



**In re Estate of Benjamin Tali Namasaka (Deceased) (Succession Cause 115 of 2025) [2025] KEHC 5497 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5497 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
SUCCESSION CAUSE 115 OF 2025**

**AC MRIMA, J**

**APRIL 30, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE  
BENJAMIN TALI NAMASAKA (DECEASED)**

**BETWEEN**

**SABINA NANDUTU TALI ..... 1<sup>ST</sup> PETITIONER  
TALI MURABWA NAMASAKA ..... 2<sup>ND</sup> PETITIONER  
CHEBUTE TALI NAMASAKA ..... 3<sup>RD</sup> PETITIONER**

**AND**

**BEN NAMASAKA TALI ..... RESPONDENT**

**AND**

**SEVENTH DAY ADVENTIST CHURCH EAST AFRICAN  
UNION ..... INTERESTED PARTY  
KHAYANGA SHAKILO NAMASAKA ..... INTERESTED PARTY**

**AND**

**JINSEN INTERNATIONAL WOOD INDUSTRY CO.  
LIMITED ..... INTERMEDDLER**

**RULING**

**Introduction:**

1. This is a ruling on an application filed by one Khayanga Shakilo Namasaka, the 2<sup>nd</sup> Interested Party herein, (hereinafter referred to as ‘the Applicant’) by way of a Chamber Summons dated 30<sup>th</sup> January



2024. It was supported by her affidavit deposed to on a similar, a supplementary affidavit and a further affidavit deposed to on 29<sup>th</sup> June 2024 and 10<sup>th</sup> August 2024 respectively.

2. The application was hotly contested.

**The Application:**

3. The Applicant sought orders against Jinsen International Wood Industry Co. Limited, the alleged intermeddler herein, in the following terms: -
  - a. Spent
  - b. That the Respondent/intermeddler Jinsen International Wood Industry Co. Limited be restrained from intermeddling and or interfering with the beneficiaries' possession, occupation and use of the land parcel No. North/Kabras/Luandeti/128, which is part of the deceased's estate hereof and being held in trust for the 2<sup>nd</sup> Interested Party herein.
  - c. That the distribution of the interest in land parcel No. North/Kabras/Luandeti/128 be forthwith done as its proprietorship is not contested.
  - d. That this honourable Court be pleased to grant any other order which it may deem fit and just to grant.
  - e. That the cost of this Application be borne by the Respondent/intermeddler.
4. In the grounds in support of the application, the Applicant stated that the alleged intermeddler trespassed into the parcel of land known as North/Kabras/Luandeti/128, which is part of the estate of the deceased in this matter, [hereinafter referred to as 'the land'], without any colour of right and begun damaging, wasting and alienating it by erecting permanent structures thereon.
5. On her locus standi in this cause, the Applicant stated that she was one of the beneficiaries in this cause as per the additional list of beneficiaries which was agreed upon by the clan, based on the last will and testament of the deceased herein and as affirmed by this Court. It was, therefore, her case that the interest in the land had never passed from the proprietor since 3<sup>rd</sup> October 1974 and that the alleged intermeddler trespassed into the land on the basis of an alleged lease from a document which does not meet the pre-requisite of a valid will. In urging the Court to grant the orders, it was her case that the succession case will be rendered nugatory if the orders are not granted.
6. Through her supporting affidavit, the Applicant deposed that she had consent from all the beneficiaries to act on their behalf and have the interest in the land transferred to her so that its distribution does not have to await the final determination of this cause. She further deposed that she was the daughter of one Janet Nasimiyu Namasaka (now deceased) and Boaz Namasaka (also deceased). She asserted that the deceased herein, Benjamin Tali Namasaka, was her uncle being a brother to her father Boaz Namasaka, and that the said Benjamin Tali Namasaka held the land in trust of Boaz Namasaka and her mother as evidenced in the Grant of Letters of Administration with will annexed issued on 9<sup>th</sup> March 2016 in this Cause.
7. In the Supplementary Affidavit, the Applicant asserted that it beats logic for the Administrator in this cause, Ben Namasaka Tali, to plead the case of the alleged intermeddler since that was in direct contravention of his duties as an Administrator. She deposed that she needed not to obtain any Letters of administration intestate on behalf of her parents in order to air her opinion and or be enjoined in this cause since she was not substituting her late mother as a party to the cause.



