



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CIVIL CASE NO. 172 OF 2010**

JULIUS ANDRONICUS NYAGA KAROGE..... APPLICANT

VERSUS

ENNEDY WAWIRA NJAGI.....1<sup>ST</sup> RESPONDENT

KENNEDY MUNYI NJAGI .....2<sup>ND</sup> RESPONDENT

HADRINE MURUGI NJAGI ..... 3<sup>RD</sup> RESPONDENT

ANN JOY KARIMI ..... 4<sup>TH</sup> RESPONDENT

SICILY CIANJOKA MURIUKI ..... 5<sup>TH</sup> RESPONDENT

AMBROSE N.G. MURIUKI ..... 6<sup>TH</sup> RESPONDENT

BICON B. MURIUKI ..... 7<sup>TH</sup> RESPONDENT

**RULING**

1. The Respondents (No.1 – 4) have through their Counsel Mr.Njage raised this Preliminary Objection dated 23/5/2011 citing the following grounds;
  - i. *The suit is expressed to be brought under the provisions of order xxxvi rule 1 of the Civil Procedure Rules. No such rule exists.*
  - ii. *The suit is expressed to concern parcel of land registered as KAGAARI/KAGAA/3127. No copy of the register is annexed.*
  - iii. *The application seeks to appoint the Defendants as administrators of the estate of Peter Salesio Njagi Muriuki. Such an order is not available under the preferred proceedings herein.*
  - iv. *The Defendants are wrongly sued in the matter of estate of a deceased person before they or any of them are appointed legal representatives under the Law of Succession Act.*
  - v. *Any such agreement referred to in paragraph 4 and 9 of the affidavit of Julius Andronicus Nyaga Karoge, sworn on 26<sup>th</sup> November 2010, being as they were for the disposition of an interest in land, the same are null and void for all purposes under section 6 of the Land Control Act for want of consent of the Divisional Land Control Board.*
  - vi. *That the action being founded on agreements expressed to be dated the 8<sup>th</sup> December 1998 and the 3<sup>rd</sup> January 2000, the same is time barred under section 4 of the Limitations of Actions Act*

**Cap.22.**

2. Its noted that the 5<sup>th</sup> – 7<sup>th</sup> Respondents are not represented.
3. Mr. Njage for 1<sup>st</sup> – 4<sup>th</sup> Respondents and Mr. Gitobu Imanyara for the Applicant agreed to dispose of the application by way of written submissions which they did.
4. Mr. Imanyara's submission is basically that the Preliminary Objection is based on procedural technicalities which goes against the letter and spirit of Article 59(c) and (d) of the Constitution. He submits that alternative forms of resolving the dispute have not been sought.
5. He further submits that the Preliminary Objection purports to be asking for evidence which cannot be adduced at this stage.
6. And finally he states that the Preliminary Objection appears to target only the first four Respondents leaving out the rest of the Respondents.
7. In response through his submissions Mr. Njage states that the Preliminary Objection raises solid points of law relating to both legal and procedural issues. He says the suit is founded on wrong provisions of the law.
8. He submits that the Applicant came to court without proper Respondents, and that the procedure of appointment of administrators is under the law of Succession Act, and not in this suit.
9. He further submits that no Land Board Consent nor a copy of the register was annexed to the application.
10. Finally he raises the issue of limitation under the Limitation of Actions Act.
11. The factual background to this case will determine whether this matter is properly before this Court or not.
12. PETER SALESIO NJAGI MWANIKI (now deceased) is alleged to be the registered owner of land parcel No.KAGAARI/KIGAA/3127. There is no copy of certificate of search, title deed or the copy of the register filed.
13. He is said to have sold this land to the Applicant/Plaintiff herein. The annexed documents show that the person who bought the land is one JOHN NJERU MUNENE.
14. The sale agreement was entered into on 8<sup>th</sup> December 1998.
15. The said PETER NJAGI MURIUKI died in the year 2002 before transferring this land to the Applicant/Plaintiff. And this is where the crux of the matter is.
16. The said land obviously forms part of the estate of the late PETER SALESIO NJAGI MURIUKI. And if its proved that indeed the Applicant was a purchaser then he has a beneficial interest in the said estate.
17. A deceased person's estate can only be distributed by an administrator or an executor of the deceased's WILL.
18. In this case who is the administrator or executor? None has been appointed.
19. And if the heirs to PETER SALESIO NJAGI MURIUKI have refused/neglected to take out letters of administration there is a very clear procedure in the Law of Succession Act on what should be done.
20. The procedure of filing an originating summons in respect of a deceased person's property is erroneous. Even the Respondents/Defendants have wrongly been sued in this matter as they are not administrators/executors of the deceased's estate.
21. I will not go into the other issues raised in the Preliminary Objection and the Respondents submissions as they are matters of evidence.
22. I uphold the preliminary objection by the Respondents and strike out the suit with costs.

**DATED SIGNED, AND DELIVERED IN OPEN COURT AT EMBU THIS 16<sup>TH</sup> DAY OF JUNE 2014.**

**H.I. ONG'UDI**

**J U D G E**

**In the presence of:-**

Mr. Njage for Respondents

Njue – C/c