



REPUBLIC OF KENYA



**Mwakata v Mwamburi & 2 others (Environment & Land Case E007 of 2024)
[2025] KEELC 3065 (KLR) (Environment and Land) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3065 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND CASE E007 OF 2024**

EK WABWOTO, J

APRIL 3, 2025

BETWEEN

SIMON MASHAKA MWAKATA PLAINTIFF

AND

PASCAL MLOMBI MWAMBURI 1ST DEFENDANT

JOSEPH MWAMBURI 2ND DEFENDANT

COUNTY LAND REGISTRAR, TAITA TAVETA COUNTY 3RD DEFENDANT

RULING

1. This ruling is in respect to the 1st and 2nd Defendants notice of preliminary objection dated 16th November 2024. The said objection was premised on the following grounds;
 - i. That the suit as filed and canvassed is incompetent, bad in law and non starter and cannot be capable of being sustained as it violates mandatory provisions of the law.
 - ii. That the subject suit properties belong to the deceased persons and their personal representatives have not been sued.
 - iii. That in the circumstances, the Plaintiff's suit and the orders or prayers sought herein are a monumental procedural and legal nullity, abuse of the court process, vexatious, mischievous and a proper candidate for dismissal and or striking out with costs.
 - iv. That the suit is therefore bad in law, an abuse of the court process and ought to be dismissed with costs.
2. The objection was contested by the Plaintiff and pursuant to the directions issued by the court, the parties were directed to file written submissions in respect to the same. The 1st and 2nd Defendants filed



written submissions dated 20th November 2024 while the Plaintiff filed written submissions dated 17th March 2025. Parties were also allowed to highlight their written submissions on the 26th March 2025 upon which Learned Counsel Mr. Mwazighe appeared for the 1st and 2nd Defendants while the Plaintiff was self-represented.

3. The court has carefully considered the objection, oral and written submissions made by the Plaintiff and the 1st and 2nd Defendants and is of the considered view that the main issue for consideration herein is whether the objection is merited.
4. In the instant case, it is not in dispute that the suit properties herein being L.R No. Chawia Kidaya/Ngerenyi/1043 belongs to Roman Mwambingu Mwaburi while L.R No. Chawia/Kidaya/Ngerenyi 1042 belongs to Caleb Mwakiwo Mlombi who are both deceased. It is also not disputed that the Plaintiff instituted this suit against the 1st and 2nd Defendants who are not the owners of the suit properties and neither are they the administrators of their estate.
5. The Plaintiff did not furnish this court with any evidence to demonstrate that the 1st and 2nd Defendants are the administrators of the estate of the deceased Roman Mwambingu Mwaburi and Caleb Mwakiwo Mlombi.
6. It is trite law that a suit filed before the applicant is issued with a grant of letters of administration in respect to the estate of a deceased person is an incompetent suit. In the cases of Daniel Njuguna Mbugua v Peter Kiarie Njuguna & 2 Others (2021) eKLR and Isaya Masira Momanyi v Daniel Omwoyo (2017) eKLR, the courts struck out suits that had been filed by parties prior to obtaining grants of letters of administration. The courts separately held that the plaintiffs in the cases lacked capacity and/or locus standi to file the suits on behalf of the estates of the deceased persons. In the latter case the court stated that the suit was incompetent and an abuse of the process of the court.
7. In view of the foregoing, it is the finding of this court that the suit is incompetent and a nullity for having been filed before a grant of letters of administration was obtained. It is a grant of letters of administration that gives a person the mandate to deal with the property of a deceased person. This is made clear by section 82(a) of the Law of Succession Act which lists the powers of a personal representative to include –
 - “to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate.”
8. In conclusion, the court finds merit in the 1st and 2nd Defendants preliminary objection and proceeds to issue the following orders;
 - i. The Plaintiff’s suit is struck out.
 - ii. Each party to bear own costs of the suit.
 - iii. The file is closed forthwith.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY/OPEN COURT AT VOI THIS 3RD DAY OF APRIL 2025.

E. K. WABWOTO

JUDGE

In the presence of:-



Simon Mashaka Mwakata Plaintiff acting in person.

Mr. Mwazighe for the 1st and 2nd Defendant.

N/A for the 3rd Defendant.

Court Assistants: Mary Ngoira.

