



**Chemitei & another v Chepkok & 2 others (Environment & Land
Case 67 of 2019) [2025] KEELC 4358 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4358 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 67 OF 2019**

**MAO ODENY, J
JUNE 11, 2025**

BETWEEN

ISALAH CHEMITEI 1ST PLAINTIFF

RAPHAEL CHEMITEI 2ND PLAINTIFF

AND

LUKA CHEPKOK 1ST DEFENDANT

KIMOI CHEPKOK 2ND DEFENDANT

KENNETH KIPTOON 3RD DEFENDANT

RULING

1. This ruling is in respect of the 3rd Defendant’s Preliminary Objection dated 9th October, 2024 based on the following grounds:
 - a. The suit is bad in law, inept, fatally incompetent, unsustainable, an abuse of court process and is null and void ab initio.
 - b. The suit is re judicata, and/or the court is functus officio.
 - c. This court has no jurisdiction to entertain or try the suit.
 - d. The Plaintiffs have no locus standi.
2. The 3rd Defendant prayed that the entire suit be dismissed and/or struck out, with costs.

3rd Defendant’s Submissions

3. Counsel for the 3rd Defendant filed submissions dated 20th January, 2025 and submitted that the issue in dispute is ownership of land and the same matter was determined in favour of the 1st and 2nd



Defendants in Nakuru High Court Succession Cause No. 362 of 1997 where the High Court issued a Certificate of Confirmation of Grant and bestowed the entire parcel of land to the Defendants.

4. Ms. Magana submitted that the Plaintiffs annexed the Petition for Grant of Letters of Administration, the Grant for Letters of Administration, and the Certificate of Confirmation of Grant of Succession Cause No 362 of 1997 vide an affidavit dated 19th December 2003. Further, the Plaintiffs alleged that the 1st and 2nd Defendants subdivided the suit land into two being LR No Kampi ya Moto/ Kampi ya Moto Block 1/998 and LR No Kampi ya Moto/ Kampi ya Moto Block 1/999, whereby the latter was sold to the 3rd Defendant.
5. It was counsel's submission that the subject matter in this case had previously been determined by a court of concurrent jurisdiction therefore the court and the Plaintiffs are estopped from re-litigating the matter. That the dispute herein is about the ownership of the suit land which was the subject of a Succession Cause which ruled in favour of the 1st and 2nd Defendants vide a confirmation of grant which distributed the estate of which the Plaintiffs were aware of.
6. Counsel relied on the cases of Stephen Mwaura Njuguna vs Dougals Kamau Ngotho & another [2012] eKLR and Matindi & 3 others vs National Assembly of Kenya & 4 others (2023) KEHC 19534 (KLR).
7. On the issue of whether the Plaintiffs have locus standi, counsel submitted that a party can only bring and sustain a suit on behalf of the estate of a deceased person if they hold either a full grant of Letters of Administration or Limited Grant Ad Litem, hence the Limited Grant Ad Colligenda bona is not appropriate and cannot be the basis for filing or sustaining a suit on behalf of the estate.
8. Counsel relied on the cases of Morjaria vs Abdalla [1984] eKLR and Kipngetich Kalya Kones (Suing as the Administrator of the estate of Kipkalya Kiprono Kones (deceased) vs Wilson Kiplangat Kones [2021] eKLR and urged the court to strike out the suit as the Plaintiffs lack locus standi.
9. On the issue of whether the suit is bad in law /incompetent for failure to comply with Order 4 Rule 4 of the Civil Procedure Rules, counsel submitted that the Originating Summons is fashioned as a representative suit brought on behalf of the Estate of the Plaintiffs' late father.
10. According to Counsel, the Originating Summons has not complied with the mandatory provision as it neither indicates in the title nor the body the capacity in which the Plaintiffs have sued nor how that capacity arises. Counsel urged the court to uphold the preliminary objection and strike out the suit with costs.
11. Counsel submitted that the suit is bad in law/incompetent for failure to comply with Order 4 of the Civil Procedure Rules.

Plaintiffs Submissions

12. Counsel for the Plaintiffs filed submissions dated 9th May, 2025 and submitted that the Plaintiffs are challenging the confirmation of Grant in Nakuru Succession Cause No 362 of 1997 as the same was obtained through fraud and misrepresentation of facts.
13. Counsel submitted that the matter is still alive and pending for hearing and determination and that the preliminary objection is based on facts as seen at paragraph 5 of the 3rd Defendant's submissions.
14. Mr. Orina further submitted that the present suit seeks the following specific prayers: Ownership, Mesne profits and Eviction which are distinct legal reliefs that were not in issue in the Nakuru High Court Succession Cause No 362 of 1997. And that the parties in this suit are different from the said Succession Cause. Counsel submitted that the doctrine of estoppel is not applicable in the present



suit as the matter of ownership and mesne profits has not been litigated upon conclusively in Nakuru Succession Cause No. 32 of 1997.

