



**Sigei & another (Suing as administrators of the Estate of the Late Kimalel Arap Sigei) v Malel
(Sued as the administrator of the Estate of the Late Martha Chepkoech Berenge) & 3 others
(Environment & Land Case E012 of 2023) [2024] KEELC 6797 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6797 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE E012 OF 2023
LA OMOLLO, J
OCTOBER 17, 2024**

BETWEEN

**KIMALEL ARAP SIGEI & RONALD LANGAT (SUING AS ADMINISTRATORS
OF THE ESTATE OF THE LATE KIMALEL ARAP SIGEI) PLAINTIFF**

AND

**ANDREW ARAP MALEL (SUED AS THE ADMINISTRATOR OF THE ESTATE
OF THE LATE MARTHA CHEPKOECH BERENGE) 1ST DEFENDANT**

KIPSANG NGENO SAMWEL 2ND DEFENDANT

KIPLANGAT ARAP BETT 3RD DEFENDANT

BETHWEL LANGAT 4TH DEFENDANT

RULING

Introduction.

1. This ruling is in respect of the Defendants Notice of Preliminary Objection dated 11th December, 2023. The preliminary objection is on the following grounds;
 - a. That the Plaintiff herein lacks locus standi to institute and maintain the suit herein.
 - b. That this Honourable Court lacks jurisdiction to entertain and hear the Plaintiff's suit herein since the same amounts to sitting on an appeal from a Court with concurrent jurisdiction and the same status as this Honourable Court.
 - c. That the suit is procedurally and substantively bad in law.
 - d. That the suit is otherwise frivolous vexatious and an abuse of Court process hence suitable to be dismissed and/or struck out with costs.



Factual Background.

2. The Plaintiffs commenced the present proceedings vide the Plaint filed on 28th November, 2023 wherein, they seek the following prayers;
 - a. A declaration that the Estate of the (sic) Kimalel Arap Sigei is the sole legal and beneficial owner of the land comprised in Kericho/Keбенeti/930 measuring approximate area 4.4 hectares and the 2nd 3rd and 4th Defendant have no interest whatsoever therein and/or any portion thereof at all.
 - b. A declaration that the purported subdivision of the estate property comprised in Kericho/Keбенeti/930 and the resultant titles and registers thereof namely; Kericho/Keбенeti/2141, 2142, 2143, 2144 & 2145 is irregular, un procedural, unlawful, null and void ab initio.
 - c. A declaration that alleged transfer of Kericho/Keбенeti/2142 in the name of 3rd Defendant and subsequent subdivision thereof into Kericho/Keбенeti/3046, 3047 & 3048 by the 3rd Defendant and any further dealings thereof be declared illegal, null and void ab initio.
 - d. A declaration that the 2nd, 3rd and 4th Defendants by themselves and/or their servants, agents and/or employees are trespassers on the estate property comprised in Kericho/Keбенeti/930.
 - e. A declaration that the proceedings in Kericho High Court Succession Cause No. 124 of 2013 and all consequential orders arising thereof be declared irregular and/or nullity.
 - f. This Honourable Court be pleased to issue orders directing the 2nd 3rd and 4th Defendants by themselves and/or their servants, agents and employees to vacate the estate property, herein Kericho/Keбенeti/930 forthwith and/or in the alternative be evicted therefrom with the assistance of Ocs (sic) Sondu Police Station.
 - g. An order of permanent injunction restraining the 2nd 3rd and 4th Defendant (sic) by themselves and/or their servants, agents and employees from entering upon, remaining thereon, occupying, cultivating, using, leasing, erecting structures thereon, interfering and/or in any manner whatsoever dealing with the estate property comprised in land parcel Kericho/Keбенeti/930.
 - h. Special Damages as prayed in paragraph 17 hereinabove.
 - i. Damages for trespass.
 - j. Cost of the suit.
3. The Defendants filed their Statement of Defence and Counterclaim on 11th December, 2023.
4. The Defendants seek the following prayers in their counterclaim;
 - a. An order of dismissal of the suit and the prayers contained therein with costs for lack of merits. (sic)
 - b. An order of eviction against the Plaintiff/Defendant from 0.20 acres of land parcel Kericho/Keбенeti/2144.
5. The preliminary objection first came up for directions on 20th February, 2024. The Court gave directions that the Preliminary Objection shall be canvassed by way of written submissions.



6. The matter was mentioned on 29th April, 2024 to confirm filing of submissions before it was reserved for ruling on 1st July, 2024.

Issues for Determination.

