



REPUBLIC OF KENYA



**In re Estate of Katiku Mumo (Deceased) (Succession Cause 598 of 1998)  
[2024] KEHC 3477 (KLR) (Family) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3477 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 598 OF 1998  
MA ODERO, J  
APRIL 12, 2024  
IN THE MATTER OF THE ESTATE OF KATIKU MUMO (DECEASED)**

**RULING**

1. Before this court for determination is the Notice of Preliminary Objection dated 19<sup>th</sup> May, 2023. The same was canvassed by way of written submissions. The Objectors filed the written submissions dated 2<sup>nd</sup> June, 2021 whilst the Respondents filed the written submissions dated 20<sup>th</sup> June, 2023.

**Background**

2. This succession cause relates to the estate of the late Katiku Mumo who died intestate on 17<sup>th</sup> October, 1997. The Deceased was survived by a widow Grace Ngina Katiku and eight (8) children.
3. The Objectors herein filed an objection dated 22<sup>nd</sup> September, 2014 seeking to be enjoined in this Succession cause. They claim to be purchases for value of the property known as LR No. 12715/167/ Syokimau (hereinafter ‘the suit land’). The Applicants therefore object to the inclusion of this suit land as a part of the estate of the Deceased.
4. In response to this application the Administrators/Respondents filed the Notice of Preliminary Objection dated 19<sup>th</sup> May, 2023 in which was premised upon the grounds that the said application

- “(a) Is *Res Judicata*
- (b) The 2<sup>nd</sup> to 3<sup>rd</sup> Objectors lack locus standi and are also fictitious persons.
- (c) Costs”

**Analysis and Determination**

5. I have carefully considered the Preliminary Objection filed by the Objectors as well as the written submissions filed by both parties.



6. The definition of what constitutes a Preliminary Objection was given in the case of *Mukisa Biscuit Manufacturing Company Ltd v West End Distributors Ltd* [1969] E.A in which the court 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 the suit. Examples are an objection to the jurisdiction of the court, or a place 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 is used to be a demurrer.

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

7. In *Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 Others*[2015] eKLR, the Supreme Court of Kenya stated that

“ a Preliminary Objection may only be raised on a “pure question of law”

8. To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed as they are prima facie presented in the pleadings on record”

9. Therefore in order for a Preliminary Objection to succeed, the following tests must be satisfied;-

- i. The Preliminary Objection should raise a pure point of law.
- ii. The Preliminary Objection must be argued on the assumption that all the facts pleaded are correct.
- iii. The Preliminary Objection cannot be raised if any fact is to be ascertained or if what is being sought is the exercise of judicial discretion.
- iv. A valid Preliminary Objection ought if successful dispose of the entire suit.

10. Therefore a genuine and proper Preliminary Objection can only raise pure points of law and must not itself derive its foundation on facts or information which stands to be tested by normal rules of evidence.

11. In this case the dispute revolves around the parcel of land known as LR no. 12715 1167 Syokimau, which the Administrators of the estate have included as part of the estate of the Deceased. The Applicants object to the inclusion of this parcel of land as part of the estate as they insist that the suit land though registered in the name of the Deceased has been sold by the Deceased during his lifetime to Mbukoni Holdings Limited which had in turn subdivided the land into smaller portions and sold the sub-divisions to the Objectors.

12. It must be remembered that this is a succession matter. The duty of this court settling as a Probate Court is to supervise the distribution of the estate to the genuine heirs.

13. The Objectors seek to be enjoined by this Succession cause as ‘Purchasers’. A ‘purchaser’ is Not a party in a succession cause. The Objectors are not beneficiaries to the estate of the Deceased.



