



**Maina v Maina; Langat (Being the Legal Representative of the Estate of Kiplangat arap Maina (Deceased) (Applicant); Bett (Being the Legal Representative of the Estate of Kibet Arap Maina alias Job Kibet Maina (Deceased) (Interested Party) (Environment & Land Case 100 of 2005) [2025] KEELC 4989 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4989 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE 100 OF 2005**

**LA OMOLLO, J**

**JULY 3, 2025**

**BETWEEN**

**KIPLANGAT ARAP MAINA ..... PLAINTIFF**

**AND**

**JOB KIBET MAINA ..... DEFENDANT**

**AND**

**PHILIP KIMUTAI LANGAT (BEING THE LEGAL REPRESENTATIVE OF THE ESTATE OF KIPLANGAT ARAP MAINA (DECEASED) ..... APPLICANT**

**AND**

**ZACHARIAH KIPKOECH BETT (BEING THE LEGAL REPRESENTATIVE OF THE ESTATE OF KIBET ARAP MAINA ALIAS JOB KIBET MAINA (DECEASED) ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect of the Interested Party’s preliminary objection dated 1<sup>st</sup> October, 2024. It is on the following grounds;
  - a. That this application is res judicata and the same had been adjudicated and determined by the Honourable Court’s ruling dated 25<sup>th</sup> July, 2024 hence offends the provisions of Section 7 of the *Civil Procedure Act* (Cap 21) Laws of Kenya.
  - b. That the Applicant’s application herein is therefore an abuse of the Court process, frivolous, vexatious and have no merits at all hence the same be dismissed with costs.



## **Factual Background.**

2. The Plaintiff commenced the present proceedings vide the Plaint dated 7<sup>th</sup> September, 2005 which was amended on 7<sup>th</sup> March, 2007. He seeks the following prayers;
  - a. An order that the transfer of land parcel number Kericho/Sosiot/604 in favour of the Defendant and the subsequent sub-division into Kericho/Sosiot/1655 and 1656 is null and void ab initio.
  - b. Mesne profits.
  - c. Costs of the suit.
  - d. Interest on (a), (b) and (c) above at Court rates.
  - e. Any other relief this Honourable Court may deem fit.
3. The Defendant filed an “Amended Amended Statement of Defence and Counterclaim” (Sic) on 16<sup>th</sup> September, 2009. The Defendant seeks that the Plaintiff’s suit be dismissed with costs.
4. Subsequently, on 5<sup>th</sup> August 2024, the Applicant filed an application dated 2<sup>nd</sup> August, 2024 in which he seeks the following orders;
  - a. That this Honourable Court be pleased to grant leave to the Applicant to revive the suit against the Defendant.
  - b. That the Court be pleased to extend time to substitute the deceased Plaintiff and Defendant.
  - c. That this Honourable Court do cause the legal representatives of the deceased Plaintiff and Defendant namely Philip Kimutai Langat and Zachariah Kipkoech Bett respectively to be substituted and be made parties in this suit and proceed with this suit on their behalf.
  - d. That such other and/or further directions be given by this Honourable Court to meet the ends of justice.
  - e. That the costs of this application be in the cause.
5. In response to the said application, the Interested Party filed the preliminary objection under consideration.
6. On 7<sup>th</sup> November, 2024, the Court issued directions that the preliminary objection be heard by way of written submissions.
7. On 11<sup>th</sup> December, 2024, it was mentioned for submissions and reserved for ruling.

## **Issues for Determination.**

8. The Interested Party filed his submissions on 12<sup>th</sup> December, 2024 while the Applicant filed his submissions on 14<sup>th</sup> November, 2024.
9. The Interested Party submits that the Applicant’s application dated 2<sup>nd</sup> August, 2024 is res judicata and offends the provisions of Section 7 of the *Civil Procedure Act* for the reason that it is a replica of an earlier filed application dated 15<sup>th</sup> April, 2024 which was determined vide a ruling delivered on 25<sup>th</sup> July, 2024.