8. In the Further Affidavit, it was her case that she was properly on record as an interested party and was in the cause on behalf of her late mother, Janet Nasimiyu Namasaka, who was listed as a beneficiary to the land. She reiterated that the 2<sup>nd</sup> Interested Party was intermeddling with her mother's property even though the case was still pending in Court. She asserted that the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners were strangers to the lease agreement.
9. The Applicant also refuted ever giving the land to one Mr. Sirengo Namasaka. It was her case that the Respondents were in contempt of the orders of this Court dated 5<sup>th</sup> February 2024.
10. In conclusion, she was emphatic that the land was bequeathed to her late mother and as such, it should legally pass to her and her three siblings. She deposed that justice in this matter will be met if the application was allowed.

**The Applicant's submissions:**

11. The Applicant urged her case further through two sets of written submissions dated 21<sup>st</sup> July 2024 and 7<sup>th</sup> August 2024 respectively.
12. It was her submission that the instant application was instigated by the alleged intermeddler's habitual disobedience of the Court Orders issued on 5<sup>th</sup> February 2024. In asserting the finality of the Order of Hon. Kimaru, J [as he then was] to the effect that the land was due to her mother, Janet Nasimiyu Namasaka, she asserted that no appeal had been preferred against the that order.
13. As regards the claim that no Administrators had complained on intermeddling on the land, it was her position that no law provided that the Administrators were the only ones who would raise issues in a Cause and/or ought to jointly sue. She drew support from Nairobi HCSC No. 2044 of 2010, In the matter of the Estate of Godfrey Alati Olukoye; Emily Dorothy Oseno -vs- Judith Betty Ayuma.
14. The Applicant further submitted that the land be transferred to her pending determination of this Cause on the basis of a consent recorded before this Court. As the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners supported the application, a brief recap of their cases follow.

**The 2<sup>nd</sup> Petitioner's case:**

15. Murabwa Tali Namasaka supported the application through her Affidavit deposed to on 14<sup>th</sup> March 2024. It was her deposition that the land was given to Janet Nasimiyu Namasaka during the lifetime of the deceased herein and that the said Janet Nasimiyu Namasaka was survived her daughter, the Applicant herein. She deposed that the land should be given to the Applicant and expressed her shock upon learning that the alleged intermeddler had trespassed into the land and started operations.
16. It was her case that as an Administrator of the estate of the deceased herein, she did not consent to the intermeddler's actions and that it was fair that the application be allowed.

**The 3<sup>rd</sup> Petitioner's case:**

17. In support of the application, Chebute Tali Namasaka, filed a Replying Affidavit deposed to on 12<sup>th</sup> March 2024. It was his case that the alleged intermeddler could not have any agreement over the land parcel with any other person without the Administrator's knowledge.
18. He deposed that the land was to be bequeathed to the late Janet Nasimiyu Namasaka long before she passed on leaving her daughter, the Applicant. To him, the land ought to devolve to the Applicant.
19. The application was opposed by the rest of the parties.



### **The Respondent/Objector's case:**

20. Ben Namasaka Tali, challenged the application through his Replying Affidavit deposed to on 24<sup>th</sup> June 2024. It was his position that the application was baseless, misconceived and ought to be dismissed since the Applicant had no legal authority to represent and sue on behalf her late mother. Secondly, it was his case that the application ought to be dismissed because the land was still vested in the name of the deceased herein and whose four administrators were not unanimously in support of the instant application.
21. Thirdly, the Objector deposed that since an application for confirmation of the deceased's estate was pending determination, then the instant application ought to be dismissed with costs.

### **The submissions:**

22. The Objector filed written submissions dated 31<sup>st</sup> July 2024. From the outset, it was his case that since the Applicant was seeking to have the land destined for her late mother transferred to her, then she ought to first obtain the requisite Letters of administration. The Objector submitted that on 13<sup>th</sup> July 2021, the Applicant's mother, Janet Nasimiyu Namasaka, was awarded the suit land by this Court through a consent.
23. It was his case that before Janet Nasimiyu Namasaka was awarded the land, one Francis Sirengo Namasaka, a brother to the deceased, had been leasing it out to third parties since 2014 and that there were some running leases. He further stated there was also one Samson Lusweti Wakoli who bought part of the land from the said Janet Nasimiyu Namasaka and that the SDA Church, 1<sup>st</sup> Interested Party herein, was also gifted part of the land by the deceased in this cause.
24. With the foregoing, the Objector submitted the estate was in the hands of the four administrators who had not filed any complaint of intermeddling. It was his case, therefore, that the Applicant, who is not one of the Administrators, lacked any legal authority to deal with the land even though it was destined for her deceased mother. Support to that end was drawn from In The Estate of the late Simeon Kiptum Choge (2017) eKLR. The Objector further refuted the Applicant's claim that the land ought to be transferred to her by submitting that it negated the very essence of the succession proceedings.
25. Regarding the claim that there was any intermeddling of the estate, the Objector submitted that the administration of the estate rested with the four Administrators and that any alleged intermeddler was answerable to them.

