



Mungai (Suing as the Personal Representative of the Estate of Simon Mungai Kamau (Deceased)) & 2 others v Gitau (Sued as the Personal Representative of the Estate of Samuel Gitau Kamau (Deceased)) & 2 others (Environmental and Land Originating Summons E006 of 2023) [2025] KEELC 3987 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3987 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2023**

LN MBUGUA, J

MAY 22, 2025

BETWEEN

JOSEPH MUCHIRI MUNGAI (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON MUNGAI KAMAU (DECEASED)) 1ST APPLICANT

VIRGINIA WANJIRU NGANGA (SUING AS THE PERSONAL REPRESENTATIVE OF ROBERT NGANGA KAMAU (DECEASED)) 2ND APPLICANT

CHARLES KAMAU MUNGAI 3RD APPLICANT

AND

STEPHEN NJOROGE GITAU (SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SAMUEL GITAU KAMAU (DECEASED)) 1ST RESPONDENT

CHARLES KAMAU NJENGA (SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF FRANCIS NJENGA KAMAU) 2ND RESPONDENT

ALICE WANJA MUNGAI (SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF MUNGAI KAMAU) 3RD RESPONDENT

RULING

1. This ruling concerns the Preliminary Objected dated 8.4.2024 as amended on 6.12.2024 brought forth by the defendant where it is contended that the case of the 2nd plaintiff should be dismissed as she had filed a suit with similar issues, the same being High Court Civil case no. 373 of 2005 Virginia W. Ng'ang'a v Francis Njenga Kamau & Mungai Kamau.



2. In opposition thereof, the plaintiffs filed a Replying affidavit sworn on 15.1.2025 by Joseph Muchiri Mungai who introduces himself as a co administrator of the estate of Simon Mungai Kamau (Deceased). He denies that there was ever a suit in which the issues were the same as the ones in the current suit, adding that the facts are disputed, hence the Preliminary Objection should be dismissed.
3. The court gave directions for the preliminary objection to be heard by way of written submissions, of which, the plaintiffs did not file submissions by 18.4.2025 as directed by the court.
4. I have considered all the arguments raised herein including the submissions of the defendant dated dated 24.3.2025. The issue for determination is whether the preliminary objection is premised on the “resjudicata” principle.
5. A proper Preliminary Objection was defined in the case of Mukisa Biscuit Company Ltd Vs West End Distributors 1969 E.A 896 as follows:-

“ 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”.
6. While in Oraro v Mbaja [2005] eKLR, the court had this to say on a Preliminary Objection.

“Preliminary objection”, correctly understood, 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 processes 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”.
7. I find that the issue of the existence of the older case has been mentioned severally in the pleadings of the defendants. However, the contents therein are blurred with factual details with claims and counterclaims dating as far back as the 1970s. To this end, the defendants have proffered a detailed counterclaim relating to the ownership and possession of the parcels mentioned in the respective pleadings. That being the case, I find that the preliminary objection does not raise a pure point of law.
8. Further, I find that the particulars of the older case including the pleadings, the framed issues and the alleged eventual consent have not been tendered before this court through the preliminary objection. Thus whereas the defendants may be arguing from a point of knowledge, the court has not been given the details of the aforementioned case.
9. In the end, I find that the Preliminary Objection is not merited, the same is hereby dismissed. Each party is to bear their own costs of the Preliminary Objection.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 22ND DAY OF MAY 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Simon Wachira for Plaintiff

Mwaniki for defendants



