



Njiru (As the Co-Administrator of the Estate of the Late Clementine Wanjiku Kamunyi) & another v Loishura & 4 others (Land Case E033 of 2023) [2025] KEELC 4670 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4670 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
LAND CASE E033 OF 2023
LC KOMINGOI, J
JUNE 19, 2025**

BETWEEN

**GEORGE STEPHEN NJIRU (AS THE CO-ADMINISTRATOR OF THE ESTATE OF THE LATE CLEMENTINE WANJIKU KAMUNYI) 1ST PLAINTIFF
MARK NDUNG’U KAMUNYI (AS THE CO-ADMINISTRATOR OF THE ESTATE OF THE LATE CLEMENTINE WANJIKU KAMUNYI) .. 2ND PLAINTIFF**

AND

**REGINA LOISHURA 1ST DEFENDANT
SOLOMON NTINI LOISHURA 2ND DEFENDANT
IGNITIUS PAPU LOISHURA 3RD DEFENDANT
THE LAND REGISTRAR KAJIADO 4TH DEFENDANT
THE ATTORNEY GENERAL 5TH DEFENDANT**

RULING

1. This Ruling is in respect of the 1st to the 3rd Defendants’ Preliminary Objection dated 22nd July 2024. The Defendants seek for dismissal of the suit with costs on grounds that:
 - a. The suit is statute barred pursuant to Section 4 (1) and 7 of the *Limitation of Actions Act*.
 - b. The Hon. Court lacks jurisdiction to hear and determine the matter raised by the Plaintiffs in paragraph 18 of the Plaint.
 - c. Without properly obtaining and confirming letter of administration, the 1st, 2nd and 3rd Defendants lack the requisite capacity or locus standi to be sued on behalf of the deceased Estate.



- d. The Plaintiffs' suit is an abuse of the Court process.
2. In response George Stephen Njiru filed a Replying Affidavit stating that the suit was not time barred because the dispute arose in 2016 and this suit was filed in 2023 a fact acknowledged by the Defendants' in their counterclaim.
3. He further contested the objection to jurisdiction on grounds that the Defendants had submitted to the Court's jurisdiction in the Defence as well as in the counterclaim and were thus estopped from contesting the jurisdiction. And if this Court does not have jurisdiction, then the Defendants' counterclaim should equally fail.
4. On the issue of locus standi, he stated that the Plaintiff could not dictate whether the Defendants ought to take out letters of administration or not, while pointing out that the Defendants in paragraph 14 of their counterclaim had acknowledged efforts made by the Plaintiffs to have them take out letters of administration but they refused. Equally, the Defendants lack locus to file a counterclaim on behalf of the Deceased's Estate in absence of letters of administration. As such, the preliminary objection should be dismissed with costs.
5. The preliminary objection was canvassed by way of written submissions.

The 1st- 3rd Defendants submissions

6. On whether the suit is barred by dint of Section 4 (1) (a) and Section 7 of the [Limitation of Actions Act](#), it was submitted that that Plaintiffs claim was on the premise that their late father purchased the suit property from the 1st Defendant's late husband – Loishorua Ole Kuyoni Mutonyi in 1989 and was therefore time barred. Counsel added that the issue of time limitation was an issue of jurisdiction and thus this Court lacked jurisdiction to entertain it. Reference was made to *Sohanladurgadass Rajput and another vs Divisions Integrated Development Programmes Co. Ltd* (2021) eKLR, *Bosire Ongero vs Royal Media Secrives* [2015] eKLR and *Alba Petroleum Ltd vs Total Marketing Kenya Ltd* [2019] eKLR.
7. On whether the 1st to the 3rd Defendants lack locus standi to be sued on behalf of the Deceased's Estate, counsel submitted that the deceased passed away intestate on 21st July 2013 and no letters of Administration had been taken out. Therefore, the Defendants were neither legal representatives or administrators if the estate and lacked legal capacity to be sued on behalf of the Estate of the late Loishorua Ole Kuyoni. As such, the suit against them should be dismissed with costs. Reference was made to the following cases in support of this argument: *Alfred Njau & 5 others vs City Council of Nairobi* [1983] eKLR, *Julian Adoyo Ongunga vs Francis Kiberenge Bondeva* (2016) eKLR, *Melickzedek Shem Kamau vs Beatrice Waithera Maian & 2 others* [2020] eKLR and *Re estate of Barasa Kanenye Many (deceased)* [2020] KEHC (KLR).
8. On whether the court has jurisdiction to hear and determine matters under paragraph 18 of the Plaintiff, it was submitted that the Plaintiffs claimed that the Defendants failed/refused to take put letters of administration or consent to transfer the property to the Plaintiffs an issue that was not within the jurisdiction of this Court as held in *Isaac Kinyua & 3 others vs Hellen Kaigongi* (2018) eKLR and *Melickzedek Shem Kamau vs Beatrice Waithera Maian & 2 others* [2020] eKLR. Therefore, transferring any of the deceased's property without legal authority would amount to intermeddling contrary to Section 45 of the [Law of Succession Act](#). It was also argued that Part VI of the Probate and Administration Rules as read together with Section 66 of the [Law of Succession Act](#) provided for actions to take in cases where persons entitled to apply for letters of administration were not willing to or were slow in moving court. Therefore, this Court was not clothed with jurisdiction to determine this issue.