### **The 1<sup>st</sup> Interested Party's case:**

26. The Seventh Day Adventist Church East African Union, did not participate in the instant application.

### **The alleged intermeddler's case:**

27. Jinsen International Wood Industry Co. Limited challenged the application through a Replying Affidavit deposed on 15<sup>th</sup> July 2024 and written submissions dated 22<sup>nd</sup> July 2024. It was its case that the Applicant does not have locus standi in the proceedings since she was not a party to the proceedings and has never filed an entry of appearance as required under Rule 60 of the Probate and Administration Rules, yet was seeking substantive orders with far reaching consequences. It further contended that the Law Firm of Messrs. Mukhooli and Associates had not filed any Notice of Appointment of Advocates to represent the Applicant. The decision in the case of Techno Service Limited -vs- Nokia International Kenya & 3 Others (2020) eKLR was relied upon where the Court struck out an application for having not been instituted by an Advocate who was not properly on record.



28. It was its further case that the Applicant was neither a beneficiary nor a dependant within the meaning of Sections 29 and 63 of the Law of Succession Act in respect of the Estate of the late Benjamin Tali Namasaka, the Applicant being a grandchild.
29. On the limb of locus standi, the alleged intermeddler submitted that the Applicant had never been an Administrator in respect of the land on behalf of the beneficiaries of the late Janet Nasimiyu Namasaka in order for her to agitate for the right due to Janet. This Court's holding in the Succession Cause No. 457 of 2005 Cleopa Amulata Namayi -vs- Judith Were (2015) eKLR was cited where it was observed that the children of a deceased should first inherit the deceased's property and thereafter the grandchildren of the deceased would inherit from their parents.
30. It was further its case that neither the Applicant nor the late Janet Nasimiyu Namasaka were the legal proprietors of the land since it was given to Sirengo Namasaka Murabwa by the family members of the deceased and that the land was lawfully leased to it.
31. Regarding the issue of intermeddling, it submitted that it had not purchased the land as to be said that it was intermeddling contrary to sections 45 and 82 of the Law of Succession Act. It asserted that it was simply in possession by dint of a leasehold by virtue of an Agreement dated 11<sup>th</sup> November 2023 between it and the said Sirengo Namasaka Murabwa.
32. It was its further case that there was no evidence that the nature of land had been changed adversely or that it will be affected and denied any intermeddling with the land.
33. On a different line of argument, it submitted that the Applicant was forum shopping having filed another case in Kakamega MCELC No. 5 of 2024 where she was seeking to evict it from the very land, subject of the instant application. It was its case that the case was filed by Murabwa Tali Namasaka who described himself as the Administrator of the land and that the Applicant herein was his sibling.
34. On the prayer for distribution, it submitted that since the applicant lacked any locus standi, it follows that the issue of distribution cannot stand and that since the Grant of letters of administration had not been confirmed, the issue of entitlement was yet to be determined.
35. In conclusion, the alleged intermeddler challenged the consent order which forms the basis of the instant application. It was its case that the application dated 10<sup>th</sup> November 2023 challenging that consent ought to be first determined before this Court deals with the distribution of the estate.

**Analysis:**

36. From the foregoing discourse, the pertinent issues that emerge for determination are as follows: -
  - i. Whether the Applicant has locus-standi in these proceedings.
  - ii. Depending on (i) above, whether the application is merited.
37. Going forward, this Court will deal with each of the issues in seriatim, and as follows: -
  - a. Whether the Applicant has locus-standi in these proceedings:
38. The resolution of this issue settles both the Objector's and the alleged intermeddler's contention on the legal standing of the Applicant in these proceedings. The former contended that the Applicant does not have legal authority whereas the latter is of the position that the Applicant is not a party to the instant cause and has never filed entry of appearance.



