority, Civil Appeal No. 85 of 2006*, *Orix (K) Limited vs Paul Kabeu & 2 Others* (citation not given) and urge the Court to allow the application as prayed.
42. The Plaintiffs/Respondents submit on the following issues;
  - a. Whether the Respondents had the locus standi to institute the instant suit.
  - b. Whether the instant suit can take refuge under the oxygen principle. (sic)
43. With regard to the first issue, the Plaintiffs/Respondents submit that the dismissal of the succession cause did not amount to a revocation of the grant of letters of administration as they remained in operation.
44. The Plaintiffs/Respondents also submit that the Court in its order issued on 24<sup>th</sup> September, 2024 which reinstated the succession proceedings, did not reinstate a nullified grant of letters of administration. Had that been the case, the Court would have explicitly required a reissuance of a grant in the name of the Respondents. Therefore, there was no interruption in their (Plaintiffs/Respondents) authority over the estate thus ensuring continuous and unbroken administration of the estate of the deceased.
45. The Plaintiffs/Respondents further submit that now that the succession proceedings have been reinstated, they are the legitimate legal representatives of the estate of the deceased. They rely on Section



- 82 of the Succession Act and submit that the letters of administration dated 19<sup>th</sup> January, 2021 are still valid and in force.
46. With regard to the second issue, the Plaintiffs/Respondents submit that in the event the Court finds that they did not have the locus standi to commence the present proceedings, the Court should exercise its discretion, apply the overriding objective and dismiss the application under consideration.
  47. The Plaintiffs/Respondents rely on the judicial decisions of Faith Wambui Kuthua v Anthony Munyagia Kigundu [2020] eKLR, Stephen Boro Gitihia v Family Finance Building Society & 3 others [2009] eKLR and submit that the perceived lack of authority following the dismissal of the succession cause constitutes a procedural technicality which has since been remedied by the reinstatement of the succession cause.
  48. The Plaintiffs/Respondents also rely on the judicial decisions of East African Safari Air Ltd vs Anthony Ambaka Kegode [2011] eKLR, D.T Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another [1980] eKLR, reiterate the averments in their Replying Affidavit and submit that if the suit is allowed to proceed, the 1<sup>st</sup>, 3<sup>rd</sup> to 7<sup>th</sup> Defendants/Applicants will not be prejudiced.
  49. The 8<sup>th</sup> to 10<sup>th</sup> Defendants/Respondents submit on whether the Plaintiffs/Respondents have the locus standi to institute and maintain the suit.
  50. The 8<sup>th</sup> to 10<sup>th</sup> Defendants/Respondents rely on Section 82(a) of the Succession Act, Section 2 of the *Civil Procedure Act*, the judicial decision of Alfred Njau vs City Council of Nairobi [1983] KLR 625 and submit that the Plaintiffs/Respondents were granted letters of administration.
  51. They also submit that the succession cause in which they were granted letters of administration was dismissed on 29<sup>th</sup> November, 2022.
  52. They further submit that the present proceedings were commenced on 12<sup>th</sup> April, 2023 (sic) at which time the Plaintiffs/Respondents did not have the locus standi to file the suit.
  53. The 8<sup>th</sup> to 10<sup>th</sup> Defendants/Respondents rely on the judicial decision of Julian Adoyo Ongunga vs Francis Kiberenge Abano Migori Civil Appeal No. 119 of 2015 and submit that the issue of locus standi is not a mere technicality but goes to the heart of the suit.
  54. They also rely on the judicial decisions of Nelson Machoka Keraro (Suing as the administrator of the estate of Kenyanya Keraro) v Abel Ontweka Kiage (Administrator of the estate of Yuvenalis Kiage Omwega (Deceased) & 4 others [2020] eKLR, Daniel Njuguna Mbugua v Peter Kiarie Njuguna & 2 others [2021] eKLR and submit that suit having been filed by the Plaintiffs/Respondents without letters of administration is invalid and cannot be cured by later obtaining letters of administration.
  55. They conclude their submissions by urging the Court to strike out the Plaintiffs/Respondents suit with costs.

