



**Njenga (Suing as a Representative of the Estate of Kongo Muthumo) v Njuguna & another
(Environment & Land Case E107 of 2024) [2025] KEELC 3945 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3945 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E107 OF 2024**

JA MOGENI, J

MAY 14, 2025

BETWEEN

HANNAH WACHUKA NJENGA PLAINTIFF

SUING AS A REPRESENTATIVE OF THE ESTATE OF KONGO MUTHUMO

AND

**MICHEAL NJUGUNA NJOROGE [SUED AS A REPRESENTATIVE OF THE
ESTATE OF NJOROGE NJUGUNA 1ST DEFENDANT**

LAND REGISTRAR KIAMBU 2ND DEFENDANT

RULING

1. The Application herein dated 5/11/2024 seeks Orders:
 - i. That this Application be certified as urgent and service of this Application be dispensed with in the first instance.
 - ii. That Court be pleased to grant a temporary injunction restraining the Defendants/ Respondents whether by themselves, their agents and/or servants from trespassing on, wasting, construction on, disrupting, alienating or otherwise interfering or dealing with land parcel Title No. Githunguri/Gathangari/1XX2 (Githunguri/Gathangari/2XX0 & 2XX1) pending the hearing and determination of this suit.
 - iii. The Court be pleased to grant injunction restraining the Respondents whether by themselves, their agents and/or servants from trespassing on, wasting, constructing on, disrupting, alienating or otherwise interfering or dealing with land parcel Title Number Githunguri/Gathangari/1XX2 (Githunguri/Gathangari/2XX0 & 2XX1) pending the hearing and determination of this suit.



- iv. The Officer Commanding Githunguri Police Station do enforce compliance of the orders herein.
 - v. The costs of this Application be provided for.
2. The Application was predicated upon the following grounds:
- a. That the Plaintiff/Applicant is one of the beneficiary in the Estate of Kongo Muthundo the registered proprietor of land parcel Githunguri/Gathangari/1XX2 (Githunguri/Gathangari/2XX0 & 2XX1).
 - b. That the Respondents have interfered with the said property by trespassing thereupon with the intention of subdividing the said parcel of land Title Number Githunguri/Gathangari/1XX2 (Githunguri/Gathangari/2XX0 & 2XX1).
 - c. That unless restrained, the Respondent will continue to interfere, and or trespass on the aforesaid property thereby causing the Plaintiff/Applicant irreparable damage with the likelihood of a breach of the peace.
3. The Application is supported by the Supporting Affidavit of HANNAH WACHUKA NJENGA. It was brought to Court by way of a Certificate of Urgency and was heard inter-partes on 12.2.2025 when interim orders maintaining the Status Quo obtaining at the even date were granted.
4. Before the Application was canvassed the 1st and 2nd Defendants filed Preliminary Objections dated 20/08/2024. On 12/02/2025 when the parties appeared in Court they agreed to canvass the Notice of Motion Application dated 5/11/2024 and the Preliminary Objections by way of written submissions.
5. The Preliminary Objection is filed by the 1st Defendant on the following grounds:
- i. The suit herein is Res-judicata.
 - ii. The Plaintiff has no locus standi to institute this suit and the same should be dismissed with costs to the Defendant.
6. The 2nd Defendant filed another Preliminary Objection dated 13/09/2024 on the following grounds:
- i. THAT the Plaintiff has instituted this suit without authority as provided under paragraph 82 (a) of the *Law of Succession Act* Cap 160 Laws of Kenya.
 - ii. THAT the Plaintiff lacks the requisite capacity to institute the current suit before first obtaining Letters of Administration and/or authority from Court.
 - iii. THAT the Court therefore lacks the jurisdiction as an Environment and Land Court to entertain the current suit as a land matter as it is deemed to relate to an Estate of a Deceased person.
 - iv. THAT the suit is therefore an abuse of the Court process.
7. In her submissions, the Plaintiff argued that the orders prayed for are deserved as their Amended Plaint is about the irregular subdivision of Githunguri/Gathangari/1XX2 which according to them was irregular and unlawful. They claim that their father David Kongo Muthundo is the proprietor of the parcel of land being land parcel Number Githunguri/Gathangari//1XX2.
8. The Plaintiff contended that the late Kongo Muthundo inherited 5.2 acres from his father, then purchased 2.7 acres from one Mr Njuguna Karuri and 4 acres from Mr Jacob Ngunyai and these were combined into one title known as Githunguri/Gathangari//1XX2.



