



REPUBLIC OF KENYA



**Kingdom Bank Limited (Formerly Jamii Bora Bank) v Leteipan & 4 others (Environment & Land Case E016 of 2022) [2024] KEELC 501 (KLR) (1 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 501 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E016 OF 2022  
LC KOMINGOI, J  
FEBRUARY 1, 2024**

**BETWEEN**

**KINGDOM BANK LIMITED (FORMERLY JAMII BORA BANK) ..... PLAINTIFF**

**AND**

**CAROLINE WANJIRU LETEIPAN ..... 1<sup>ST</sup> DEFENDANT**

**ALEX SUYIANKA OLE LETEIPAN ..... 2<sup>ND</sup> DEFENDANT**

**JOYCE NAIREIAI MOHAMED KIMOJINO ..... 3<sup>RD</sup> DEFENDANT**

**DAVE NOAH SITONI LETEIPAN ..... 4<sup>TH</sup> DEFENDANT**

**CHARLES OBADIAH SALAPEI LETEIPAN ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. This is the Preliminary Objection dated 24<sup>th</sup> April 2023 brought by the 2<sup>nd</sup> to 5<sup>th</sup> Defendants on the grounds that:
  - i. The 2<sup>nd</sup> to 5<sup>th</sup> Defendants powers and duties under the Certificate of Confirmation of grant dated 25/09/2018 issued in Nairobi Succession Cause No. 1131 of 2017, in the Matter of the Estate of the Late John Mark Leteipan (Deceased), were extinguished upon distribution of the suit property to the named beneficiary of the Estate of John Mark Leteipan (Deceased) under the Court order.
  - ii. The 2<sup>nd</sup> to 5<sup>th</sup> Defendants are functus officio under Section 82 and 83 of the [Law of Succession Act](#), cap 160.
2. The Preliminary Objection was canvassed by way of written submissions.



### **The 2nd 5th Defendants Submissions**

- 3 Counsel submitted that under the Certificate of Confirmation of Grant dated 25<sup>th</sup> September 2108 issued in High Court Succession Cause No. 1131 of 2017: In the Matter of the Estate of the Late John Mark Leteipan (Deceased) the powers conferred to them were extinguished upon distribution of the Estate of the deceased as per Section 83(e) of the [Law of Succession Act](#). The suit was thus unmerited and should be dismissed as the application had met the criteria set out in *Mukisa Biscuit Co. Ltd v West End Distributors Ltd* (1969) EA 696 and [Kigwor Company Limited v Samedy Trading Company Ltd](#) [2021] eKLR.

### **The 1st Defendant's submissions**

4. Counsel also submitted that the legal representatives' powers were extinguished under Section 82 and Section 83(e) of the [Law of Succession Act](#) upon distribution of the late John Mark's Estate. They were thus functus officio as was elaborated by the Supreme Court of Kenya in [Raila Odinga v & Others v IEBC & Others](#) [2013] eKLR and the Court of Appeal in [Telkom Kenya Ltd v John Ochanda \(suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Ltd\)](#) [2014] eKLR. The Succession orders being final could only be re-considered through an Appeal or revocation of the grant and none of this had been undertaken. The Plaintiff was thus seeking to illegally reopen the orders given by the High Court which was an abuse of the court process and should be dismissed with costs to the Defendant.

### **The Plaintiff's Submissions**

5. Counsel submitted that the Defendants being the legal representatives of the estate of the Late John Mark had the legal authority to act on his behalf as stipulated by Section 79 of the [Law of Succession Act](#) and held by Musyoka J. in [In Re Estate of Freda Musimbi Mudoga \(Deceased\)](#) [2014] eKLR and the Court of Appeal in [William Kiptarbei Korir & 6 others v danson Munju Njeru](#) [2018] eKLR. Their claim that the Estate had been distributed was unsubstantiated and there was no proof to warrant their discharge from the proceedings and the application should therefore be dismissed with costs to the Plaintiff.

### **Analysis and determination**

6. I have considered the Preliminary Objection, the rival submissions, the authorities cited. The issues for determination are:
- i. Whether the 2<sup>nd</sup> – 5<sup>th</sup> Applicants' Preliminary Objection is merited.
  - ii. Who should bear the costs?
7. It is trite law that a Preliminary Objection should be on a pure point of law which can be discerned and determined on the face of the pleadings. This was embedded in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696. Similarly, the Supreme Court in Kenya [National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others \(Interested Parties\)](#) [2020] eKLR pronounced itself as follows on the preliminary objection issue:

78 ...“Thus a preliminary objection may only be raised on a ‘pure question of law’. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”



- 16 It is quite clear that a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law.
8. The Plaintiff's case is that between the years 2014 and 2015, they advanced loan facilities to the 1<sup>st</sup> Defendant who charged property Kajiado/Osilalei/58 registered in the name of John Mark Leteipan as security. The 1<sup>st</sup> Defendant defaulted in settling the outstanding loan and the Plaintiff followed the laid out procedure to invoke its statutory power of sale. However, during that process the valuer notified the Plaintiff that the charged property was not captured on the Registry Index Map which instead reflected its mother parcel number Kajiado/Osilalei/15. They instituted investigations into the issue and discovered that the said John mark Leteipan had passed away and his Estate was under the administration of the 2<sup>nd</sup> to the 5<sup>th</sup> Defendants with the charged property having been vested to the 4<sup>th</sup> Defendant. The Plaintiff reached out to them so that they could sign necessary documents for reconstruction of the mutation plans and survey maps to conclude the subdivision of the charged property so as to enable the Plaintiff recover its secured debt, but the Defendants were uncooperative thus necessitating this suit.
  9. The Defendants then filed a preliminary objection seeking dismissal of the suit on the grounds that the Estate of the late John Mark Leteipan had been duly distributed as per the confirmed grant and were thus functus officio and could no longer act on the orders sought by the Plaintiff.
  10. The Plaintiff contested the application stating that the Defendants were legally bound to offset the Estate of the deceased's obligations before distributing it and there was no evidence to show that the estate had indeed been distributed as claimed. It sought that the Preliminary Objection be dismissed.
  11. Having taken into consideration the parties respective positions and submissions, I find that the preliminary objection at hand is not one that raises a pure question of law. Courts, in their sacred duty to administer justice, are cautioned against being manipulated by litigants who seek to exploit procedures to secure dismissals rather than allowing suits to be determined on their merits. This was the Supreme Court of Kenya's pronouncement in the case of *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] eKLR where it stated;
    - "79. Further the Court in *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others* Civil Application No. 36 of 2014 , stated;

"The occasion to hear this matter accords us an opportunity to make certain observations regarding the recourse by litigants to preliminary objections. The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits."
  12. I find no merit in the Preliminary Objection same is hereby dismissed with costs to the Plaintiff.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 1<sup>ST</sup> DAY OF FEBRUARY 2024.**



**L. KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF:**

Mr. Munene for the Plaintiff.

Mr. Tole for the 1<sup>st</sup> Defendant.

N/A for the 2<sup>nd</sup> – 5<sup>th</sup> Defendants.

Mutisya – Court Assistant.