### **Analysis and Determination.**

56. Having considered the application, the response thereto and the submissions, my view is that the only issue that arises for determination is whether the 1<sup>st</sup>, 3<sup>rd</sup> to 7<sup>th</sup> Defendants/Applicants application dated 18<sup>th</sup> June, 2024 has merit.
57. The 1<sup>st</sup>, 3<sup>rd</sup> to 7<sup>th</sup> Defendants/Applicants are seeking that this Court strikes out the present suit and the application dated 12<sup>th</sup> April, 2023.



58. They contend that the Plaintiffs/Respondents have commenced the present proceedings on behalf of the estate of the late Musa Kipkirui Chumo.
59. They also contend that the succession proceedings with respect to the estate of the late Musa Kipkirui Chumo were dismissed for want of prosecution on 29<sup>th</sup> November, 2022.
60. They further contend that at the time the present suit was filed, which was on 17<sup>th</sup> April, 2023, the Plaintiffs/Respondents did not have locus standi.
61. In response the Plaintiffs/Respondents admit that they commenced succession proceedings in respect of the estate of their deceased father.
62. The Plaintiffs/Respondents also admit that they were granted letters of administration and allege that when they were reviewing the records of the estate of the deceased, they discovered that the Defendants were intermeddling with the suit parcel.
63. The Plaintiffs/Respondents contend that they opted to hold the succession proceedings in abeyance until they resolved the issue of intermeddling which issue they decided to address by filing the present proceedings.
64. They also contend that they only became aware that the succession proceedings had been dismissed when the application under consideration was filed.
65. They further contend that they filed an application to reinstate the succession cause which suit was reinstated on 24<sup>th</sup> September, 2024.
66. The Plaintiffs/Respondents submit that the dismissal of the succession cause did not amount to a revocation of grant of letters of administration and therefore the letters of administration continue to be in force.
67. They contend that the dismissal of the succession cause was a procedural technicality and they urge the Court to hear the suit on merit and dismiss the application under consideration.
68. It is not disputed that the Plaintiffs/Respondents commenced the present proceedings on behalf of the estate of the late Musa Kipkurui Chumo.
69. It is also not disputed that the Plaintiffs/Respondents were granted letters of administration. It is further not disputed that the succession cause they had filed was dismissed on 29<sup>th</sup> November, 2022 for want of prosecution.
70. It is further not disputed that the said succession proceedings were reinstated on 24<sup>th</sup> September, 2024.
71. What is disputed is whether by virtue of the said dismissal, the Plaintiffs/Respondents had locus standi at the time of institution of this suit.
72. Section 82 of the *Law of Succession Act* provides as follows;

“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;



- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best...”

73. In the judicial decision of Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) [2016] eKLR the Court held as follows;

“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.” (Emphasis mine)

74. As afore stated, it is not disputed that the Plaintiffs/Respondents were given grant of Letters of Administration for the estate of the late Musa Kipkurui Chumo on 19<sup>th</sup> January, 2021.
75. This means that the Plaintiffs/Respondents have the locus standi to represent the estate of their deceased father.
76. Under the *Law of Succession Act*, a grant of letters of administration remains in force until it is revoked and/or annulled. Revocation and/or annulment of letters of administration is provided for under Section 76 of the *Law of Succession Act*.
77. This therefore means that an administrator’s authority to administer the estate of a deceased person can only be taken away if letters of administration are revoked and/or annulled.
78. I am therefore inclined to agree with the submissions of the Plaintiffs/Respondents that the dismissal of the succession cause did not amount to revocation and/or annulment of the grant.
79. That being the case, as at 17<sup>th</sup> April, 2023 when the present suit was filed, the Plaintiffs/Respondents had locus standi.

#### **Disposition.**

80. The upshot of the foregoing is that the 1<sup>st</sup>, 3<sup>rd</sup> to 7<sup>th</sup> Defendants/Applicants application dated 18<sup>th</sup> June, 2024 lacks merit and it is hereby dismissed with costs.
81. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 17<sup>TH</sup> DAY OF JULY, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Omwoyo appearing alongside Wachira for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants/Applicants.

Mr. Kipkorir for the Plaintiff/Respondents.

Miss Chepkemoi for the 8<sup>th</sup> to 10<sup>th</sup> Defendants/Respondents.



Miss Olki for Kigen for 2<sup>nd</sup> Defendant  
Court Assistant; Mr. Joseph Makori.

