



REPUBLIC OF KENYA



**KENYA LAW**  
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**Otieno v Nganya (Sued as the administrator in the Estate of the Late  
William Nganya Otiende (Deceased) (Environment & Land Case  
E022 of 2022) [2023] KEELC 21031 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21031 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ENVIRONMENT & LAND CASE E022 OF 2022**  
**E ASATI, J**  
**OCTOBER 26, 2023**  
**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT CAP.22**  
**AND**  
**IN THE MATTER OF THE REGISTERED LAND ACT NO.3 OF 2012**  
**IN THE MATTER OF LR NO. KISUMU/PANDPIERI/1406 AND 1407**  
**AND**  
**IN THE MATTER OF CLAIM FOR ADVERSE POSSESSION**

**BETWEEN**

**CAREN ATIENO OTIENO ..... PLAINTIFF**

**AND**

**CHRISTOPHER OWINO NGANYA (SUED AS THE ADMINISTRATOR  
IN THE ESTATE OF THE LATE WILLIAM NGANYA OTIENDE  
(DECEASED) ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the Respondent's Notice of Preliminary Objection dated 1<sup>st</sup> March, 2023. The Preliminary Objection was premised on the grounds that;
  - i. the Defendant has no standing in this matter as he is not administrator of the estate of William Nganya Otiende, deceased.
  - ii. the subject matter is *res judicata* and in contravention of the provisions of Sections 7 of the *Civil Procedure Act* as a similar suit has been heard and determined in Kisumu ELC No.433 OF 2023.



- iii. that the subject matter of the suit namely land parcel No. Kisumu/Pandpieri/1406 and/or land parcel No. Kisumu Pandpieri/1558 are not in existence.
2. Counsel for the Defendant filed written submissions dated 1<sup>st</sup> March, 2023 in support of the Preliminary Objection. Counsel submitted on behalf of the Defendant that the Defendant has no capacity to be sued on behalf of the estate of William Nganya Otiende, deceased. That he only took out Limited Letters of Administration Ad Litem for purposes only of suing in Kisumu CMC EL Case No.433 of 2023 (herein called the former suit). That the Limited Letters of Administration expired hence purporting to represent the estate of the deceased in this matter by the Defendant will amount to intermeddling in the estate of the deceased. The Limited Grant was listed as item 2 in the Defendant's list of documents. It shows that the same was Limited for "filing suit only". It is dated 16<sup>th</sup> August, 2017. That the grant empowered the Defendant to sue only in the former suit. Counsel relied on the case of *Estate of Helena Wangechi Njoroge (Deceased)* [2015] eKLR and submitted that the life of the Limited Grant must have ended once the purpose for which it was issued was performed.
3. The Defendant submitted that the suit envisaged in the Limited Grant was the former suit. There is no evidence that the defendant has taken any further step that vests him with power to be sued on behalf of the estate of the deceased. I find that in the circumstances the Defendant has no capacity to be sued as he has not been appointed personal representative of the deceased as provided for in the *Law of Succession Act*.
4. As to whether the suit is res judicata, Counsel for the applicant relied on the provisions of section 7 of the *Civil Procedure Act* and submitted that the suit was over the same subject matter and between the same parties as in the former suit, that the former suit was heard and determined by a court of competent jurisdiction. Counsel relied on the case of *Invesco Assurance Company Limited & 2 Others -vs- Auctioneers Licencing Board & Another, Kinyanjui & Company Advocates & Another (Interested Parties)* [2020] eKLR where it was held that the doctrine of res judicata ousts the jurisdiction of the court to try any suit or issue which had been finally determined by a court of competent jurisdiction in a former suit.
5. A copy of the judgement in the former suit was attached to the submissions. The same shows that the suit concerned land parcel numbers Kisumu/Pandpieri/1406 (Now 1558 & 1559) and Kisumu/Pandpieri/1407. It shows that the following orders were made in respect of the suit lands in the former suit
  - a. Orders compelling the 1<sup>st</sup> Defendant, Land Registrar, to expunge/delete all the entries within green card of parcel No. 1406, 1558, 1559 and 1407 and revert back in the names of William Nganya Otiende as entry No. 1 as at 5<sup>th</sup> June 1989.
  - b. An order of removal/destruction of the illegal structures/houses set up by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants on the suit land and parcel No. Kisumu/Pandpieri/1406 now Numbers 1558 and 1559 and 1407 through enforcement by the OCS Central Police Station Kisumu.
  - c. A permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants by himself/ their selves/ herself or his authorized agents/assigns from alienating, trespassing, encroaching, erecting beacons/fencing, buildings and or any other manner whatsoever interfering with the Plaintiff's quiet administration / accessing of the said land parcels No. Kisumu/Pandpieri/1406, and 1407 revert back to the names of William Nganya Otiende.
  - d. The Defendants to bear the costs of the suit and interest thereon at court rates.



6. There is no evidence that the said judgement in the former suit was ever appealed against, reviewed or set aside. I note that the parties and subject of the former suit are the same herein.
7. I find that this court lacks jurisdiction as the dispute herein is *res judicata*.
8. Counsel finally submitted that the suit lands do not exist as they were expunged vide the judgement in the former suit. The orders in the former suit reverted the land back to the name of the deceased. This is clear from the orders in the judgement in the former suit.
9. No submissions were filed on behalf of the Plaintiff. The Preliminary Objection was not opposed.
10. I find that the Preliminary Objection has merit and hereby uphold it. The suit is hereby struck out. Costs to the Defendant.

Orders accordingly.

**RULING, DATED AND SIGNED AT Kisumu, READ VIRTUALLY THIS 26<sup>TH</sup> DAY OF OCTOBER 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI**

**JUDGE.**

