



Case Number:	Environment and Land Case 19 of 2019
Date Delivered:	23 Mar 2021
Case Class:	Civil
Court:	Environment and Land Court at Kakamega
Case Action:	Ruling
Judge:	Nelly Awori Matheka
Citation:	Justino Mukami Wanyama v Kitere Wangia; Michael Sidney Sifuna(suing as the legal representative of the Estate of Justino Mukami Wanyama) (Applicant) [2021] edKLR
Advocates:	-
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Kakamega
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC CASE NO. 19 OF 2019**

**JUSTINO MUKAMI WANYAMA.....PLAINTIFF**

**VERSUS**

**KITERE WANGIA.....DEFENDANT**

**AND**

**MICHAEL SIDNEY SIFUNA(suing as the legal representative**

*Of the estate of JUSTINO MUKAMI WANYAMA).....APPLICANT*

**RULING**

The application is dated 15<sup>th</sup> December 2020 seeking the following orders:-

1. That the honourable court be pleased to grant leave to substitute the plaintiff Justino Mukami Wanyama who is deceased with the applicant herein Michael Sidney Sifuna.
2. That costs of this application be in the cause.

It is based on the annexed affidavit of Michael Sidney Sifuma the applicant and on the grounds that the plaintiff herein died on 27<sup>th</sup> October, 2020 after judgment in this suit having been delivered on 39<sup>th</sup> April, 2020. That the cause of action survived and or continues. That the substitution is brought in time and will not cause any prejudice to any parties herein.

This court has considered the application and submissions therein. The applicant submitted that the plaintiff died when judgment in this suit had been delivered. That the cause of action herein is a land issue where the plaintiff was declared the owner of portion measuring 1.5 Ha of land parcel No. Bunyala/Nambacha/638 by virtue of adverse possession and the defendant/respondent was ordered to transfer the said suit land to the plaintiff/applicant within the next 30 days from the date of judgment failure to which the deputy registrar to sign the transfer documents. That he now wishes to apply to be allowed to substitute the deceased, plaintiff so that the transfer of the suit land can be effected and the matter comes to rest. The applicant wishes to be substituted as the legal representative of the plaintiff. In the Law of Succession Act, the term “**personal representative**” is interpreted to mean the Executor or Administrator, as the case may be, of a deceased person. Section 79 of the said Act provides as follows with regard to a personal representative:-

*“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of the grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”*

Section 82 (a) of the said Act provides that:-

*“Personal representatives shall, subject only to limitation imposed by their grant, have powers 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.”*

In the present case the applicant has not produced any evidence to prove he is the administrator. In *Otieno vs Ougo (1986-1989) EALR 468*, the Court 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.”*

I find that the applicant has no locus standi to represent the plaintiff. *Locus standi* is defined in *Black’s Law Dictionary, 9<sup>th</sup> Edition at page 1026* as-

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

In the case of *Alfred Njau & 5 Others vs. City Council of Nairobi (1983) eKLR* the court held that;

*“The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt’s Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.”*


**For these reasons, I find this application has no merit and I dismiss it with no orders as to costs as the same was undefended.**

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 23<sup>RD</sup> MARCH 2021.**

**N.A. MATHEKA**

**JUDGE**

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