



Arusei (Suing as the Legal Administrator of the Estate of the Late Elizabeth Jepkoech Ruto) & 2 others v Ruto (Environment & Land Case E016 of 2023) [2025] KEELC 1431 (KLR) (18 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1431 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E016 OF 2023
FO NYAGAKA, J
MARCH 18, 2025**

BETWEEN

**VIVIAN JEPKEMOI ARUSEI (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE ELIZABETH JEPKOECH RUTO) 1ST PLAINTIFF
ELIUD KIBET SEREM 2ND PLAINTIFF
BRIAN KIPLET'TING SEREM 3RD PLAINTIFF

AND
SAUL KIPKENY RUTO DEFENDANT**

RULING

Brief Facts

1. The Defendant filed the instant Preliminary Objection dated 27th November, 2024, following the death of one of the defendants, the 1st, who was the father of the Plaintiffs. Thus, he brought the Objection following an amendment to the Plaint, pursuant to an order of the Court made on 19/09/2024 after the then 1st Defendant had died and the suit against him withdrawn. Basically, the Plaintiffs had sued the two Defendants as a result of an alleged sale transaction over part of the suit land, then known as LR. Chepsiro/Kibuswo Block 1(Kapcheplanget)/52, that they allegedly occupied since their birth. It was their claim that their mother who predeceased their father some time in 2008 was a joint owner of the parcel of land then registered in their father's name, which land she developed and put up with their late father, build her home thereon, improved it by ploughing, planting domestic and commercial crops and trees and brought up her children thereon. Further that it was her legitimate expectation and that of her children that they would inherit the entire parcel of land, but not a smaller part thereof by virtue of part of it being sold and being subdivided into parcel Nos. Chepsiro/Kibuswo Block 1/(Kapcheplanget)/140 and 141.



2. After the death of their mother, sometime in 2011, the deceased father fraudulently sold part of the land to the current defendant. The Plaintiffs prayed for a number of reliefs including mesne profits since 2011, a declaration that their late mother had equal rights over the land before it was subdivided into the two new parcels, a declaration that she contributed to the acquisition of the land and the late father could not singlehandedly sell the said parcel of land or part thereof, the agreement between the late father and the Defendant was void and illegal for want of consent to sell, a customary trust existed on the part of the deceased father and the family in regard to the ownership of the suit land, an order of eviction and injunction against the Defendants, among others.
3. Following the filing of the Amended Plaint and Amended Defence, the Defendant raised a preliminary objection to the suit, on the following grounds:
 1. That the suit property to wit land reference number Chepsiro/Kibuswo Block 1(Kapcheplanget)/141 is registered in the name of Kipserem Arusei Maritim (DECEASED) and the suit herein is incompetent since it is being prosecuted by persons who are not administrators of the estate of the late Kipserem Arusei Maritim (Deceased) and therefore lack locus standi to institute and prosecute this suit.
 2. That the 1st plaintiff obtained limited letters of grant in respect of the estate of the late Elizabeth Jepkoech Ruto and yet the deceased Elizabeth Jepkoech Ruto did not leave behind an estate capable of being administered by the 1st plaintiff since her interest in land reference number Chepsiro/Kibuswo Block 1(Kapcheplanget)/52 escheated to her surviving spouse Kipserem Arusei Arap Maritim, now also deceased.
 3. That the 2nd and 3rd plaintiffs are not the administrators of the estate of Kipserem Arusei Maritim and are equally incompetent, or lack locus standi to urge any suit on behalf of his estate.
 4. By dint of article 162(2) (b) of the [constitution](#) of Kenya as read with section 13 of the [Environment and land court Act](#) this honourable court has no jurisdiction over issues or cases of intestate or testamentary succession to the estate of the deceased persons and the application and determination of any disputes relating such cases is vested in the High court and resident magistrate's appointed by the chief Justice as provided by section 47 of the [law of succession Act](#) Cap 160.
 5. That the suit herein is fatally defective, incompetent and vexatious as it offends the provisions of section 45, 46, and 47 of the Cap 160 laws of Kenya.

Submissions

4. The Preliminary Objection was disposed of by way of written submissions. Counsel for the Defendant filed his submissions dated 9th December, 2024, through his learned counsel, in which he submits that Elizabeth Jepkoech Ruto died on 15th December, 2008. He further submits that Kipserem Arusei Maritim was the registered proprietor of land reference no. Chepsio/Kibuswo Block 1(Kapcheplanget)/52 the suit land herein. He relied on Sections 101, 102, 103 and 118 of the Registered [Land Act](#) and argues that where a proprietorship is joint, the person does not have any separate shares in the land. He added that the shares were not indicated in the register. It was his submission that Kipserem Arusei Maritim was the only registered owner and that the interest of his spouse was not indicated in the register. He submits that the proprietorship if at all, his wife made contributions were those of a joint proprietorship.