39. Locus-standi is a jurisdictional contest. It must be resolved at the earliest opportunity. If not, the Court may be engaging in a nullity. The Black's Law Dictionary, 9<sup>th</sup> Edition defines the term locus standi at page 1026 as follows: -

The right to bring an action or to be heard in a given forum.

38. In Michael Osundwa Sakwa -vs- Chief Justice and President of the Supreme Court of Kenya & another [2016] eKLR, the Court, while referring to the matter of Ms. Priscilla Nyokabi Kanyua vs. Attorney General & Interim Independent Electoral Commission Nairobi HCCP No. 1 of 2010 asserted that: -

...In Kenya the Court has emphatically stated that what gives locus standi is a minimal personal interest and such interest gives a person standing even though it is quite clear that he would not be more affected than any other member of the population....

38. Similarly, in Khelef Khalifa El-Busaidy v Commissioner of Lands & 2 others [2002] eKLR the Court canvassed locus standi as hereunder: -

...for an individual to have a locus standi, he must have an interest either vested or contingent in the subject matter before the court, which interest must be a legal one. Such interest must be above that of other members of the public in general.

38. In Julian Adoyo & another vs Francis Kiberenge Bondeva Yours truly discussed locus standi with particular respect to taking out limited grant before instituting a suit as follows: -

.... 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.

38. And, in Ibrahim -vs- Hassan & Charles Kimenyi Macharia [2009] eKLR the Court made useful remarks on locus standi in succession matters as under: -

Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, it means that party cannot be heard despite whether or not he has a case worth listening to. The issue herein is whether the Applicant lacks the requisite locus standi to seek relief from the court to revoke the grant in question issued to the Respondent. In my view issues regarding locus standi are critical preliminary issues which must be dealt with and settled before delving into other substantive issues. [own emphasis]

38. Returning to the case at hand, the question that arises is whether the Applicant has any interest or stake capable of protection by law in the Estate of Benjamin Tali Namasaka, the deceased in this Cause. From the Applicant's Affidavit deposed to on the 30<sup>th</sup> January 2024, the Affidavit of Murabwa Tali Namasaka deposed to on 14<sup>th</sup> March 2024 and that of Chebute Tali Namasaka deposed to on 12<sup>th</sup> March 2024, the Applicant is the daughter of Boaz Nalika Namasaka and Janet Nasimiyu Namasaka. They are both deceased.

39. It can be gathered also that the deceased herein, Benjamin Tali Namasaka, was the brother to Boaz Nalika Namasaka. The Applicant was, hence, a niece to the deceased. Having settled the relationship between the Applicant and the deceased herein, it was the Applicant's case that the deceased held in



- trust the land in question herein for Boaz Nalika Namasaka which, upon his death, devolved to his wife, Janet Nasimiyu Namasaka and subsequently to her upon Janet's death.
40. Having in mind the claim that the land was held in trust by the deceased for Boaz Nalika Namasaka and considering the fact that both Boaz Nalika Namasaka and Janet Nasimiyu Namasaka are now dead, there is no doubt their daughter, the Applicant herein, has a cause of action in pursuing her deceased parents' estate. The factual matrix give rise to a legally recognizable right.
41. This Court has taken the liberty to painstakingly peruse proceedings and pleadings in this matter. There is an Order by Hon. Kimaru J. (as he then was) of 19<sup>th</sup> May 2021 which was formally issued on 21<sup>st</sup> May 2021 where His Lordship ordered distribution upon mediation, of various properties of the deceased among them, Land Parcel No. Kabras/Luandeti/128. In the Order, the land was to devolve to Janet Namasaka, the Applicant's mother herein.
42. As fate would have it, the Janet Namasaka passed away, hence, the claim by the Applicant. Again, there is, therefore, no doubt that the Applicant has a cause of action. The foregoing, therefore, begs the answer to the question as to how a beneficiary or a dependant can assert their legal standing in order to protect their interest in a deceased's estate.
43. The application herein is hinged on Section 45 of the *Law of Succession Act* (hereinafter referred to as 'the Act'). It seeks to arrest claimed incidence of intermeddling. The said section provides as follows;
- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
  - (2) Any person who contravenes the provisions of this section shall—
    - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
    - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.
38. It is quite imperative to note that, in view of the order on partial distribution made on 19<sup>th</sup> May 2021, the claimed intermeddling is, therefore, not in respect of the Estate of Benjamin Tali Namasaka, the deceased herein, but in respect of the Estate of Janet Nasimiyu Namasaka. Therefore, for this Court to protect that interest, regardless of whether it was instituted by the Applicant herein or any other beneficiary of the estate of Janet Nasimiyu Namasaka, there must be in place a Grant of representation. That Grant would give one the appropriate locus standi to set in motion any proceedings over the estate.
39. As things stand in this case, there is no formal Grant of representation, whether full or limited, that would cloth the Applicant with the requisite locus standi and this Court with the jurisdiction over the estate of Janet Nasimiyu Namasaka.
40. In the Estate of Rajesh Pranjivan Chandasame [2014] eKLR the Court stated as follows: -
- .... It is common ground that at the time of institution of the said summons the respondent was not in possession of grant of letters of administration. The respondent acknowledges that



