



Khasoha & 2 others v Nyokabi & 3 others (Environment & Land Case E055 of 2021) [2023] KEELC 16522 (KLR) (23 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16522 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E055 OF 2021**

**EO OBAGA, J
MARCH 23, 2023**

BETWEEN

**VIOLET KHASOHA 1ST PLAINTIFF
Jael VUYANZI 2ND PLAINTIFF
JULIET SHIRWAZA 3RD PLAINTIFF**

AND

**MARY NYOKABI 1ST DEFENDANT
HELLEN MUSIMBI MUSILA 2ND DEFENDANT
BASILLA NYANGOR 3RD DEFENDANT
BENSON WAMBALE 4TH DEFENDANT**

RULING

1. The plaintiffs filed a suit against the Defendants in which they sought the following reliefs: -
 1. That the Plaintiffs thus pray for a declaration that the defendants jointly and severally acted illegally and unlawfully in transferring the deceased properties without involving the beneficiaries of the estate of the deceased and without grant of administration and that the subject titles be cancelled.
 2. That the Plaintiffs thus pray for a declaration that the Defendants acted jointly and severally illegally and unlawfully by failing to disclose to the estate of the deceased during succession and that the same be distributed to the beneficiaries of the estate.
 3. Costs of this suit.
 4. Any other order this Honourable Court may grant.



2. The 1st Defendant raised a preliminary objection on the following grounds: -
 1. The Plaintiffs lack Locus standi to represent the Estate of Late Nicholas Kiptum.
 2. The matter herein is Res-judicata, having been heard and determined in Eldoret HCC Succession No 383 of 2006; the Estate of the Late Nicholas Kiptum (Deceased)
 3. The suit herein does not disclose any reasonable cause of action against the 1st Defendant.
 4. The suit is frivolous, vexatious and is otherwise an abuse of the court process.
3. The parties were directed to file written submissions in respect of the preliminary objection. The 1st Defendant did not file any submissions and if any were filed then they are not in the file. The Plaintiffs filed their submissions on December 5, 2022
4. I have considered the submissions in light of the grounds in the preliminary objection. One of the grounds in the preliminary objection is that this suit is res judicata.
5. The principle of res-judicata is predicated on section 7 of the *Civil Procedure Act* which states as follows: -

' No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.'
6. In the case of *Independent Electoral and Boundaries Commission –Vs- Maina Kiai & 5 others (2017)* the Court of Appeal held as follows: -

' Thus, for the bar or res-judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

 - a. The suit in issue was directly and substantially in issue in the former suit.
 - b. The former suit was between the same parties or parties under whom they or any of them claim.
 - c. Those parties were litigating under the same title.
 - d. The issue was heard and finally determined in the former suit.
 - e. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.
7. In the instant case, there were no materials placed before me to enable me determine whether this suit is res judicata. The pleadings in Eldoret HC Succession cause No 383 of 2006 were not placed before me. Even if the materials were to be placed before me, the Preliminary objection on the ground of res-judicata would not have succeeded. This is because the claim in the plaint was for cancellation of titles obtained fraudulently.
8. A succession court has no jurisdiction to entertain a claim of ownership let alone cancellation of title. A cursory look at the Plaintiffs' claim shows that it is not frivolous or vexatious and that it does not



disclose a reasonable cause of action. I therefore, find that the Preliminary objection is devoid of merit.
The same is dismissed with costs to the Plaintiffs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 23RD DAY OF MARCH, 2023.

E. O. OBAGA

JUDGE

In the virtual absence of Plaintiff's counsel who was aware of ruling date.

Court Assistant –Laban

E. O. OBAGA

JUDGE

23RD MARCH, 2023