5. It was his submission that the 1st Plaintiff took up a grant of letters of administration intestate ad litem on 16th March, 2023 which estate escheated to her surviving spouse upon the death of the deceased thus, the grant was inoperative. Counsel relied on Sections 91 and 93 of the *Land Registration Act* No. 3 of 2012 and submits that the said provision did away with joint proprietorship unless the proprietors are spouses or by an order of the court. He argues that the current law cannot operate retrospectively to cure that which occurred in 2008. He cited the case in *Moses Bii V Kericho District Land Registrar & the Attorney General* [2105] eKLR. He also relied on the case of *Law Society of Kenya V Commissioner of Lands & Others Nakuru High Court Civil Case No. 464 of 2000* and submits that the Plaintiffs have not taken out letters of administration in respect of Kipserem Arusei Maritim. He also relied on Section 82(a) of the *Law of Succession Act*. He argues that the Plaintiffs, not being administrators of his estate, they are thus not competent to sue the Defendant.
6. He relied on the case of *Owners of the Motor Vessel "Lilians" V Caltex Oil (Kenya) Limited (1989) KLR* and Section 47 of the *Law of Succession Act*. He submits that the suit is fatally defective and that the deceased did not need the consent of the Plaintiffs to sell his own property. He cited the case of *John Ayienda V Jaques Orangi and Donald Bosire* [2015] eKLR.

Analysis and Determination

7. This court has considered the Objection, the law and submissions by counsel. It is of the view that the main issue for determination is whether the preliminary objection is merited.
8. In the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696*, the court stated that:

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings and which objection point may dispose the suit”, and further that “A preliminary objection raises a pure point to law which is argued 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 case of *Quick Enterprises Ltd V Kenya Railways Corporation, Kisumu High Court Civil Case No.22 of 1999*, the court held that:

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the court having to resort to ascertaining the facts from elsewhere apart from looking at the pleadings alone”.
10. It is clear that this Court ought to rely on the pleadings only to determine the preliminary objection since it is based on a point of law. To rely on facts thereof would invite the Court to examine call for the same, examine it, weigh the truthfulness or otherwise of it, the weight and so on. That would mean that the Court shall be looking at the merits of the case hence a full hearing. That would then cease to be a preliminary objection. It should also go for the Court having to consider each and every point raised in the objection as to whether it is based on the law or both law and facts.
11. Regarding the last point above, the Defendant raised five grounds in the Preliminary Objection. Thus, the Court proceeds to sieve them through the lens of both law and fact to find out if they pass for points of law only.



12. The first ground is that the suit property, to wit, land reference number Chepsiro/Kibuswo Block 1(Kapcheplanget)/141 is registered in the name of Kipserem Arusei Maritim (Deceased) and the suit herein is incompetent since it is being prosecuted by persons who are not administrators of the estate of the late Kipserem Arusei Maritim (Deceased) and therefore lack locus standi to institute and prosecute this suit. This is a pure point of law.
13. The second one is that the 1st Plaintiff obtained limited letters of grant in respect of the estate of the late Elizabeth Jepkoech Ruto and yet the deceased Elizabeth Jepkoech Ruto did not leave behind an estate capable of being administered by the 1st plaintiff since her interest in land reference number Chepsiro/Kibuswo Block 1(Kapcheplanget)/52 escheated to her surviving spouse Kipserem Arusei Arap Maritim, now also deceased. It is the humble view of the Court that the issue whether or not Elizabeth Jepkoech Ruto (deceased) left behind an estate capable of being administered is a question of fact. Evidence shall have to be adduced to show how and what she left behind as an estate upon her death. This is not a pure point of law even though the aspect as to whether or her estate escheated to the surviving spouse may be a point of law. In any event the Plaintiffs raised the claim of customary trust and legitimate expectation. As to how those arise it is a question of fact and law. Therefore, the ground fails as a point of law.
14. The third ground was that the 2nd and 3rd Plaintiffs were not the Administrators of the estate of Kipserem Arusei Maritim and are equally incompetent, or lack locus standi to urge any suit on behalf of his estate. This is a pure point of law hence the Court needs to determine it.
15. The fourth ground was that by dint of Article 162(2) (b) of the *constitution* of Kenya as read with Section 13 of the *Environment and Land Court Act* this honourable court had no jurisdiction over issues or cases of intestate or testamentary succession to the estate of the deceased persons and the application and determination of any disputes relating such cases is vested in the High court and resident magistrate's appointed by the chief Justice as provided by Section 47 of the *Law of Succession Act*, Chapter 160, laws of Kenya. Indeed, the issue of jurisdiction is a point of law which ought to be determined at a preliminary stage.
16. Regarding the last point that the suit herein is fatally defective, incompetent and vexatious because it offends the provisions of Section 45, 46, and 47 of the Chapter 160 laws of Kenya, these are matters of law to the extent that they would be limited to the provisions cited. But if they extend to the suit being regarded as vexatious that would cease to be a point of law. Be that as it may and with the exclusion of that factual matter, the Court sustains this point as a pure point of law.
17. Having considered the objections raised by the Defendant, it is this court's view that the lack of locus standi and jurisdiction can dispose of the matter preliminarily without having to resort to ascertaining of facts. On the issue of locus standi, which was raised as the 1st and 3rd ground of the Preliminary Objection, the Defendant contends that Kipserem Arusei Maritim (deceased) was the proprietor of the suit land. He further contends that by virtue of the Plaintiffs not being administrators of the deceased's estate, they lacked the locus standi to institute the present suit. However, it is this court's view the Defendant has missed an important point: the Plaintiffs sue as the administrators of the estate of the late Elizabeth Jepkoech. It is that estate that claims against the transactions entered into by the deceased father and the Defendants. It is that estate which claims both customary trust and legitimate expectation. They have not sued on behalf of the estate of the deceased father. Thus, the contention on the locus standi of the Plaintiffs on that account fails.
18. About the fourth aspect of the Objection which is jurisdiction, as posed by the Defendant, the Defendant contends that this court has no jurisdiction over issues or cases of intestate or testamentary succession to the estate of the deceased persons. That is correct.