7. The Defendants filed their submissions on 18th March, 2024 while the Plaintiffs did not file any submissions.
8. The Defendants rely on the judicial decisions of Alfred Njau vs City Council of Nairobi [1983] KLR 625, Julian Adoyo Ongunga vs Francis Kiberenge Abano Migori Civil Appeal No. 119 of 2015 and submit that the Plaintiff Ronald Langat describes himself in the Plaint as suing as the legal representative of the estate of the late Kimalel Arap Sigei.
9. The Defendants also submit that Ronald Langat is yet to obtain limited grant of letters of administration ad litem to give him capacity to institute the present proceedings.
10. The Defendants rely on Viktor Maina Ngunjiri & 4 Others v Attorney General & 6 Others [2018] eKLR, Benjamin Leonard Mcfoy vs United Africa Company Limited [1961] ALL ER 1169 and submit that at the time of institution of the suit, Kimalel Arap Sigei was deceased.
11. The Defendants also submit that the Plaintiff was aware that Kimalel Arap Sigei was deceased and even attached a copy of his death certificate.
12. The Defendants submit that prayer (e) in the Plaint seeks for a declaration that the proceedings in Kericho High Court Succession Cause No. 124 of 2013 be declared a nullity.
13. The Defendants also submit that the Plaintiff is inviting this Court to sit on appeal against a decision of the High Court which has the same status as this Court.
14. The Defendants submit that this Court does not have jurisdiction to sit on appeal on a matter that has been determined by a Court of concurrent jurisdiction.
15. The Defendants therefore seek that the Plaintiffs suit be struck out with costs.

Analysis and Determination.

16. I have considered the Defendants preliminary objection and submissions.
17. The only issue that arises for determination is whether the preliminary Objection dated 11th December, 2023 is merited.
18. In Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd. (1969) EA 696 Law J.A. and Newbold (both with whom Duffus V-P agreed), respectively at 700 and 701, held as follows on what constitutes a competent preliminary objection:

“Law, JA:

“So far as I am aware, a Preliminary Objection consists of a pure 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. Examples are an objection on the jurisdiction of the Court, or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”



Newbold, P:

“ A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop.”

19. The Court of Appeal in *Nitin Properties Ltd v. Singh Kalsi & another* [1995] eKLR also held as follows;

“ A Preliminary Objection raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

20. As was held in the above cited judicial authorities, 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.

21. The first ground on the Defendants preliminary objection is that the Plaintiff herein lacks the locus standi to institute and maintain the suit.

22. In the judicial decision of *Joseph Muriuki Kithinji v Peterson Ireri Mwaniki & 3 others* [2021] eKLR the Court held as follows;

“ 21. A claim that one has no locus standi therefore challenges a party’s right to be heard before a Court and if a determination is made in the affirmative then this issue has the capability of disposing of the suit. A claim that a party lacks locus standi therefore is a pure point of law and one that needs to be raised and determined at the earliest.” (Emphasis mine)

23. As was held in the above cited judicial authority, the issue of locus standi is a pure point of law.

24. The Defendants submit that one of the Plaintiffs, Ronald Langat describes himself in the Plaint as suing as an Administrator of the Estate of the late Kimalel Arap Sigei.

25. The Defendants also submit that the said Ronald Langat did not obtain Grant of Letters of Administration Ad Litem in respect of the estate of the late Kimalel Arap Sigei to enable him sue on behalf of his (Kimalel Arap Sigei) estate.

26. The Plaintiffs did not file any response or submissions to the Defendants preliminary objection.

27. The estate of a deceased person can only be represented in legal proceedings by a person duly authorized to do so. Only persons who have been issued with Letters of Administration have the capacity to represent the estate of a deceased person.

28. Section 82 of the *Law of Succession Act* provides as follows;

“ Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—



- (a). to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
- (b). to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best...”

29. In the judicial decision of Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) [2016] eKLR the Court held as follows;

“Further the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a Court acting without jurisdiction since it all amounts to null and void proceedings. It is also worth-noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.”

30. Upon perusal of the Court record, I have noted that the Plaintiffs have annexed to their list of documents a copy of Grant of Letters of Administration Intestate issued by the High Court of Kenya at Kericho in Succession Cause No. 285 of 2007 In the matter of the estate of the late Kimalel Arap Sigei.

31. The said Grant of letters of Administration was issued on 20th July, 2023 to James Kiplangat Malel and Ronald Langat.

32. It is apparent that Ronald Langat has Grant of Letters of Administration in respect of the estate of the late Kimalel Arap Sigei and therefore has locus standi to commence the present proceedings on behalf of the estate of the deceased.

33. The Defendants also contend that the suit has been instituted in the name of a deceased person. They argue that at the time of institution of the suit, Kimalel Arap Sigei was deceased and his death certificate is attached to the Plaintiffs List of Documents.

