



**Ragui v Gatu & another (Environment and Land Case 68 of 2014)  
[2025] KEELC 5986 (KLR) (10 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 5986 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 68 OF 2014  
CG MBOGO, J  
SEPTEMBER 10, 2025**

**BETWEEN**

**MUKURIA RAGUI ..... PLAINTIFF**

**AND**

**ERASTUS GATHAGE GATU ..... 1<sup>ST</sup> DEFENDANT**

**SERAH NJERI MWANGI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the notice of preliminary objection dated 15<sup>th</sup> April, 2025 filed by the defendants challenging the suit on the following grounds:-
  1. That the court lacks jurisdiction to hear and determine the present suit against the defendants as the court lacks territorial jurisdiction by virtue of the cause of action resides outside this court's jurisdiction.
  2. That this honourable court lacks the requisite jurisdiction to entertain the said suit as the suit offends Section 15 of the *Civil Procedure Act*.
  3. That the court lacks jurisdiction to hear and determine the present suit against the defendants as the specific cause of action is statutorily time barred by virtue of Sections 7 and 10 of the *Limitation of Actions Act*.
  4. That the plaintiff has sued the defendants in their personal capacity and not as the legal administrators as is required by law.
  5. That the present suit against the defendants is therefore fatally defective ab initio, incompetent and an abuse of the court process and should be dismissed with costs to the defendants.



2. The preliminary objection was canvassed by way of written submissions. The defendants filed their written submissions dated 12<sup>th</sup> May, 2025 and they raised four issues for determination as follows:-
  - i. Whether the preliminary objection has been raised on a pure point of law.
  - ii. Whether the court has jurisdiction to hear and determine this matter.
  - iii. Whether the plaintiff has the locus standi to sue the defendants in their personal capacity.
  - iv. Whether the suit is time barred.
3. On the first issue, the defendants submitted that the issues of locus standi, and time limitation for presenting the suit are pure points of law. Reliance was placed in the case of *Zipporah Njoki Kangara v Rock and Pure Limited & 3 others* [2021] eKLR. On the second issue, the defendants submitted that pursuant to Section 15 of the *Civil Procedure Act*, the suit is located in Kiambu County which has an existing ELC court in Thika.
4. On the third and the fourth issues, the defendants submitted that they obtained letters of administration of the estate of the late John Gatutu Gichuhi, and that any claim against the property of the deceased should be made against the estate. Further, they submitted that the suit was instituted on 19<sup>th</sup> June, 2019 and that the plaintiff claims to have purchased the property sometime in the year 1985. The defendants submitted that pursuant to Section 7 of the *Limitation of Actions Act*, the suit is time barred and its continuity greatly disadvantages them and should be struck out.
5. The plaintiff filed his written submissions dated 30<sup>th</sup> June, 2025 and he raised four issues for determination as listed below:-
  - a. Whether this court has jurisdiction to hear and determine this matter.
  - b. Whether this suit is time barred.
  - c. Whether the defendants herein are capable of being sued.
  - d. Whether the preliminary objection is merited.
6. On the first issue, the plaintiff submitted that at the time of filing this suit in the year 2014, the ELC in Thika had not been established. He submitted that in view of that, this court has jurisdiction to hear and determine this suit. On the second issue, the plaintiff submitted that in line with the prayers sought in the plaint dated 19<sup>th</sup> June, 2019, Sections 7 and 10 of the *Limitation of Actions Act* do not apply. He relied on the case of *Stephen Mwangi Gatunge v Edwin Onesmus Wanjau* (Suing in her capacity as the administrator of the estate of Kimingi Wariera (deceased) and Mwangi Kimingi (deceased) [2022] eKLR.
7. On the third and fourth issues, the plaintiff submitted that he filed an application dated 19<sup>th</sup> June, 2019 seeking leave to amend the plaint and substitute the deceased defendant. The said application was allowed with the leave of the court. On the fourth issue, and while relying on the cases of *Petronilla Mututku Makilya & 2 others v Caroline Mbinya Kathendu & 4 others*, Land Registrar, Machakos Land Registry & another (Interested Parties) [2022] eKLR, *Nitin Properties Ltd v Singh Kalsi & Another* [1995] eKLR and *DT Dobie & Company Kenya Limited v Joseph Mbaria Machira & Another* [1980] eKLR, the plaintiff submitted that a preliminary objection cannot be anchored where there is a dispute as to facts relied upon by the party raising the same. He submitted that the preliminary objection is frivolous, and lacks merit and ought to be dismissed with costs.



8. I have considered the preliminary objection and the written submissions filed by the parties. I am of the view that the issue for determination is whether the preliminary objection has merit.

9. Law, J.A. in *Mukisa Biscuits Manufacturing Company Limited -vs- West End Distributors* (1969) EA 696 stated as follows:-

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which raises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration...”

10. Also, the case of *John Musakali vs. Speaker County of Bungoma & 4 others* (2015) eKLR, it was held that: -

“The position in law is that a preliminary objection should arise from the pleadings and on the basis that facts are agreed by both sides. Once raised the preliminary objection should have the potential to disposing of the suit at that point without the need to go for trial. If, however, facts are disputed and remain to be ascertained, that would not be a suitable preliminary objection on a point of law.”

11. Further, Ojwang, J (As he then was) in *Oraro -vs- Mbaja* (2005) KLR 141 where after quoting the statement of Law, J.A. in the *Mukisa Biscuits* case (supra) went on to state that: -

“A 'preliminary objection' correctly understood is now well defined as and declared to be a point of law which must not be blurred by 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, 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 point....

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...”

12. From the above cited authorities, it is clear that for a preliminary objection to succeed, the same must consist of a pure point of law, with the facts not disputed by the opposing party. Also, a preliminary objection should possess the ability to dispose off the issue that is before court without going to trial and lastly, the same ought to stem from pleadings and not outside of that.

13. From a careful reading and keen understanding of the grounds upon which the objection is premised, it is clear that the preliminary objection does not entirely raise a pure point of law. First and foremost, for a preliminary objection to succeed, the same must contain undisputed facts. It is not disputed that at the time of filing this suit, there was no court of similar jurisdiction within Kiambu County. It therefore follows that the plaintiff correctly instituted this suit in this court. However, does want of territorial jurisdiction dispose off the suit? I think not. To ensure that parties are afforded the opportunity to ventilate their issues, it is only logical that the suit is heard in the right court. In this case, a transfer of the file to Thika ELC would be most suitable.



14. It appears that the defendants have not perused the pleadings in this matter. Following the demise of the defendant, an amended plaint was filed dated 19<sup>th</sup> June, 2019. A quick reading of the amended plaint as contained in paragraph 7 would inform the defendants when the plaintiff's dispute arose which leads me to conclude that Section 7 and 10 of the Limitation of Actions Act as a ground for striking out the pleadings cannot suffice.
15. In my view, the preliminary objection was not well thought out. An issue of territorial jurisdiction is easy to deal with simply by transferring the file to the relevant jurisdiction. The same cannot dispose of this suit. For this reason, the notice of preliminary objection dated 15<sup>th</sup> April, 2025 thus fails. The orders commending issuance at this stage is the transfer this file to ELC Thika for hearing and determination which orders I hereby proceed to issue. Costs in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 10<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**10/09/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Kariuki holding brief for Mr. Charagu for the Plaintiff/Respondent

