



Nganga v Lagat (Sued as the Administrator of the Estate of Christopher Kimaru Lagat - Deceased) (Environmental and Land Originating Summons E005 of 2024) [2025] KEELC 4759 (KLR) (26 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4759 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E005 OF 2024
EM WASHE, J
JUNE 26, 2025

BETWEEN

RODAH JEROTICH NGANGA APPLICANT

AND

PRISCAH CHEPCHIRCHIR LAGAT (SUED AS THE ADMINISTRATOR OF THE ESTATE OF CHRISTOPHER KIMARU LAGAT - DECEASED) RESPONDENT

RULING

1. The Respondent in the main Petition (hereinafter referred to as “the Applicant”) filed a Notice of Preliminary Objection dated 25.05.2024 (hereinafter referred to as “the present PO”) against the Applicant in the main Petition (hereinafter referred to as “the Respondent”) seeking for the Main Petition dated 09.04.2024 and well as the Application dated 21.05.2024 to be struck out for the following ground; -
 - a. Both the Main Petition dated 09.04.2024 as well as the Application dated 21.05.2024 offend the mandatory provisions of Section 7 of the *Civil Procedure Act*, Cap 21 Laws of Kenya.
2. The present PO was duly served on the Respondent and parties directed to prepare, file and exchange submissions on the same.
3. The submissions by the Applicant in support of the present PO were duly filed on the 03.07.2024 which also included the submissions in relation to the pending application dated 21.05.2024.
4. On the other hand, there were no submissions filed by the Respondent in opposition of the present PO.



5. The Court had indeed perused the present PO and the submissions by the Applicant and identify the following issues for determination; -

Issue No. 1- Is The Pending Os Dated 09.04.024 Contravening The Provisions Of Section 7 Of The Civil Procedure Act, Cap 22?

Issue No. 2- Is The Pending Application Dated 21.05.2024 Contravening The Provisions Of Section 7 Of The Civil Procedure Act, Cap 22?

Issue No.3 -is The Present Po Merited?

Issue No. 4- Who Bears The Costs Of The Present Po?

6. The Court having duly identified the above-mentioned issues for determination, the same will now be discussed herein below.

Issue No. 1- Is The Pending Os Dated 09.04.024 Contravening The Provisions Of Section 7 Of The Civil Procedure Act, Cap 21?

7. The first issue for determination is whether or not the pending OS dated 09.404.2024 offends the provisions of Section 7 of the Civil Procedure Act, Cap 21.
8. The Applicant did not make any meaningful submissions in their submissions dated 21.05.2024 to explain the manner in which the pending OS contravened the provisions of Section 7 of the Civil Procedure Act, Cap 21.
9. However, looking at the provisions of Section 7 of the Civil Procedure Act, Cap 21, the same deals with the issue of Res Judicata.
10. The Court therefore was being invited to look at and determine whether the pending OS was Res Judicata to any other proceeding that could possibly have dealt with similar issues between the same parties and a Court of Competent jurisdiction determined the said issues.
11. Unfortunately, the present PO as drawn did not identify the earlier proceeding that was were the parties herein over the same subject matter and when the determination of the earlier Court was pronounced.
12. Further to the foregoing, the Applicant herein at the time of filing the present PO on the 25.05.2024 had not filed any Response to the pending OS which would have acted as a Defence.
13. It is settled law that where a Party files a PO against a claim before filing the Defence, such a PO is deemed to be pre-mature as the pleadings which are to define the facts to be relied in determining the PO will not have been closed.
14. For clarity purposes, the Applicant filed the Response to the pending OS on the 28.11.2024 way after the present PO had already been filed.
15. In essence therefore, the present PO against the pending OS is pre-mature and cannot be sustained by this Court.

Issue No. 2- Is The Pending Application Dated 21.05.2024 Contravening The Provisions Of Section 7 Of The Civil Procedure Act, Cap 21?

16. The second issue is whether or not the Application dated 21.05.2024 contravenes the provisions of Section 7 of the Civil Procedure Act, Cap 21.



17. At the time the Applicant filed the present PO on the 25.05.2024, there was no Replying Affidavit filed in response to the Respondent's application dated 21.05.2024.
18. In other words, the Applicant had not presented any facts before the Court to sustain the ground relied upon in the present PO.
19. The Replying Affidavit filed by the Applicant in response to both the Application dated 21.05.2024 and the pending OS dated 21.05.2024 was filed on the 28.11.2024.
20. In essence, the present PO against the Application dated 21.05.2024 was pre-mature and cannot be sustained.

Issue No.3 -is The Present Po Merited?

21. Based on Issue No. 1 and 2 hereinabove, the present PO is premature and not merited.

Issue No. 4- Who Bears The Costs Of The Present Po?

22. On costs, the Applicant is condemned to pay costs to the Respondent.

Conclusion

23. In conclusion, this court hereby makes the following Orders in terms of the Preliminary Objection dated 25.05.2024; -
 - A. The Preliminary Objection Dated 25.05.2024 Is Pre-mature And Therefore Struck Out Forthwith.
 - B. The Applicant Will Pay Costs Of This Preliminary Objection To The Respondent.

DATED, SIGNED & DELIVERED Virtually at ELDORET ELC this 26TH DAY OF JUNE 2025.

EMMANUEL.M. WASHE

JUDGE

In The Presence Of:

Court Assistant: Brian

Advocates For The Applicant: Mr. Kipnyekwei

Advocates For The Respondent: Ms. Isiaho (n/a)