9. As such, the preliminary objection raised pure points of law and should be allowed as prayed.

The Plaintiffs submissions

10. On the issue of jurisdiction, counsel submitted that parties were bound by their own pleadings and the Defendants had expressly admitted jurisdiction of this Court under paragraph 12 of their Defence and Counterclaim and could therefore not turn around and allege lack of jurisdiction. To support that parties are bound by their own pleadings, reference was made to Independent Electoral and Boundaries Commission & another vs Stephen Mutinda Mule & 3 others (2014) eKLR.
11. Counsel went on to submit that without letters of administration, the Defendants could file a counterclaim, which was tied to the estate of the late Loishorua as was held in Bolton vs Salim Khanoi (1958) EA 360. As such, the Defendants lacked locus standi although, the Plaintiffs' suit was proper for determination.
12. On Defendants' refusal to take out letters of administration, counsel submitted that the Defendants had willingly refused to take out letters of administration for the estate of the late Loishorua without reason, despite the Plaintiffs incessant requests of the same. Counsel argued that the sole reason was to frustrate the Plaintiffs and stall the suit until it abates and the Court under Rule 14 of the fifth schedule of the Probate and Administration Rules had authority to offer redress to parties faced with this dilemma. The Court's authority to exercise justice was also within the provisions of Section 1A, 1B and 3A of the Civil Procedure Act and as held in Stephen Boro Githia vs Family Finance Building Society & 3 others. Therefore, the Court had inherent power to order the Defendants to take out letters of administration to effect transfer of the property to the Plaintiffs.
13. On whether the suit was time barred, Counsel submitted that the suit property was purchased in 1989 and all payments and consents duly acquired / effected. And that the only pending issue was release of the original title deed for the transfer to be effected. It is submitted that since the property was purchased, the Plaintiffs took possession and extensively developed it without objection from the Defendants. The dispute however arose in 2017 when they asked the Defendants to complete the transfer of the property in which the Defendants declined to take put letters of administration. Therefore, the suit was not time barred and this was a question of fact which was outside the confines of a preliminary objection and it should be dismissed with costs DIVISION - Analysis and determination
14. I have considered the Preliminary Objection, the response, the rival submissions, and the authorities cited. I find that the issues for determination are:
 - i. Whether Preliminary Objection dated 22nd July 2024 is merited;
 - ii. Who should bear costs?
15. It is well settled principle that a Preliminary Objection should be made on a pure point of law as held by the Supreme Court in John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR):

The definition of a preliminary objection was well set out in the case of Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696 as follows:

"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... 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 had to be ascertained or if what is sought is the exercise of judicial discretion...”

16. The 1st – 3rd Defendants contest that the suit is time barred under Section 4 and 7 of the Limitation of Actions Act on grounds that the suit property was purchased from the late Loishorua Ole Kuyoni Mutonyi in 1989. However, paragraph 6 of the Defendants’ statement of defence states that the sale agreement was entered on 12th August 2011. With this discrepancy, it therefore means that to ascertain whether the suit is time barred as per Section 4 and Section 7 of the Limitation of Actions Act the Court has to review evidence. Which is contrary to elements of a preliminary objection.
17. The second objection raised was on the locus standi of the 1st, 2nd and 3rd Defendants.
18. It is not in contention that the claim emanates from a sale agreement between the Plaintiff’s late father Augustine Kamunyi and the 1st-3rd Defendants late father Loishorua Ole Kuyoni. It is also not in contention that the 1st – 3rd Defendants are neither Administrators nor Legal representatives of the Estate of the late Loishorua Ole Kuyoni Mutonyi. They thus argue that they have no locus standi to participate in these proceedings.
19. The Plaintiffs argue that the 1st – 3rd Defendants have willingly refused to take out letters of administration for the estate of the deceased to frustrate the Plaintiffs and the Court has authority to offer redress to the Plaintiffs in such circumstances.
20. While this may be so, there are legally established procedures in how a Court with competent jurisdiction can be moved to mitigate such situations. Since it is on the face of the pleadings that the suit property belonged to the late Loishorua, it therefore means, an action against his Estate can only be brought against duly authorised representatives. If this Court was purport to make any orders or take any actions against the Estate of the deceased without due representation, this would be intermeddling contrary to Section 45 Law of Succession Act.
21. As such, I find that the 1st, 2nd and 3rd Defendants as is, do not have the locus standi to defend the suit.
22. I find merit in the Preliminary Objection on this ground. The Plaintiffs have the right to seek recourse in a Court of competent jurisdiction, thereafter approach this Court for determination of the issues raised herein.
23. This suit is therefore struck out with no orders to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF JUNE 2025.

L. KOMINGOI

JUDGE

In the presence

Mr. Chadianya for the Plaintiff.

Mr. Ntele for the 1st, 3rd Defendants.

N/A for the 4th, 5th Defendants.

Court Assistant – Mutisya.

