



REPUBLIC OF KENYA



**In re Estate of Ambrose Adeya Adongo (Deceased) (Succession Cause
3042 of 2003) [2025] KEHC 8302 (KLR) (Family) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8302 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE 3042 OF 2003

PM NYAUNDI, J

JUNE 13, 2025

IN THE ESTATE OF AMBROSE ADEYA ADONGO (DECEASED)

RULING

Introduction

1. The Summons for determination is dated 20th March 2023 and is presented under Sections 47 and 76 of the *Law of Succession Act* and Sections (*sic*) 44(1) and 73 of the *Probate and Administration Rules*. It is dubbed a Summons for revocation and the applicant seeks the following orders-
 - a. Spent
 - b. That the Confirmation of Grant of letters of Administration interstate (*sic*) issued on the 03/08/2006 and 13/03/2008 and rectified pursuant Amended order given on 24/01/2020 and issued on 02/03/2020 be rectified to include the Applicant.
 - c. That the applicant herein be made a beneficiary of the Estate of the late Ambrose Adeya Odongo and /or the grant be rectified to include the Objector/ Applicant as a beneficiary in respect to that parcel of land known as Eldoret/ Municipality Block/ 14/ 731
 - d. Spent
 - e. That costs of this application be provided for.
2. The Application is supported by the Affidavit of applicant, Alice Awino Mlanga sworn on 20th March 2023. Her claim is that she is the adopted/ foster daughter of the deceased, she was not informed of the succession proceedings, she has been resident of the subject parcel of land for close to 30 years and that the deceased gifted her the parcel of land.
3. The Application is opposed and the respondent has lodged preliminary objection and grounds of opposition, the substance of which is that a similar application dated 23rd September 2021 was presented by the respondent in this Cause and ruling delivered thereon on 7th October 2022. The



Court dismissed the earlier application and the instant application raises the same issues that have been determined in that ruling. The application is therefore res judicata.

4. The Court directed that the application be canvassed by written submissions, both parties elected not to file submissions.

Analysis and Determination

5. The issues for determination are
 - a. Whether the Preliminary Objection has merit?
 - b. If (a) is answered in the negative, whether the application dated 20th March 2023 has merit
 - c. Who should pay costs of the suit?
6. On the 1st issue, in *Independent Electoral and Boundaries Commission v Jane Cheperenger and others* (2015) eKLR, the Supreme Court stated;

(21) ...The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection- against the 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.

7. In the locus classicus case of *Mukisa Biscuit Manufacturing Ltd v West End Distributors Ltd* [1969] EA 696 the Court set out the legal threshold of a preliminary objection as:

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 ... 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.

8. Section 7 of the *Civil Procedure Act* (the Act) reads:

No court shall try any suit or issue 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 court.

9. In the *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] KECA 477 (KLR) the Court cited with approval the Indian Supreme Court in the case of *Lal Chand v. Radha Kishan*, AIR 1977 SC 789 where it was stated;

The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving



determination of the same issue. The practical effect of the res judicata doctrine is that it is a complete estoppel against any suit that runs afoul of it, and there is no way of going around it – not even by consent of the parties – because it is the court itself that is debarred by a jurisdictional injunction, from entertaining such suit.

10. I have looked at the application dated 23rd September 2021, similar to the instant application it is presented under section 47 and 76 of the [Law of Succession Act](#) and sections (*sic*) 44(1) and 73 of the [Probate and Administration Rules](#). It seeks to set aside and review consent orders of 23rd January 2020 and prays that the applicant Alice Awino Mlenga be declared as the rightful beneficiary of the property Eldoret/ MUN/ Block 14/ 371.
11. In ruling dated 7th October 2022, the Court dismissed the application and found that the applicant lacked locus to present the application as she was not the adopted or foster daughter of the deceased. Having failed to prove the relationship her application would fail. This decision was not appealed.
12. The application subject of this ruling is identical to that of 23rd September 2021 as the applicant seeks a judicial pronouncement on her entitlement to enter into the tent of the beneficiaries of this Estate. She is akin to the intruder who having failed to gain access through a door is now seeking admission through a window, the doctrine of res judicata will bar her.
13. In [E.T. v Attorney General & another](#) [2012] KEHC 5506 (KLR) the Court summarised it succinctly,

The courts must always be vigilant to guard against litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in a form a new cause of action which has been resolved by a court of competent jurisdiction. In the case of *Omondi v National Bank of Kenya Limited and Others* [2001] EA 177 the court held that, ‘parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.’ In that case the court quoted Kuloba J., in the case of *Njangu v Wambugu and Another* Nairobi HCCC No. 2340 of 1991 (Unreported) where he stated, ‘If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata’
14. Having found that the current application is res judicata, the matter rests there, there is no need to consider the merits of the application, it is dismissed.
15. On costs, this application constitutes a clear abuse of court process. In [Gathariki v Cheko Plot Owners Association & another](#) [2025] KECA 313 (KLR), the Court of appeal was categorical that the practice is to be frowned upon and not to be condoned as it results in a strain on the scarce judicial resources, including time.

(22) Abuse of Court process creates a scenario where a party is pursuing the same matter in two-court process. A litigant has no right to pursue *pari passu* two processes, which will have the same effect in two courts at the same time with a view of obtaining victory in one of the process or in both. In the above High Court decision, it was stated that litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks. Pursuing two processes at the same time constitutes and amounts to abuse of court/legal process.



16. In the circumstances, the respondent herein is deserving of costs. I therefore dismiss the application and award costs of Kenya Shilling 50,000 (Fifty thousand) to the Respondent, payable within 45 days.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 13TH DAY OF JUNE, 2025.

P. M. NYAUNDI

HIGH COURT JUDGE

In the presence of:

Omboto for Applicant

Fardosa Court Assistant

