



**Ndagara w/o Kaumbuthu (Substituted By Peter Murithi & Muriuki Kaumbuthu)
v Katharangushu (Substituted by Nyaga S/O Mbogo - Deceased) (Environment
& Land Case 57 of 2017) [2025] KEELC 3716 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3716 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE 57 OF 2017
AK BOR, J
APRIL 30, 2025
[FORMERLY NAIROBI HCCC NO. 1253 OF 1975 (OS)]**

BETWEEN

**NDAGARA W/O KAUMBUTHU (SUBSTITUTED BY PETER MURITHI &
MURIUKI KAUMBUTHU) APPLICANT**

AND

**MBOGO KATHARANGUSHU (SUBSTITUTED BY NYAGA S/O MBOGO -
DECEASED) RESPONDENT**

RULING

1. Muriuki Kaumbuthu filed the application dated 21/3/2022 seeking a prohibition order to restrict all dealings with the land known as Kagaari/Kigaa/404 pending hearing and determination of this application. He also sought for costs of the application to be provided for.
2. The application was made on the grounds the respondents have been registered with the suit land yet the applicant and his family are the ones entitled to the suit land. Further, that the respondents are seeking to obtain a Land Control Board (LCB) consent for subdivision of the land and unless a prohibition order is issued, the applicant and his family would suffer loss and irreparable damage.
3. In response to the application, the respondents raised a preliminary objection on the grounds that the court did not have jurisdiction to entertain the application as it was a strategy by the applicants to re-litigate issues raised in a previous application dismissed by this court. They also raised the ground that the orders sought in the application were incapable of being granted by this court as the application has a sole prayer for an order of prohibition pending hearing of the application. They contended that there are no prayers upon which such an order can issue and that an order of prohibition is a drastic order that can only be issued in proper cases and upon well laid out grounds yet the applicants had not laid out cogent grounds to sustain the issuance of such an order. The other ground was that the applicants



- are trying to forestall the conclusion of the subdivision processes of the suit property and allocation to the respective beneficiaries of the estate and that the application was an abuse of the court process.
4. Parties filed and exchanged written submissions. Only the respondents filed their submissions which the court has considered. The submissions reiterated the grounds set out in the preliminary objection.
 5. The court has to first consider whether the preliminary objection has any merit as its outcome will determine the fate of the application dated 21/3/2022.
 6. It is well established that a preliminary objection, as set out in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, must be based on pure points of law which are argued on the assumption that all the facts pleaded by the other side are correct. It must not be blurred with factual disputes or matters that require probing through evidence. The preliminary objection is marred with factual issues that require the ascertainment of facts and the probing of evidence which go beyond the scope of a preliminary objection. For instance, the respondents argue that this court lacks jurisdiction to hear and determine the application on grounds that the applicant is re-litigating issues previously determined and dismissed by this court. This raises the issue of the application being *res judicata* and the court would be required to examine the record and confirm whether the issues, parties, and subject matter in the previous application are the same as those in the current application.
 7. Similarly, the respondents' argument that the applicant is abusing the court process by filing multiple applications also invites a factual inquiry into the nature and content of the prior proceedings. This again renders it unsuitable for consideration under a preliminary objection.
 8. With respect to the contention that the orders sought are incapable of being granted, the court agrees that this is a valid legal issue. The applicant solely seeks an order of prohibition to prevent any dealings with the suit property pending the hearing and determination of the very application in which the order is sought. The application does not seek any final or substantive relief beyond the interim order, meaning there is no principal claim to support the interim relief sought by the Applicant.
The preliminary objection is upheld on that ground.
 9. The court declines to grant the orders sought in the application dated 21/3/2022 and awards costs to the respondents.

DELIVERED VIRTUALLY AT EMBU THIS 30TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Muriuki Kaumbuthu- the Applicant in person

Mr. Isaac Rene for the Respondents

Diana Kemboi- Court Assistant

