



REPUBLIC OF KENYA



**In re Estate of Kipkosgei Yetgei (Deceased) (Succession Cause
108 of 2015) [2025] KEHC 4069 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4069 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 108 OF 2015
JK NG'ARNG'AR, J
APRIL 2, 2025
IN THE MATTER OF THE ESTATE OF KIPKOSGEI YETGEI (DECEASED)**

BETWEEN

ELIZABETH TABNYOBI KOSKEI APPLICANT

AND

KIMUTAI KOSKEI 1ST PETITIONER

ELIJAH KOSKEI 2ND PETITIONER

RULING

1. This matter relates to the estate of Kipkosgei Yetgei who died intestate on 3RD March, 2000.
2. Letters of administration intestate were confirmed by this court on 16th April, 2010
3. From the record there is a ruling was delivered on 20th June, 2024 by Korir J.
4. The main issue for determination is the Preliminary Objection dated 27th October, 2024 raised by the 2nd Petitioner/Respondent citing an issue of res judicata.
5. The Objector avers that the issues canvassed in support of the application are res judicata. They state that the same had been substantially canvassed in Kericho Succession Cause Number 51 of 2001.

Determination

6. I have considered the preliminary Objection, the affidavits and all other documents on record. The only material issue for determination is whether the Preliminary Objection is merited as to the issue of res judicata.



7. The Court has considered the primary application dated 28th August, 2024, the preliminary objection by the respondents dated 14th September, 2024 and submissions of Counsel for the parties. The Preliminary objection is on the ground that the present suit is *res judicata*.
 8. The Court of Appeal in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 found that a preliminary objection must be on a point of law. The court had the following to state:

“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 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...”
 9. 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 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.” Sir Charles Newbold, P. added the following:
 10. Section 7 of the [Civil Procedure Act](#) lays the basis for the doctrine of *res judicata* and provides that:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
 11. It is not in doubt that a Preliminary Objection raises pure points of law, which are 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 from elsewhere or if the court is called upon to exercise judicial discretion.
 12. Further, the Preliminary Objection must stem from the pleadings and should not deal with disputed facts nor should it derive its foundation from factual information. See the case of [Oraro v Mbaja](#) [2005] 1KLR 141, where it was held that:-

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence.”
- In the present case I note that the Preliminary Objection is valid as the matter has already been determined by this court.
13. For the Court to ascertain whether or not the matter is *Res Judicata*, it will have to confirm the facts as pleaded by the Applicant and probe the bundle of documents filed in court. As stated above the documents in the bundle of documents make sufficient ascertainment of required facts. In doing so, the Court has no new document to probe in evidence.
 14. The final order of the court is that the Respondents’ preliminary objection dated 11th September, 2024 is founded on pure points of law and therefore stands.
 15. In light of the foregoing, I find at this level a reason to allow the Preliminary Objection dated 27th October, 2024 and based on the pleadings before this court I am satisfied that the issue is *res judicata*.



Neither do I find any reason to disturb the ruling by this court made on 20th June, 2024. I am persuaded to allow the preliminary Objection dated 27th October, 2024.

16. Being a family matter each Party to bear their own costs.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 2ND DAY OF APRIL, 2025.

HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence of Mugumya for the 1st Petitioner, J.K. Koech for the 2nd Petitioner, Ms. Kosgei for beneficiary and Siele/Susan (Court Assistants)

