



Kimani v Waithaka & 4 others (Sued as the Legal Administrator of the Estate of Waithaka Keru Peter (Deceased)) (Succession Cause 92 of 2018) [2024] KEHC 14327 (KLR) (15 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14327 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 92 OF 2018
A MSHILA, J
NOVEMBER 15, 2024**

BETWEEN

EPHANTUS KIMOTHO KIMANI APPLICANT

AND

TERESIAH WANJIKU WAITHAKA 1ST RESPONDENT

JUDY WAMBUI KINYANJUI 2ND RESPONDENT

PENINA WANJIKU NJUGUNA 3RD RESPONDENT

CATHERINE MBAIRE KINYANJUI 4TH RESPONDENT

IRENE WARINGA KINYANJUI 5TH RESPONDENT

**SUED AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF WAITHAKA
KERU PETER (DECEASED)**

RULING

1. The Respondents herein filed a Notice of Preliminary Objection on a point of law seeking that the application dated 11th March, 2024 be struck out with costs to the Respondents on the grounds;-
 - a. That the Applicant has no Locus Standi and that they have no right to appear or be heard in this proceedings.
 - b. That there is a pending application before this Court dated 26th July, 2022 awaiting determination.
 - c. That the Applicant's application dated 11th March, 2024 ought to be dismissed with costs to the Respondents.



2. The Preliminary Objection was canvassed by way of written submissions.

Applicant's Submissions

3. The Applicant submits that the shaping of a Preliminary Objection needs clarity and care as the court determines the case in summary. The Respondents were said to be misconceived as the court herein under Section 47 of the *Law of Succession* is clothed with jurisdiction to entertain any application brought before it. Having invoked Section 159 of the Constitution, requiring the court to administer substantive justice, the court should ignore procedural technicalities. It was submitted that Ndumberi/ Ndumberi/3219, 3220 & 3221 do not form part of the estate as such should be subjected to the ELC court for determination if need be. It was submitted that issues of ownership ought to be resolved first before the grant can be confirmed as such the preliminary objection was said to be short of the threshold. The court was urged to allow the applicant's application to enable him ventilate his interests.
4. The Respondents submits that the applicants' application to be enjoined in these proceedings is yet to be determined as such the applicant lacks locus standi to file his application dated 11th March, 2023. The interim orders secured by the applicant were said to be incapable of being executed as they were obtained by a stranger to the proceedings. It was submitted that the matter having been concluded on 23/3/2022, the applicant's application is only meant to frustrate the beneficiaries from enjoying the fruits of the transmission process.

Respondent's Submissions

5. It was submitted that the applicant lacks locus standi to move the court as he does not form part of the beneficiaries of the deceased's estate. He denied that the beneficiaries who sold land to the applicant had legitimate titles as such the applicant was said to be an intermeddler. The applicant was said to have no locus standi as such cannot be heard and that point alone may dispose of the suit. Reliance was placed in the case of *Quick Enterprises Ltd vs Kenya Railways Corporation*, Kisumu High Court Civil Case No. 22 of 1999. The application dated 11th March, 2024, was said to stop the beneficiaries from enjoying the fruits of the deceased as such the court was urged to dismiss the said application.

Issues for Determination

6. Having considered the preliminary objection and the submissions by the parties, the main issue for determination is whether the Preliminary Objection herein should be upheld.

Analysis and Determination

7. A proper preliminary objection must be on a pure point of law. In *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* (1969) EA 696, the locus classicus on preliminary objections in this region, Law JA stated:

“So far as I'm aware, 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.
8. For a preliminary objection to succeed it must satisfy the following tests in that it should only raise a pure point of law, it is argued on the assumption that all the facts pleaded by the other side are correct



and lastly, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid preliminary objection should dispose of the suit if successful.

9. In the case herein, the applicant is accused by the respondents of lacking the locus standi to stand and/or to be heard before this court as his application dated 26th July, 2022 seeking to be enjoined in this proceedings is yet to be heard and determined as such his application dated 11th March, 2024 seeking preservatory orders is only meant to stop the beneficiaries herein from enjoying the fruits of the transmission process.
10. The applicant avers that he is seeking the court's protection of his right to own property. He contended that on 13th April, 2015, he purchased the suit properties being Ndumberi/Ndumberi/3219, 3220 & 3221. He alleges that at the time of the transaction the titles were in the names of the beneficiaries namely David Waithaka Kinyanjui, Stephen Thuo Kinyanjui & James Kariuki Kinyanjui the same having been transferred to them during the deceased's lifetime.
11. A perusal of the record indeed indicates that at the time of the sale, the suit properties were registered in the names of the beneficiaries being David Waithaka, Stephen Thuo and James Kariuki who had acquired their titles on 15th April, 2015. The applicant herein acquired his titles on 12th June, 2015.
12. Be that as it may, this court notes that the deceased herein died on 27th June, 2013. He is indicated as the registered proprietor of the suit properties as at 26th June, 2013. This therefore means, that the beneficiaries transferred to themselves the suit properties after the death of the deceased and not during the lifetime of the deceased as claimed by the applicant.
13. In the circumstances, bearing in mind the fact that the beneficiaries acquired title to the land after the death of the deceased and before the confirmation of grant leads this court to conclude that the beneficiaries intermeddled with the estate of the deceased. This therefore, means that the said beneficiaries could not have passed a clean title to the applicant herein, as such the applicant lacks the requisite locus standi to participate in these proceedings unless with the permission of court.
14. In the upshot therefore, this court finds that the applicant's application dated 11th March, 2024, has been brought prematurely before this court, as there is a pending application dated 26th July, 2022 where the applicant sought to be enjoined in these proceedings which is still pending determination as such he lacks locus standi to be heard before this court.
15. The Preliminary Objection is therefore, upheld to the extent that the application is found to be premature as the Applicant lacks locus standi and he has to await the hearing and determination of his pending application dated 26th July, 2022 seeking to be enjoined in these proceedings.

Findings and Determination

16. For the forgoing reasons this court makes the following findings and determination.
 - i. This court finds the Preliminary Objection has merit and it is hereby upheld
 - ii. The application dated 11th March, 2023 is hereby struck out
 - iii. The Applicant shall bear the costs of this application.
 - iv. Mention on 24/03/2025 for directions on the application dated 26/07/2022

Orders Accordingly

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 15TH DAY OF NOVEMBER, 2024.



A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Morara for Judy Wambui – Administrator/2nd Respondent

Nganga for Applicant