14. The Obvious question is whether the objectors have locus standi in this matter. Locus standi is a latin term which literally means ‘place of standing’. It refers to the right of an individual and/or party to appear in a particular case.
15. It is trite law that pleadings filed by a person who has no Locus Standi are void ab initio. In *Ibrahim v Hassan & Charles Kimenyi Macharia* [2019] eKLR it was stated as follows:-

“Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, it means that party cannot be heard despite whether or not he has a case worth listening to. The issue herein is whether the Applicant lacks the requisite Locus Standi to seek relief from the court to revoke the grant in question issued to the Respondent. In my view issues regarding locus standi are critical preliminary issues which must be dealt with and settled before delving into other substantive issues. [Own emphasis]
16. As stated earlier the Objectors describe themselves as ‘purchasers’.

They do not even claim to have purchased the suit property from the Deceased himself Rather they claim to have purchased the sub-division from an entity known as Mbukoni Holdings Limited who allegedly purchased the same from the Deceased.
17. What this basically means is that the objectors are claiming proprietary rights over the suit land. In those circumstances their remedy does not lie in this Probate Court but rather in the Environment and Land court.
18. Under Article 162 (b) of *the Constitution* of Kenya 2010 questions relating to the use, ownership and Occupation of land can only be heard and determined by the Environment and Land Court (ELC).
19. In Re: Estate of Stone Kathubi Muinde (Deceased) [2016] eKLR Hon. Justice William Musyoka stated as follows.

“Such claims to ownership of alleged estate property, as between the estate and a third party should be resolved through the Civil process in a Civil Suit property brought before a Civil Court in accordance with the provisions of the Child Procedure Act and the Civil procedure Rules.”

This could mean filing suit at the Magistrates Courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the Probate Court in the Succession Court so that the court can give effect to it [Own emphasis]
20. Accordingly, I find that the Objectors (as ‘Purchasers’) have no locus standi in this matter. Their remedy lies in filing a suit in the ELC and if successful they may present the decree to this court for implementation.
21. For completeness I will also deal with the question of ‘Res Judicata’ which has been raised by the Respondents. They contend that the question of ownership of LR No 12715/167/Syokimau has already been heard and determined by the High Court.
22. The principle of Res Judicata is provided for by Section 7 of the Civil Procedure Act Cap 21 as follows:-

“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”

23. The court of Appeal in Independent Electoral and Boundaries Commission v Maina Kiai & Others [2017] eKLR stated as follows:-

“That rule or doctrine of res Judicata serves the solitary aim to bring finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and wounded by issues and suits that have already been determined by a competent court. It is designed at a pragmatic and common sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders keeping by a multiplicity of suits and fora to obtain at last outcomes favourable to themselves. Without it, there would be no end to litigation and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice [own emphasis]

24. I have carefully perused the proceedings in this file, I note that in a Ruling delivered on 22<sup>nd</sup> May, 2020 the court did consider an application dated 11<sup>th</sup> March, 2019 where one prayer sought a declaration that LR NO. 12715/167/Syokimau [the suit land] does not form part of the estate of the Deceased. The Applicant sought orders that the said parcel of land be transferred to Mbukoni Holdings Ltd and the interested parties (the objectors herein) who had bought the resulting subdivisions done by the said Mbukoni Holdings Limited.

25. In dismissing the application of 11<sup>th</sup> March, 2019 the learned Judge found that the same amounted to an abuse of court process. He directed that the Administrators proceed with haste to file a summons for confirmation of Grant. This application is therefore in my view Res Judicata as the issue which it raises have already been determined by the High Court.

26. Based on the foregoing I find merit in the Preliminary Objection. The Objection dated 22<sup>nd</sup> September, 2014 has no basis and is dismissed in its entirety. Costs will be met by the Objector/Applicants.

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**MAUREEN A. ODERO**

**JUDGE**

**RULING DELIVERED ON THIS 12<sup>TH</sup> DAY OF APRIL, 2024**

In the presence of:-

Mr. Gichuki for Objectors

Ms. Oduor h/b Mr. Wangira for Administrators

Court Assistant: Ndung'u

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**MAUREEN A. ODERO**

**JUDGE**