9. The Respondent in his submissions generally sought to controvert the submissions of the Plaintiff. He explained that the Application by the Plaintiff is an abuse of the Court process, mischievous, res judicata and dead on arrival.
10. That the Plaintiff lacks locus standi since the subject of the proceedings Plot No. Githunguri/Githangari/1XX2 was subject of High Court Civil Suit No. 575 of 1968 and Judgment delivered on 15/03/1978 as per annexure MNN1.
11. He stated that the Plaintiff's father was represented in the suit and that his attempt to set aside the Judgment were unsuccessful even upto the Court of Appeal level as shown through annexures MN2, a, b, c, d, and e. That Githunguri/Gathangari//1XX2 was already cancelled through subdivisions Githunguri/Gathangari/2XX0 & 2XX1.
12. Among other things, he stated that there was annexure MNN3- a, b, c, mutation form b and official search c and d to support the claim for the subdivision. At the same time there was a letter dated 14.06.2024 by Deputy Commissioner removing the restriction from the suit property.
13. He further stated that there were other suits filed in the High Court before Justice Koome (as she then was) No. 1200 of 2007 which was dismissed for want of prosecution on 16/07/2012. There was also Civil Suit No. 736 of 1996 which was also dismissed it was filed by the wife of David Kongo. He also submitted that the Plaintiff did not satisfy the principles to be considered for grant of an injunction as set out in the Case of Giella Vs. Cassman Brown & Co. Ltd as re-emphasized in the case of East Africa Development Bank Vs Hyudai Motors Kenya Ltd, Civil Appeal No. 194 of 2004. He also claimed that as the original parcel of land No. Githunguri/Gathangari/1XX2 did not exist, the Court could not grant the prayers sought in the Application as they would be in vain.
14. I do not see the need to lay out all the arguments advanced by the parties. Many of them can only be properly ventilated at the hearing of the main suit. At this stage of the proceedings, care must be taken not to decide on issues which need to be determined at the conclusion of the main suit.
15. Both the Plaintiff and the Defendant have sentimental attachment to the suit land which would be incapable of compensation in monetary terms. Issues such as the claim, inter alia, that the suit may be Res Judicata are best canvassed at the hearing of the main suit. I also do take note of the fact that the parties had, by consent, agreed to maintain the Status Quo pending hearing and determination of this Application. I also note that the issues surrounding the ownership of the suit property has been canvassed since 1968 to date the parties are still on each other's case. It means there are issues that need to be settled once and for all.
16. I will now turn to the Preliminary Objections where the 1st and 2nd Applicants allege that the suit is res judicata and that the Applicant has no locus standi for instituting this suit having filed it without obtaining Letters of Administration.
17. Counsel contended that under Section 82(a) of the *Law of Succession Act*, a person can only represent the estate of a deceased person if they have Letters of Administration. Thus the Plaintiff/Applicant could not file suit on behalf of the estate of Kongo Muthundo without Grant of Letters of Administration.
18. It was further submitted for the 1st and 2nd Defendants that both the Application and the suit were frivolous. Counsel argued that the Plaintiff's Application is an abuse of the Court process and a waste of the Court's valuable time.



Analysis and Determination.

19. I have considered the Preliminary Objections dated 20/08/2024 and 13/09/2024, the Grounds of Opposition and the submissions. In my view the issues that arise for determination are whether the Preliminary Objections raises valid Preliminary Objections, and whether the Preliminary Objections are merited.
20. In the case of *Mukisa Biscuits Manufacturing Company Limited vs West End Distributors* [1969] E.A 696, the Court of Appeal described a Preliminary Objection in the following terms;

“So far as I am aware, a Preliminary Objection consists of a point of law which arises by clear implication out of the 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.”
21. Similarly, in the case of *Nitin Properties Ltd vs. Singh Kalsi & Another* [1995] eKLR, the Court of Appeal stated 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.”
22. Essentially therefore, a Preliminary Objection can only be anchored on pure points of law and cannot be sustained where there is a dispute as to facts relied upon by the party raising the Objection.
23. In the instant suit, the 1st and 2nd Defendants have argued that this suit is res judicata as the issues raised herein are the same issues raised in HCC No. 575 of 1968 and subsequent suits such as HCC 1089 of 2003 among others; which concerns ownership of the suit property. On her part the Plaintiff has contended that the issues in the two suits are not the same as the suit land was fraudulently registered in the name of the 1st Defendant when the first suit HCC 575 of 1968 was decided ex parte at the instigation of the late Njoroge Njuguna who did not disclose to the late Kongo Muthundo about the suit.
24. I have perused the pleadings and noted that indeed HCC 575 of 1968 was decided ex parte and that other suits like HCC 1200 of 2007 was dismissed for want of prosecution and therefore the suit was not heard on the substantive issues. Notably the Plaintiff was deceased and could not attend Court. No wonder the dismissal. It is my considered view that a plea of res judicata cannot stand given the circumstances of the cases. I also opine that res judicata can be raised as long as the facts are readily ascertainable from the pleadings without the requirement for the Court to get into evidential enquiries to determine whether a matter is res judicata or not, then the same can be rightly argued as a Preliminary Objection.
25. The facts herein are contended and therefore this is an issue that cannot rightfully be determined as a Preliminary Objection. The Applicants should then have raised the issue of res judicata by a Notice of Motion since the facts are contested and not by way of Preliminary Objection.
26. The 1st and 2nd Defendants have also raised an Objection to the suit on the ground that the Plaintiffs lack locus standi. They argue that the Plaintiff is not an administrator of the estate of the late Kongo Muthundo and therefore cannot bring a suit on behalf of his estate. I find and hold that the question of locus standi is a matter that can be raised preliminarily without resorting to the facts and therefore it is