he may have known of the existence of the will but according to time he doubted the validity of the will. In his view therefore the deceased died intestate. As far as he was concerned he moved to court by virtue of being a beneficiary for purposes of preserving the deceased's estate. That may well be the case but in our view the position in law as regards locus standi in Succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or full grant of letters of administration in cases of Intestate Succession. In *Otieno -Vs- Ougo* (Supra) this court differently constituted rendered itself thus;

... an administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.

38. This Court is, hence, persuaded and affirms the decision in the case of *Isaya Masira Momanyi -vs- Daniel Omwoyo & Another* [2017] eKLR the Court held as follows: -

... It is trite law that the estate of a deceased person can only be represented in any legal proceedings by a person who is duly authorized to do so on behalf of the estate. Only a person who has been issued a grant of letters of Administration has capacity to represent the estate of a deceased person.

38. The Applicant herein appears to have misappraised locus standi for cause of action. Whereas she has a cause of action deserving of legal intervention, she lacks the locus standi before this Court. In the case of *Alfred Njau & 5 Others -vs- City Council of Nairobi* [1983] eKLR the Court distinguished the two concepts as follows: -

Lack of locus standi and a cause of action are two different things. Cause of action is the fact or combination of facts which give rise to a right to sue whereas locus standi is the right to appear or be heard in court or other proceedings.

To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the court; but to say he has no locus standi means he cannot be heard even on whether or not he has a case worth listening to.

38. The wording of Section 45(2)(b) of the Act offers more insight as to the need to have a Grant in place. The provision ensures that once a person is adjudged an intermeddler, such is answerable to an Administrator or Executor as the case may be. In this instance, since the Applicant is purporting to sue in the estate of her deceased parents and there is no grant of representation in place, there would be no one as provided to by section 45(2)(b), for the alleged intermeddler to be accountable to in the event the application succeeds.

39. In *Veronica Njoki Wakagoto (Deceased)* [2013] eKLR Hon. Musyoka, J. while speaking to intermeddling and the legal standing a person has in an estate of the deceased person observed thus;

.... The effect of section 45 is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorised to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.

38. Faced with a similar predicament as in the instant cause, the Court in *Succession Cause 8 of 2020, In Re Estate of James George Maruti (Deceased)* [2021] eKLR declined to hear an application seeking restraining orders in respect of a deceased estate because the Applicant did not have locus standi. The Court held as follows:



.... The applicant may be having a cause of action or interest as a beneficiary to protect and preserve the estate or intermeddling and waste. She however has lacked locus standi to secure the relief sought. Without first obtaining either limited or full grant of letters of administration. I therefore uphold the Preliminary Objection and find that the applicant had no locus to file the application.

58. This Court now believes it has spoken enough to demonstrate that the application suffers a false start. A consideration of the other issue on whether the application is merit become moot. This discussion may safely come to an end.

**Disposition:**

58. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.
59. In the end, the Chamber Summons dated 30<sup>th</sup> January 2024 is hereby struck out with no orders as to costs since the matter relates to family members.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2025.**

**A. C. MRIMA**

**JUDGE**

Ruling virtually delivered in the presence of:

Mr. Teti, Learned Counsel for the Respondent.

Mr. Mukhambwa, Learned Counsel for the 1<sup>st</sup> Petitioner.

Miss Owenga, Learned Counsel for the Applicant.

Mr. Khalo, Learned Counsel for the 2<sup>nd</sup> Petitioner.

Amina, Court Assistant.

