



**Nzomo v Munyao & 2 others (Environment & Land Case
E029 of 2022) [2025] KEELC 1217 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1217 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE E029 OF 2022
EO OBAGA, J
MARCH 13, 2025**

BETWEEN

ONESMA KINGOO NZOMO PLAINTIFF

AND

KIMUYU MUNYAO 1ST RESPONDENT

JOHN MUTUA MUNYAO 2ND RESPONDENT

FRANCIS MULATYA JOHN 3RD RESPONDENT

RULING

1. The 2nd and 3rd Defendants filed a Notice of Preliminary Objection dated 30th October, 2023 on the following grounds:
 - i. That the Plaintiff's claim herein as pleaded is for orders that could only have been sought against the estate of the late Munyao Muindu and not the 2nd and 3rd Defendants.
 - ii. That this Honourable court lacks jurisdiction to entertain this suit as pleaded as the same ought to have been a claim under the law of Succession as per the Law of Succession Act, Cap 160 and the Probate and Administration Rules.
 - iii. That the Plaintiff's/Respondent's suit as against the Defendants/Applicants is grossly misconceived, bad in law, incompetent, fatally defective and a brazen abuse of the court process hence the same should be struck out in limine.
2. The parties were directed to dispose of the Preliminary Objection by way of written submissions. The 2nd and 3rd Defendants filed submissions dated 22nd April, 2024. The Plaintiff filed submissions dated 27th May, 2024.



3. The 2nd and 3rd Defendants submitted that this court does not have jurisdiction to entertain this suit as the issues raised should be addressed by a succession court. The 2nd and 3rd Defendant relied on the case of Owners of Motor Vessel “Lillian S” -vs- Caltex Oil (Kenya) Limited (1989) KLR where it was stated as follows:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

4. The 2nd and 3rd Defendants further submit that when succession proceedings were filed in respect of the Estate of Munyao Muindu, the Plaintiff did not make any application in the cause as an interested party.

5. The 2nd and 3rd Defendants further submitted that the value of the land is less than Kshs.20,000,000/= and the suit should have been filed before the lower court where the succession cause was filed. They submit that this claim ought to have been filed against the Estate of the late Munyao Muindu and not against them.

6. The Plaintiff submitted that the subject matter is land where this court has jurisdiction to hear it. There were succession proceedings before the lower court where the letters of administration of the Estate of Munyao Muindu were granted to the 1st Defendant. The 1st Defendant is not objecting to the filing of this suit before this court.

7. The 2nd Defendant who is son of the late Munyao Muindu is sued in his individual capacity as having been party to the sale of the disputed portions purchased by the Plaintiff. The 3rd Defendant is son to the 2nd Defendant and is the one who collected the title deed from the land registry.

8. I have carefully considered the submissions by the 2nd and 3rd Defendants and the submissions of the Plaintiff. The only issue for determination is whether this court has jurisdiction to hear this case.

9. There is no doubt that grant of letter of administration in respect of the Estate of the late Munyao Muindu were given to the 1st Defendant. The said grant was confirmed on 27th January, 2022. This suit was filed on 23rd September, 2022.

10. The Plaintiff is seeking to have title for the portions which he purchased. The 2nd Defendant is sued as one who was party to these agreements. The 3rd Defendant is sued as one who collected the title deed and has kept it and refused to release it. There is nothing in this case which can be decided in a succession court. This is purely a matter under the jurisdiction of the Environment and Land Court.

11. The 2nd and 3rd Defendants in their submissions have tried to argue on the value of the land. They claim that there was no valuation report filed to show that the property has appreciated in value beyond Kshs.20,000,000/- and that the succession case was filed in the lower court implying that the value of the estate was below Kshs.20,000,000. This issue was not among the grounds raised in the notice of Preliminary Objection and in any case, there is evidence on record that there is a shop on the portion purchased by the Plaintiff. This being the case, there is need to ascertain the value of the land and developments thereon and no Preliminary Objection can be raised where certain facts are to be ascertained.

12. The issue of the Preliminary Objection first came when the matter had been set for hearing and the Plaintiff had three witnesses ready to proceed. This is the time the 2nd and 3rd Defendants’ advocate



indicated that he intended to raise a preliminary point of objection. The issue of jurisdiction was raised to delay this matter. The Preliminary Objection is devoid of merit. The same is dismissed with costs to the Plaintiff.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 13TH DAY OF MARCH, 2025.

In The Presence Of:

Mr. Kiptoo for Plaintiff.

1st Defendant in person.

Ms. Kathike for 2nd and 3rd Defendants.

Court assistant - Steve Musyoki

