



REPUBLIC OF KENYA



**Guthiga v Guthiga (Environment & Land Case E002 of 2022)
[2023] KEELC 16482 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16482 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E002 OF 2022**

**JO OLOLA, J
MARCH 23, 2023**

BETWEEN

DAVID KIMUKWA S GUTHIGA PLAINTIFF

AND

LILY WACHUKA GUTHIGA DEFENDANT

RULING

1. By his Complaint dated February 9, 2022 as filed herein on February 15, 2022, David Kimukwa S Guthiga (the Plaintiff) prays for Judgment against Lily Wachuka Guthiga (the Defendant) for:
 - (a) A declaration by this Honourable Court that the Plaintiff is the rightful owner of 1.643 Ha. out of land parcel Number Iriaini/Kairia/109;
 - (b) A declaration that the Defendant is illegally occupying and using the Plaintiff's parcel of land;
 - (c) An order for the eviction of the Defendant from the Plaintiff's parcel of land;
 - (d) An order for the OCS Karatina Police Station to enforce this Order and provide security during the said eviction;
 - (e) Costs of the suit plus interest at Court rates from the date of Judgment till payment in full; and
 - (f) Any other relief that this Honourable Court may deem fit and mete to grant.
2. Those prayers arise from the Plaintiff's contention that at all times material to this suit, he was the registered proprietor of 1.643 Ha out of LR No Iriaini/Kairia/109. The Plaintiff accused the Defendant of continuing to be in occupation of the said parcel of land illegally and without any colour of right.
3. But in her Statement of Defence dated March 25, 2022 but filed herein on May 17, 2022, the Defendant denies that the Plaintiff is the registered proprietor of the said parcel of land. In the alternative the



Defendant asserts that if indeed the Plaintiff is the registered proprietor of the suit property, the said registration which was pursuant to transmission is the subject of active litigation in Nyeri High Court Succession Cause No 841 of 2015 and is therefore not absolute or indefeasible.

4. It is further the Defendant's case that her occupation of the land has been as a widow and beneficiary of the predecessor in the title and has been lawfully based on customs and traditions.
5. In addition to the Statement of Defence and by way of a Notice of Preliminary Objection dated June 16, 2022, the Defendant objects to the Plaintiff's suit on the grounds that the same is sub judice Karatina PMELC No 11 of 2022.
6. Following directions given herein on July 5, 2022, it was agreed that the Preliminary Objection be disposed off by way of written submissions. I have accordingly perused the objection as well as the submissions and authorities placed before me by the Learned Advocates representing the Parties herein.
7. The parameters of what constitutes a Preliminary Objection are now well settled. The principles that the Court is enjoined to apply in determining the merits or otherwise of a Preliminary Objection were long settled by the Court of Appeal in *Mukisa Biscuits Manufacturing Limited -vs- West End Distributors Limited (1969) EA 696*. At Page 700 thereof, Law JA stated thus:

' A Preliminary Objection consists of a pure 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 the 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.'

8. As Sir Charles Newbold, P stated at page 701 of the decision in *Mukisa Biscuits* (supra):

' A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually 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.'

9. In the matter before me, the Defendant objects to the Plaintiff's suit on account that the same is sub-judice Karatina PMELC Case No 11 of 2022. There was no reference to the said case in the Plaintiff's claim and the only reference to a Karatina Case is to be found at Paragraph 6 of the Statement of Defence wherein the Defendant pleads briefly as follows:

' 6. In response to Paragraph 6, the Defendant avers that this matter is res judicata Karatina (sic) as well as sub judice the same of which the Defendant shall take a preliminary objection against the maintenance of this suit.'

10. As can be seen from the said Paragraph 6 of the Defence, there is no mention of the suit number for the Karatina case nor are the parties named or any explanation given as to how that suit relates to this present one. With respect, this Preliminary Objection calls upon this Court to go look for the pleadings in the Karatina Case and to make an inquiry as to how the Parties therein are related to the Parties before this Court.
11. I have looked at the submissions made in support of the objection including the alleged history of the matter and it was clear to me that those submissions are but an attempt to import matters into the suit that do not arise out of the pleadings currently before the Court. Issues as to whether the Plaintiff's mother and the Defendant have been embroiled in a succession or other dispute have not



been brought out in the pleadings before the Court. And whether or not the Defendant has lived on the land since 1963 can only be ascertained after the Court goes through the hearing of evidence and cannot be entertained by way of a Preliminary Objection.

12. It follows that I did not find any basis for the Preliminary Objection dated June 16, 2022. The same is dismissed with costs to the Plaintiff.

Ruling dated, signed and delivered in open Court and virtually at Nyeri this 23rd day of March, 2023.

In the presence of:

No appearance for the Plaintiff

Mr. Nderi for the Defendant

Court assistant - Kendi

.....

J. O. Olola

JUDGE

NYERI ELC E002 OF 2022 RULING Page 2 of 2