19. However, that proper position has to be looked at from the Plaintiffs' claim as flows from the pleadings. What is the Plaintiffs' claim? As summarized above, it appears to me, and correctly so, that their claim is about ownership of part of the original parcel of land before subdivision and as it stands the entire of the parcel claimed be the Defendant and part of the other that remains registered in the name of the deceased father. They claim the said parcel(s) of land by way of customary trust, inheritance and legitimate expectation, and they do so not as individuals but as the beneficiaries of the Estate of their late mother, which allegedly has been defrauded of the land in issue. It does not in any way translate the claims to succession ones. The Defendant is not sued as one of the members of the Estate but an intruder, intermeddler and "scavenger" literary.
20. Regarding the related contention that the suit offends Sections 45, 46 and 47 of Chapter 160 laws of Kenya, the three provisions provide on prohibition against intermeddling of an estate of a deceased person, duties of persons in relation to the protection of the estate of a deceased person, and also on jurisdiction of the High Court in succession matters.
21. The jurisdiction of his Court just like of any other, is a creature of statute. Following the plebiscite in 2010 for the *constitution*, this Country established the present Court under Article 162 (2) (b). Consequently, it enacted the *Environment and Land Court Act* whose preamble reads, "to give effect to Article 162(2)(b) of the *constitution*; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers".
22. In the Act the legislature then enacted Section 13 which gives the jurisdiction of the Court. It is therefore imperative that the present dispute must fall within the ambit and jurisdiction of this court espoused of the Act if it has to survive the onslaught against it by way of the preliminary objection.
23. First, it is important to note that jurisdiction is everything. Without it a court should and must down its tools immediately and that this Court is prepared to do if the point succeeds. This Court need not reinvent the wisdom enunciated in the Court of Appeal decision of the Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR. It is clear.
24. The Defendant's argument is that it is the High Court that has jurisdiction over the claim herein. The issue is whether or not the claim herein is for inheritance. The Defendant is sued as a person who participated in an illegal and void transaction over the estate of a deceased person and in a matter that was held by the deceased father in customary trust. The Plaintiffs' claim is that their mother was a joint owner of the suit land which was finally sold and subdivided yet that was done without the consent of the Estate of the deceased mother. The Plaintiffs have not sought inheritance. Their claim is that the sale transaction was illegal and void for want of consent, and even as it seems to be, intermeddling with the estate of the deceased Elizabeth Jepkoech Ruto. The nature of these claims is that they do not raise issues of succession hence the three provisions do not apply.
25. As a parting shot, what remains of the Plaintiff is to consider whether to amend the Plaint further to pray for cancellation of the titles for parcels Nos. 140 and 141 to revert to the original one. Further, since the father has died, the parties need to consider whether they apply to join the members of the other family or not since the portion they claim appears to be more than the portion they claim.
26. Consequently, I find that the Preliminary Objection dated November 27, 2024 is without merit and is therefore dismissed with costs to the Plaintiff. The suit is hereby fixed for mention before the judge on April 2, 2025 for further directions.
27. It is so ordered.



RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 18TH DAY OF MARCH 2025.

HON. DR. IUR F. NYAGAKA

JUDGE

In the presence of,

Ledisha Kittony Advocate for the Plaintiffs

Murgor Advocate for Defendant (absent).

