



Kimani v Njeri & 3 others (Environment & Land Case E021 of 2024) [2025] KEELC 3143 (KLR) (7 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3143 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE E021 OF 2024**

MN GICHERU, J

APRIL 7, 2025

BETWEEN

RUTH WAITHERA KIMANI PLAINTIFF

AND

NANCY NJERI 1ST DEFENDANT

MORINE WAKESHO 2ND DEFENDANT

BRIAN MUNA 3RD DEFENDANT

LAND REGISTRAR MURANG'A COUNTY 4TH DEFENDANT

RULING

1. This ruling is on the 4th Defendant's preliminary objection dated 9th September 2024 which is based on the following grounds.
 - a. That the Plaintiff has instituted this suit without authority as provided under paragraph 82(a) of the *Law of Succession Act* (Cap 160 Laws of Kenya).
 - b. That the Plaintiff lacks the requisite capacity to institute the current suit before first obtaining letters of administration and/or authority from court.
 - c. That the court lacks the jurisdiction to entertain this suit as it relates to an estate of a deceased person.
 - d. That the suit is therefore an abuse of the court process.
2. In the plaint dated 25-7-2024 the Plaintiff seeks to have three properties, Murang'a Municipality Block 11/171, Loc.19/Gacharageini/571 and Murang'a Municipality Block 3/96 revert from the current ownership by the 1st, 2nd and 3rd Defendants to the name of her deceased husband Paul Kimani Muna. She also seeks to have the rental income from the three properties from 26th October 2021 to date



accounted for by the Defendants and that the said rental income be utilized to offset the Equity Bank Loan that is owed by the estate of the deceased.

3. In addition to the plaint, the plaint filed a notice of motion dated 25-7-2024 seeking an order of injunction to restrain the Defendants from blocking the Plaintiff from taking possession of the suit property pending the hearing and determination of this suit. The other orders sought include the appointment of a receiver agent to collect rent from the suit property with immediate effect.
4. All the Defendants have filed written statements of defence dated 9-9-2024 and 1-10-2024 respectively. In their defence the 1st, 2nd and 3rd Defendants have said that this suit is res judicata for raising the same issues that were raised in ELCL JR E002/2023 where parties were Charles Muna Kimani Vs. Nancy Kimani and Others. Secondly, just like the Honourable the Attorney General, they have raised the issue of the Plaintiff's capacity to sue on behalf of the estate when she is not an administratrix thereof. The Hon, the AG has raised the same issue of lack of letters of administration by the Plaintiff vide paragraph 14 of the defence dated 9-9-24.
5. Counsel for the parties were to file and serve written submissions by 12-2-2025 when this case came up before Court. Only the Counsel for the Plaintiff and for the 1st to 3rd Defendants filed written submissions. I did not see any submissions by the AG.

The issues in the preliminary objection are as follows.

- i. Whether the Plaintiff has the requisite capacity to sue as envisaged by Section 82(a) of the [Law of Succession Act](#)?
 - ii. Whether this court has jurisdiction to entertain this suit which relates to the estate of a deceased person.
 - iii. Whether this suit is res judicata in view of ELCL JR E002/2023.
6. I have carefully considered the preliminary objection in its entirety including the grounds, the pleadings by the parties, the affidavits, the annexures, the written submissions and the law cited therein. I make the following findings on the issues for determination.
 7. On the issue of the Plaintiff's locus standi, I am persuaded by the submission that she needs to be lawfully appointed as a legal representative to the estate of the deceased Paul Kimani Muna before she can have capacity to file a suit in respect to the deceased's property. The documents that the Plaintiff has filed in this case especially the certificates of marriage and death should be filed in the succession cause. I agree with the submission that under Section 82(a) of the [Law of Succession Act](#), only personal representatives of the estates of deceased persons have capacity to sue on behalf of the estate. The Plaintiff herein has not exhibited any grant issued to her by a Court of competent jurisdiction. Furthermore the Succession Court is better placed to distribute the estate of the deceased in a more just and equitable manner among all the lawful Defendants of the deceased, than this Court.
 8. On whether this Court has jurisdiction to entertain a suit which relates to the estate of a deceased person, I find that it has. As long as a dispute relates to the environment, the use and occupation of, and title to land, then this court has jurisdiction. The only rider would be that the parties have capacity. Article 162 (2) (b) of [the Constitution](#) and Section 13 of the [Environment and Land Court Act](#) does not limit the Court's jurisdiction to the estates of those that are living. The estates of deceased persons are included in the jurisdiction of this court.
 9. On whether this suit is res judicata in view of ELCL JR E002/2023, I find that it is premature for me to decide on this point simply because none of the parties has pleaded sufficiently as to what the issues in that suit were, the names of all the parties and what the court decided. The pleadings on record do not



go into the depth of that suit. I appreciate that the reason for this could be that the pleadings are not yet closed but the Defendants especially should have presented a more detailed defence and also filed the documents that must by law accompany the defence as required by Order 7 Rule 5 Civil Procedure Rules. The submissions on res judicata are not well anchored on the pleadings.

Failure by the Plaintiff to mention JR E002/2023 in the plaint dated 25-7-2024 has not made it any easier for me to have sufficient material to make a decision one way or the other. Had the Plaintiff filed a reply to the defences by the Defendants, perhaps it could have made things easier for me. It is a mandatory requirement of Order 4 Rule (1) (f) and (2) of the Civil Procedure Rules that a Plaintiff discloses any previous suits and their effect on the current suit.

10. In conclusion and for the above stated reasons, I find that the Plaintiff has no locus standi to institute this suit because she has not adduced any evidence to demonstrate that she has the necessary letters of administration. I therefore strike out the suit. There will be no order as to costs because the Plaintiff may still come back to court once she obtains the necessary papers.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 7TH DAY OF APRIL, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiffs' Counsel – Mr. Maina

1st Defendant's Counsel – Mr Irungu Mwangi

2nd and 3rd Defendants' Counsel – Mr Mwangi