15. On the issue of locus standi, counsel urged the court to do substantive justice and submitted that any legal misstep can be cured to enable the suit to be heard fully and not be dismissed on a technicality and relied on Article 159 of *the Constitution* of Kenya.
16. It was counsel's submission that the mistakes of previous counsel engaged by the Plaintiff should not be visited upon them and prayed that the preliminary objection be dismissed and the matter be allowed to proceed for hearing.

Analysis and Determination

17. The issue for determination is whether the 3rd Defendant's Preliminary Objection dated 9th October, 2024 has merit. The Supreme Court in the case of Hassan Ali Joho & another -Vs- Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 [2014] eKLR held thus:

“ a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”

18. This preliminary objection raises three, issues namely, jurisdiction, locus standi and failure to comply with Order 4 rule 4 of the Civil Procedure Rules which are pure points of law which if argued on the assumption that all facts pleaded by the other side are correct, can dispose of this matter.
19. There are certain aspects of the preliminary objections which cannot be ignored taking into account that the respondent to the preliminary objection also acknowledges the existence of the facts to the points of law raised.
20. It is on record that the Plaintiffs annexed the Petition for Grant of Letters of Administration, the Grant for Letters of Administration, and the Certificate of Confirmation of Grant of Succession Cause No 362 of 1997 vide an affidavit dated 19th December 2003. Further that the Plaintiffs alleged that the 1st and 2nd Defendants subdivided the suit land into two being LR No Kampi ya Moto/ Kampi ya Moto Block 1/998 and LR No Kampi ya Moto/ Kampi ya Moto Block 1/999 whereby the latter was sold to the 3rd Defendant.
21. These documents, having originated from the Plaintiffs and forms part of their case mean that the facts are correct and not disputed. The Plaintiff also admitted that there was a Succession Cause No 362 of 1997, which was heard, determined and the estate was distributed and a Grant confirmed in favour of the 1st and 2nd Defendant.
22. There is no evidence that there was either an objection or application for revocation/annulment of grant. There is further no evidence that an appeal was filed in respect of the Succession Cause. Counsel for the Plaintiff submitted that the current suit is in respect of ownership, mesne profits and eviction hence has not been litigated before.
23. With due respect to counsel, I beg to differ, as the suit land was as a result of a court process through a Succession Cause which distributed the estate of the deceased. This court cannot therefore annul or set aside a grant that was confirmed by the High Court. What are the Plaintiffs hinging their ownership on?



24. In the case of Stephen Mwaura Njuguna v Dougals Kamau Ngotho & another [2012] KECA 98 (KLR) the Court of Appeal held that:

“Well, that appeal No. 90 of 2005 has been finalized as is indicated above in this judgment and the eviction orders has been confirmed. That being the case, again, we must conclude that this interlocutory appeal, like the one in Civil Appeal No. 90 of 2005 has been overtaken by events. In any case, Kimaru J. was perfectly on the spot. The learned judge had no jurisdiction to hear and determine a matter that was decided by a fellow judge of concurrent jurisdiction. He could not for instance set aside a judgment of Muga Apondi J. a Judge who has the same jurisdiction as himself. Such setting aside could only be done by an appellate court but not by a Judge of the High Court as the appellant sought.”

25. This court therefore has no jurisdiction to hear and determine a matter that was decided by a fellow Judge with concurrent jurisdiction sitting in the High Court on a Succession Cause. Doing so would amount to sitting as a Court of Appeal Judge, which I am not. On this ground alone, this case is an abuse of court process and should therefore be struck out.

26. On the issue of the competency of the suit, counsel for the 3rd Defendant submitted that the same offends the provisions of Order 4 rule 4 of the Civil Procedure Rules which provides as follows:

Where the Plaintiff sues in a representative capacity, the Plaintiff shall state the capacity in which he sues and where the Defendant is sued in a representative capacity, the Plaintiff shall state the capacity in which he is sued, and in both cases it shall be stated how the capacity arises

27. This provision is very important for the identification of the parties sued to avoid suing the wrong parties. I have perused the Originating Summons dated 22nd August 2003 and the Supporting affidavit sworn by Isaiah Chemitei on 9th December 2003 but I have not seen anywhere where it indicates the capacity of the Plaintiffs. The capacities of the 1st and 2nd Defendants have also not been described.

28. Counsel for the Plaintiff acknowledged this anomaly but attributed it to Plaintiff's former counsel and submitted that mistakes of counsel should not be visited on a litigant. This matter was filed in court in 2003, which makes it more than 22 years old. At one point in 2024 it was listed for dismissal for want of prosecution but it was salvaged. If counsel knew that there was an anomaly in the case then he should have filed an application for amendment, this was not done, and counsel cannot hide under Article 159(2) of *the Constitution* to salvage the Plaintiffs' case. The issue does not fall under procedural technicalities

29. I have considered the preliminary objection, the submissions by counsel, and find that the same has merit, therefore upheld. The case is hereby struck out with costs for the above reasons.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 11TH DAY OF JUNE 2025.

M. A. ODENY

JUDGE

