



Keter v Keter & another; Kemboi & another (Intended Interested Party) (Environment & Land Case 215 of 2015) [2023] KEELC 16067 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16067 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 215 OF 2015**

**EO OBAGA, J
MARCH 9, 2023**

BETWEEN

JULIANA JEPKOECH KETER PLAINTIFF

AND

KIMAIYO CHEPSOO KETER 1ST DEFENDANT

JAMES KIPRUTO MAIYO 2ND DEFENDANT

AND

SILAS KEMBOI INTENDED INTERESTED PARTY

JANE MAIYO INTENDED INTERESTED PARTY

RULING

1. The plaintiff who is the second wife of the first defendant filed a suit against her husband and the second defendant who is the first born son of the first defendant's wife. The first defendant's wife had been settled on a plot in Nandi county. The second defendant left their land in Nandi and went to Uasin Gishu and chased away the plaintiff and sold part of the land to third parties.
2. The first defendant later on passed on and the plaintiff obtained limited grant of letters of administration for purposes of filing suit and protecting the estate her deceased husband. On March 8, 2022, an application was made by two persons seeking to be enjoined in these proceeding as interested parties on ground that they had purchased 5 hectares from a piece of land known as plot No 180/3/ Tuigoin.
3. Before the application by the proposed interested parties could be heard, the plaintiff raised a preliminary objection on the following grounds: -
 1. That the applicants are strangers to the proceedings before court.



2. That the applicants land sale agreement is a nullity *ab initio*.
 3. That the vendors have no legal basis to sale or at all.
 4. That the applicants have not proved their interest on the subject parcel of land or at all.
 5. That the applicants are litigating on a parcel of land that is not in issue.
 6. That the application is a non-starter and ought to be struck out with costs.
4. The parties were directed to dispose of the preliminary objection by way of written submissions. The plaintiff filed submissions on December 5, 2022. The proposed interested parties did not file their submissions and if any were filed, they were not in the file as at February 8, 2023 when this ruling was written.
 5. I have considered the submissions by the plaintiff. The criteria of determination of a preliminary objection was set out in the case of *Mukisa Biscuit manufacturing Co Ltd vs West End Distributors Limited* [1969] EA 696 where at page 700 Law J A stated 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. Examples are an objection to 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.”

At page 701 Sir Charles Newbold P added;

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all facts pleaded are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion....”

6. Applying the principles set out in the *Mukisa Biscuit* case (*supra*), it is clear that no pure point of law is raised in all the six grounds of the preliminary objection. In all the grounds the facts have to be ascertained. An applicant being a stranger is not a pure point of law. An agreement being a nullity is not a pure point of law. The position of the vendor’s capacity to sell has to be ascertained. This is the case on the allegation that the plot being cited by the applicant is not the subject of this suit. It is therefore clear that the preliminary objection is totally devoid of merit. The same is dismissed with costs to the proposed interested parties.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 9TH DAY OF MARCH, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;
Mr. Chemwok for Plaintiff.
Court Assistant –Laban

E. O. OBAGA

JUDGE

9th MARCH, 2023