10. The Interested Party also submits that his preliminary objection raises a pure point of law as it is premised on Section 7 of the *Civil Procedure Act*.
11. The Interested Party concludes his submissions by urging the Court to strike out the Applicant's application with costs as it is res judicata.
12. The Applicant submits on whether the application dated 2<sup>nd</sup> August, 2024 is res judicata. The Applicant relies on Section 7 of the *Civil Procedure Act* and submits that the doctrine of res judicata is an administrative doctrine aimed at ensuring an orderly running of the judicial process which is not absolute in nature and can be varied depending on the circumstances.
13. The Applicant relies on the judicial decision of *John Florence Maritime Services Limited & another v Cabinet Secretary, Transport and Infrastructure & 3 Others* [2021] eKLR and submits that the Supreme Court held that there are exceptions to the doctrine of res judicata especially in instances where there is a real potential for substantial injustice.
14. The Applicant admits that he filed the application dated 15<sup>th</sup> April, 2024 seeking, among other orders, leave to revive the suit and extension of time to substitute the deceased parties.
15. The Applicant submits that the Court delivered a ruling on the said application on 25<sup>th</sup> July, 2024 where it held that it could not consider the application on merit as pertinent documents were not attached. Essentially, the Court dismissed the said application for the reason that the Applicant had not proved that he was the legal representative of the deceased Plaintiff.
16. The Applicant also submits that the ruling of the Court delivered on 25<sup>th</sup> July, 2024 was not final. Therefore, he filed the application dated 2<sup>nd</sup> August, 2024 in compliance with the said ruling.
17. The Applicant relies on the judicial decision of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment) and submits that the Supreme Court held that for the doctrine of res judicata to stand, its elements must be heard and determined conjunctively.
18. The Applicant relies on Order 24 Rule 7 of the Civil Procedure Rules, the judicial decisions of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969] EA 696, *Mbaya Nzalwa v Kenya Power & Lighting Co. Ltd* [2018] eKLR, *Kinyua v Go Ombachi* [2019] eKLR and concludes his submissions by urging the Court to dismiss the Interested Party's preliminary objection.

### **Analysis and Determination.**

19. Having considered the Interested Party's preliminary objection and the rival submissions filed by the parties herein, my view is that the only issue that arises for determination is whether the Interested Party's preliminary Objection dated 1<sup>st</sup> October, 2024 has merit.
20. The judicial decision of *Ushago Diani Investment Limited v Abdulwahab* (Environment & Land Case 12 of 2023) [2023] KEELC 20213 (KLR) (27 September 2023) (Ruling) cited with approval *Oraro v Mbaja* [2005] eKLR 141 where the Court, on the nature of preliminary objections, held as follows on;

“A preliminary objection is now well identified as and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot



be raised as a preliminary objection anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”

21. Further, a preliminary objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained. It must stem from the proceedings and raise pure points of law and should not deal with disputed facts nor should it derive its foundation from factual information.
22. The Interested Party’s preliminary objection is on the ground that the Applicant’s application dated 2<sup>nd</sup> August, 2024 is res judicata.
23. The Interested Party submits that the Applicant had earlier filed an application dated 15<sup>th</sup> April, 2024 which sought similar orders that was dismissed by the Court vide a ruling delivered on 25<sup>th</sup> July, 2024.
24. The Interested Party therefore contends that the application dated 2<sup>nd</sup> August, 2024 is res judicata and it should be dismissed.
25. In response, the Applicant admits that he filed the application dated 15<sup>th</sup> April, 2024 which was dismissed on 25<sup>th</sup> July, 2024.
26. The Applicant submits that the said application was dismissed for the reason that he failed to avail evidence that he was the legal representative of the estate of the deceased Plaintiff.
27. The Applicant also submits that the ruling delivered on 25<sup>th</sup> July, 2024 was not final in its nature and the Court should therefore hear his application dated 2<sup>nd</sup> August, 2024 on its merits.
28. In the judicial decision of Henry Wanyama Khaemba Vs Standard Chartered Bank Ltd & Another [2014] eKLR the Court held as follows;

“That re-statement of the limited scope of a Preliminary Objection brings me to the point where I hold that the Preliminary Objection by the 1<sup>st</sup> Defendant is not a true Preliminary Objection in the sense of the law. The issues of res judicata, duplicity of suits and suit having been spent will require probing of evidence as it is already evident from the submissions by the 1<sup>st</sup> Defendant. They are incapable of being handled as Preliminary Objections because of the limited scope of the jurisdiction on preliminary objection. Court of laws have always had a well-founded quarrel with parties who resort to raising preliminary objections in improperly”. (Emphasis mine)

29. The Court in George Kamau Kimani & 4 others v County Government of Trans-Nzoia & another [2014] eKLR also held as follows;

“I have considered the points raised by the first defendant. All those points can be argued in the normal manner. They do not qualify to be raised as Preliminary Points. One cannot raise a ground of res judicata by way of preliminary objection. The best way to raise a ground of res judicata is by way of notice of motion where pleadings are annexed to enable the Court to determine whether the current suit is res judicata. Professor Sifuna did not raise the issue of res judicata by way of notice of motion. Professor Sifuna only annexed a ruling in respect of a case which was struck out. This is not a proper way of raising the issue of res judicata. The other points raised in the preliminary objection are issues which require



ascertainment of facts by way of evidence. They cannot be brought by way of preliminary objection.” (Emphasis mine)

30. In the above cited judicial decisions, the Court held that the issue of res judicata cannot be raised by way of a preliminary objection.

**Disposition.**

31. Taking the foregoing into consideration, I find that the Interested Party’s Preliminary Objection dated October 1, 2024 lacks merit and it is hereby dismissed with costs.
32. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 3<sup>RD</sup> DAY OF JULY, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of:

Mr. Koske for the interested party.

Mr. Okok for the Plaintiff/Respondent.

Defendant. (Deceased)

Court Assistant; Mr. Joseph Makori.