34. It is important to note that the cause title of this suit is as follows;

“Kimalel Arap Sigei & Ronald Langat (Suing as Administrators of the Estate of the late Kimalel Arap Sigei)”

35. This Court notes that Kimalel Arap Sigei is listed as one of the Plaintiffs and he is also listed as the deceased person on whose behalf the Plaintiffs are suing.

36. As afore stated, the Defendants argue that the suit has been instituted in the name of a deceased person.

37. It is therefore logical to deduce that Kimalel Arap Sigei who is one of the Plaintiffs is the same Kimalel Arap Sigei (deceased) whose estate Ronald Langat is suing on behalf of. This in my view is an error which does nothing to the sustainability of this suit and his name can be struck out under Order 1 Rule 10(2) of the Civil Procedure Rules.



38. Order 1 Rule 10(2) of the Civil Procedure Rules provides as follows;

“(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

39. This Court is guided by Section 1A, 1B and 3A of the *Civil Procedure Act* and Article 159 of *the Constitution* of Kenya which obligates this Court to administer justice without undue regard to technicalities.

40. Section 1A of the *Civil Procedure Act* provides as follows;

“1A. Objective of Act

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an Advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.”

41. Section 1B of the *Civil Procedure Act* provides as follows;

“1B. Duty of Court

- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
 - (e) the use of suitable technology.”

42. Section 3A of the *Civil Procedure Act* provides as follows;

“3A. Saving of inherent powers of Court.



Nothing in this Act shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

43. The second ground on the Defendants preliminary objection is that this Court lacks the jurisdiction to hear the Plaintiffs suit as it amounts to sitting on an appeal on a decision from a Court of concurrent jurisdiction.
44. The Defendants argue that prayer (e) in the Plaint seeks for a declaration that the proceedings in Kericho High Court Succession Cause No. 124 of 2013 be declared a nullity.
45. The Court of Appeal in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR* states as follows on the issue of jurisdiction;

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has continuation of proceedings pending other evidence. A Court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

46. Article 162 (2) (b) of *the Constitution* of Kenya provides as follows;

“(2) Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to—

- (a) employment and labour relations; and
- (b) the environment and the use and occupation of, and title to, land.”

47. Section 13 of the *Environment and Land Court Act* provides as follows on the jurisdiction of the Environment and Land Court;

“(1) The Court shall have original and Appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the Provisions of this Act or any other law applicable in Kenya relating to Environment and Land.

(2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—

- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to Land Administration and Management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to Environment and Land.



- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.
- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate Courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) Deleted by *Act No. 12 of 2012*, Sch.
- (6) Deleted by *Act No. 12 of 2012*, Sch.
- (7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
 - (a) interim or permanent preservation orders including injunctions;
 - (b) prerogative orders;
 - (c) award of damages;
 - (d) compensation;
 - (e) specific performance;
 - (g) restitution;
 - (h) declaration; or
 - (i) costs”

48. In *Muvokanza Limited v Muri Mwaniki Thige & Kageni Llp & another* (Environment & Land Case 120 of 2021) [2022] KEELC 2275 (KLR) (16 May 2022) (Ruling) the Court held as follows;

“The broad jurisdiction of the ELC Court is donated by Article 162 (2) (b) which provides that Parliament shall establish a Court with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.”

49. The jurisdiction of this Court is limited to hearing and determining disputes relating to the environment and the use, occupation and title to land.
50. The prayers sought by the Plaintiffs in their *Plaint* have been set out in the preceding paragraphs.
51. After considering the Provisions of Section 13 of the *Environment and Land Court Act* and the prayers sought in the *Plaint*, I find that this Court has the jurisdiction to determine the question of ownership of the suit property and the resultant question on the legality or otherwise of the subdivisions on it.
52. Essentially, this Court has the jurisdiction to consider whether it can grant prayers (a) to (d) and (f) to (j) in the *plaint*.
53. With regard to prayer no. (e) which seeks for the setting aside of the proceedings in Kericho High Court Succession Cause No. 124 of 2013, this Court find that it has no jurisdiction to do so.



54. That being the case, it cannot be fair and just for this Court to strike out the Plaintiffs suit solely on the ground that it does not have jurisdiction to hear and determine one of the prayers sought in the Plaint.

Disposition.

55. Consequently, the Preliminary Objection dated 11th December, 2023 partly succeeds and I make orders as follows

- a. Kimalel Arap Sigei is struck out as a Plaintiff in this suit.
- b. Costs of this preliminary objection shall abide the outcome of the suit.

56. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 17TH DAY OF OCTOBER, 2024.

L. A. OMOLLO

JUDGE

In the presence of: -

Mr. Yegon for the Defendant.

Miss Koech for the Plaintiffs.

Court Assistant; Mr. Joseph Makori.

