



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Erasto (Suing as the Administrator of the Estate of Beatrice Muthanje Njiru) v Njagi & 3 others
(Environment and Land Case E007 of 2024) [2025] KEELC 5873 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5873 (KLR)

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

AK BOR, J

JULY 3, 2025

BETWEEN

**JOSEPH NJERU ERASTO PLAINTIFF
SUING AS THE ADMINISTRATOR OF THE ESTATE OF BEATRICE
MUTHANJE NJIRU**

AND

**KENNETH NJAGI 1ST DEFENDANT
DEFATHER KARIUKI 2ND DEFENDANT
EMBU COUNTY GOVERNMENT 3RD DEFENDANT
SIRIPHA WARUE 4TH DEFENDANT**

RULING

1. The 1st Defendant, Kenneth Njagi, raised a preliminary objection to the suit on the grounds that the matter was *res judicata* in that the subject matter has been litigated over by the same parties and a substantive judgment or rulings rendered in *Runyenjes Magistrate's Court Succession Cause No. 61 of 1995* on diverse dates. The second ground is that the Plaintiff lacks the locus standi to prosecute this matter on the basis that he did not obtain letters of administration for the Estate of Beatrice Muthanje Njiru (deceased) before this court and that if any ever existed, it stood revoked vide the ruling delivered in *Runyenjes Magistrate's Court Succession Cause No. 10 of 2020*. The 1st Defendant urged that this suit offends Section 7 of the *Limitation of Actions Act* since the Plaintiff is attempting to recover land after more than 12 years have elapsed since the cause of action arose. The 1st Defendant annexed copies of the rulings to support his objections.
2. The court directed parties to file and exchange written submissions. Only the 1st Defendant filed written submissions. He submitted that the Plaintiff's suit is bad in law as it is *res judicata*. He



submitted that on 2/2/2011, the Plaintiff filed an application for rectification of the grant issued on 8/8/1996 to include plot no. 209 Runyenjes, the suit land in this case, as being jointly owned by Azel Nyaga Erasto (deceased) and Beatrice Muthanje Njiru (deceased). The application for rectification of grant was dismissed with costs on 10/11/2011. That the Plaintiff did not relent and sought review of the order dated 10/11/2011 which did not succeed. Undeterred, the Plaintiff filed another application dated 5/5/2014 under Rules 73 and 65(5) of the *Probate and Administration Rules* whose subject matter was similar to the suit above. The application was deemed to be res judicata. He submitted that this suit is res judicata in light of Section 7 of the *Civil Procedure Act*.

3. Additionally, the 1st Defendant submitted that the Plaintiff lacked the legal capacity to file the suit on behalf of the Estate of the late Beatrice Muthanje Njiru because the grant of letters of administration issued to him were revoked pursuant to the summons for revocation of grant dated 25/3/2021 and a ruling delivered on 8/6/2023. He contended that the Plaintiff did not exhibit any letters of administration ad litem which would enable him institute the current suit. It was his submission that the Plaintiff's suit was statute barred as it offends section 7 of the *Limitation of Actions Act* given the period of 2011 to 2024 is 13 years.
4. The issue for determination is whether the preliminary objection has merit.
5. A Preliminary Objection raises a pure point of law argued on the assumption that all the facts pleaded by the other side are correct. It should not be raised if any fact has to be ascertained or where the exercise of judicial discretion is what is sought. A preliminary objection must rest purely on a point of law, and must not be entangled with factual disputes that require evidence.
6. The objection to the suit as being res judicata is premised on proceedings in *Runyenjes Succession Cause No. 61 of 1995*, in which the Plaintiff filed an application dated 2/2/2011 seeking rectification of a grant to reflect that Plot No. 209 Runyenjes was jointly owned by Azel Nyaga Erasto and Beatrice Muthanje Njiru. He also sought to have the court furnish accounts of the earnings derived from plot no. 209A Runyenjes. The claim in the current suit, as can be discerned from the plaint is different from the previous claim. The Plaintiff alleges that Plot No. 209 was unlawfully subdivided and that Beatrice Muthanje's name was illegally removed from the land register after Azel Nyaga's death. He seeks cancellation of the resulting subdivisions that is, plots 209A and 209B, reversion to the original plot no. 209, partitioning of the land into equal shares, and registration of one portion in his name.
7. Section 7 of the *Civil Procedure Act* prohibits any court from trying any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.
8. In this court's view, the issues raised in the succession cause especially rectification of a grant are distinct in nature from the current claim, which challenges the legality of the alterations to the land register removing the name of Beatrice Muthanje from the register and the subdivision of Runyenjes Plot No. 209 into Plot 209A and B. While the property in dispute may be the same, the legal questions and reliefs sought are fundamentally different. The objection on the ground of res judicata fails.
9. On the second ground that the Plaintiff lacks the locus standi to institute the suit, the 1st Defendant furnished the court a copy of the ruling in *Runyenjes Succession Cause No. 10 of 2020* where the court revoked the grant of letters of administration issued to the Plaintiff. The Plaintiff did not exhibit any new letters of administration or a limited grant ad litem which would clothe him with the legal capacity to bring this suit on behalf of the estate of the late Beatrice Muthanje Njiru. A person bringing a suit on behalf of the estate of a deceased person must demonstrate that they possess the requisite authority



to do so. In the absence of a valid grant of representation or a limited grant for purposes of filing suit, the Plaintiff lacks locus standi, and the suit is incompetent. The suit is therefore incompetent.

10. The 1st Defendant further argued that the suit was time barred under Section 7 of the *Limitation of Actions Act*, which provides an action may only be brought by any person to recover land before the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.
11. The Plaintiff claims that the name of Beatrice Muthanje Njiru was unlawfully removed from the land register on or about 27/9/1995 by the defunct Runyenjes Town Council. That forms the basis of the cause of action. If it be so, then more than 28 years elapsed before this suit was filed on 3/4/2024. The claim is statute barred and offends Section 7 of the *Limitation of Actions Act*.
12. The preliminary objection on grounds of lack of locus standi and the suit being time barred are upheld. The suit is struck out for being incompetent and statute barred.

Each party will bear its own costs.

DELIVERED VIRTUALLY AT EMBU THIS 3RD DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Dennis Kariuki for the Plaintiff

Mr. Collins Njage for the Defendants