- a question of law that can dispose of a suit and therefore fits the description of a Preliminary Objection set out in the Mukisa Biscuit case (supra). See the case of Daykio Plantations Limited vs National Bank of Kenya Limited & 2 Others [2019] eKLR.
27. In the case of Alfred Njau v City Council of Nairobi (1983) KLR 625 the Court of Appeal held that:
- “... Locus standi literally means a place of standing and refers to the right to appear or herd in Court or proceedings and to say that a person has no locus standi means that he/she has no right to appear or be heard in such and such proceedings.”
28. The Court of Appeal in Migori Civil Appeal No. 119 of 2015 Julian Adoyo Ongonga v Francis Kiberenge Abano, held the following on the issue of a party filing suit without having obtained a Limited Grant:-
- “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 in a civil suit lacks the right to institute and or maintain 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 suit without locus 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.”
29. See also the cases of Daniel Njuguna Mbugua v Peter Kiarie Njuguna & 2 Others (2021)eKLR and Isaya Masira Momanyi vs. Daniel Omwoyo (2017)eKLR where the Courts struck out suits that had been filed by parties prior to obtaining Grants of Letters of Administration. Counsel urged the Court to strike out the Application with costs to the Respondents.
30. In the case of Alfred Njau & Others vs City Council of Nairobi [1982] KAR 229, the Court held as follows;
- “The term locus standi means a right to appear in Court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings.”
31. Similarly, in the case of Law Society of Kenya vs Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000, the Court held that;
- “Locus standi signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in Court of law.”
32. In the case of Mumo Matemo vs Trusted Society of Human Rights Alliance & 5 Others, the Court stated that while the Court should not sanction hurdles to access to justice by restricting the definition of locus standi, it should nevertheless not entertain litigation that is hypothetical, abstract or is an abuse of the judicial process.
33. I am clear in my mind that though this Court has discretion to strike out a suit that amounts to an abuse of the Court process, that discretion should be cautiously and sparingly exercised in exceptional cases bearing in mind that every person has a right to access to justice and the Court’s core duty is to determine cases on their merits.



34. In the case of *D. T. Dobie & Company Kenya Limited vs Joseph Mbaria Machira & Another* [1980] eKLR, the Court stated as follows;

“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action provided it can be injected with real life by amendment, it ought to be allowed to go forward for a Court of justice ought not to act in darkness without the full facts of a case before it.”

35. Similarly, in the case of *Yaya Towers Limited vs Trade Bank Limited (in liquidation)* Civil Appeal No. 35 of 2000 the Court stated as follows;

“A Plaintiff (Defendant) is entitled to pursue a claim in our Courts however implausible and however improbable his chances of success. Unless the Defendant (Plaintiff) can demonstrate shortly and conclusively that the Plaintiff’s claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one which was difficult to believe, could be proved.”

36. In the instant suit, I have considered the Amended Plaintiff and note that in paragraph 7, 8 and 9 thereof, the Plaintiff has asserted that the suit property is to be inherited by herself as well as other beneficiaries of the late Kongo Muthundo who was their father and were preparing to start the process of succession. It therefore appears that the Plaintiff has a stake in her personal capacity as a beneficiary of the suit property. Also she obtained a Limited Grant on 18/09/2024 and filed an Amended Plaintiff to support the averment. As was held in the case of *Law Society of Kenya vs Commissioner of Lands & Others* [supra] for a person to have locus standi, they must have a sufficiency of interest in the subject matter. It is my finding that the Plaintiff’s apparent interest as a beneficiary of the suit property is sufficient interest for her to seek for redress from this Court. Therefore she has the requisite locus standi to bring this suit; and the suit is not vexatious or an abuse of the Court process.

37. In the premises therefore I find and hold that the Preliminary Objections dated 20/08/2024 and 13/09/2024 lack merit and the same are dismissed with costs.

38. I In the final result the Court issues the following Orders;

- i. The Preliminary Objections dated 20/08/2024 and 13/09/2024 are hereby dismissed.
- ii. That Court grants a temporary injunction restraining the Defendants/Respondents whether by themselves, their agents and/or servants from trespassing on, wasting, construction on, disrupting, alienating or otherwise interfering or dealing with land parcel Title Number Githunguri/Gathangari/1XX2 (Githunguri/Gathangari/2XX0 & 2XX1) pending the hearing and determination of this suit.
- iii. The Court grants injunction restraining the Respondents whether by themselves, their agents and/or servants from trespassing on, wasting, constructing on, disrupting, alienating or otherwise interfering or dealing with land parcel Title Number Githunguri/Gathangari/1XX2 (Githunguri/Gathangari/2XX0 & 2XX1) pending he hearing and determination of this suit.



- iv. The Officer Commanding Githunguri Police Station do enforce compliance of the orders herein.
- v. The costs of both the Application and the two Preliminary Objections are awarded to the Plaintiff.
- vi. Pre-trial Conference before the Deputy Registrar on 16/06/2025.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 14TH DAY OF MAY, 2025.

MOGENI J

JUDGE

