



Njiru (On Behalf of Ngui Clan) v Kironjo (On Behalf of Mugwe Clan) & 66 others (Environment and Land Appeal E013 of 2023) [2025] KEELC 3328 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3328 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E013 OF 2023**

AK BOR, J

APRIL 8, 2025

BETWEEN

ZAVERIO NGARI NJIRU (ON BEHALF OF NGUI CLAN) APPELLANT

AND

BENSON NGUGI KIRONJO (ON BEHALF OF MUGWE CLAN) 1ST RESPONDENT

PETER MATHURI KARANI & 65 OTHERS & 65 OTHERS & 65 OTHERS & 65 OTHERS & 65 OTHERS 2ND RESPONDENT

RULING

1. The Respondent, Benson Ngugi Kironjo who was sued on behalf of the Mugwe Clan raised a preliminary objection to the appeal on the grounds that the suit on which this appeal is based, that is Embu ELC Case No. 219 of 2014 no longer existed by virtue of the orders granted on 27/6/2023 in Nyeri Civil Appeal No. 65 of 2019, between Joel Kithaka Maringa suing on behalf of Ngui clan v Benson Ngugi Kironjo sued on behalf of Mugwe clan. Further, that the ruling appealed against by the Appellant had no basis by dint of the orders issued in Nyeri Civil Appeal No. 65 of 2019 and that this court was functus officio and could not therefore entertain any proceedings in Embu ELC No. 219 of 2014 nor in this appeal save for the issue of costs awarded in Nyeri Civil Appeal No. 65 of 2019. The Respondent annexed a copy of the orders issued in Nyeri Civil Appeal No. 65 of 2019 on 27/6/2023 to the objection and urged that the appeal be struck out with costs.
2. The court directed parties to file and exchange written submissions which it has carefully considered. The Respondent submitted that the appeal arose out of the ruling delivered in Siakago PMCC No. 3 of 2006 by Hon. W Ngumi which was later transferred to Embu now currently ELC Case No. 219 of 2014. That Embu ELC No. 219 of 2014 was heard and concluded and the Appellant filed Nyeri Civil Appeal No. 65 of 2019 which was compromised by consent which in essence dismissed ELC Case no. 219 of 2014 with costs to the Appellant. He averred that entertaining this appeal meant that



the court had reopened Embu ELC 219 of 2014 without the Appellant having made any application for reopening of that case. The Appellant gave its own version of the history of the appeal and invited the court to dismiss the preliminary objection.

3. The issue for determination is whether the preliminary objection has merit and should be allowed. In order for a preliminary objection to succeed, it must meet the criteria set out in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* (1969) EA 696. It should raise a pure point of 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.
4. A preliminary objection must therefore raise a pure point of law that does not require further evidence for its determination. If the facts are disputed or require further proof, then the objection cannot be sustained.
5. In this case, the Respondent's assertion is that Embu ELC Case No. 214 of 2014 does not exist anymore having been effectively disposed of through the orders granted in Nyeri Civil Appeal No. 65 of 2019. The Respondent contends that the court is *functus officio* and cannot entertain any further proceedings arising from the said matter including the present appeal.
6. The grounds raised by the Respondent in the preliminary objection are not pure questions of law. They require a minute examination of the nature and scope of the orders issued in Nyeri Civil Appeal No. 65 of 2019, what the consent that led to the compromise meant, and whether the ruling which is the subject of this appeal was affected by those orders or not. The court also needs to analyse and interpret the orders made in Embu ELC Case No. 214 of 2014. These are factual issues requiring interrogation and interpretation and therefore go beyond the scope of a preliminary objection.
7. The proper course is for the appeal to proceed to hearing where all the Respondent's arguments can be ventilated and determined on merit.
8. The preliminary objection fails. Parties are directed to set down the appeal for expeditious hearing and determination.

DELIVERED VIRTUALLY AT EMBU THIS 8TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Njagi Wanjeru for the Appellant

Ms. Linda Otieno for the Respondent

Court Assistant- Diana Kemboi

