



**Onyango (For Samuel Onyango Milula - Deceased) v Lands Registrar Migori & 2 others
(Environment & Land Case E008 of 2024) [2025] KEELC 5094 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5094 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT & LAND CASE E008 OF 2024**

**FO NYAGAKA, J
JUNE 18, 2025**

BETWEEN

**THOMAS JOSEPH ONYANGO (FOR SAMUEL ONYANGO MILULA -
DECEASED) PLAINTIFF**

AND

LANDS REGISTRAR MIGORI 1ST RESPONDENT

**JEREMIAH WAYUGA (FOR SAMSON OGUTU - DECEASED) 2ND
RESPONDENT**

**JOSEPH ALOO OPANDE (FOR JAMES OBUYA OPANDE -
DECEASED) 3RD RESPONDENT**

RULING

1. The 3rd Defendant/Respondent raised a Notice of Preliminary Objection dated 27/01/2025 seeking to have the instant suit struck out on the grounds that;
 1. The Honourable Court lacks Jurisdiction to hear the suit.
 2. The Plaintiff lacks demonstrable vested interest in the matter to initiate the suit and his right to be heard has therefore not accrued; and consequently all pleadings filed in this suit are therefore null and void for want of locus standi.
 3. The matters pleaded in the suit are res judicata the proceedings in Kisii High Court Case No. 279 of 1995: Samuel Onyango v James Opande & Another in contravention of Section 7 of the *Civil Procedure Act*, Cap 21 Laws of Kenya.
 4. The suit is frivolous, vexatious and discloses no reasonable cause of action against the 3rd Defendant/Respondent.



5. The set of documents in this suit and its underlying application collectively and individually are not pleadings known in law and contravene the legal definition under Section 2 of the Civil Procedure Act, Cap 21 laws of Kenya and contravene the formal requirements prescribed under Order 2 of the Civil Procedure Rules.
2. The 3rd Respondent filed submissions in support of the Preliminary Objection. He urged that a Preliminary Objection consists of a pure point of law which has been pleaded and arises by clear implication out of the pleading, and which if argued as a preliminary point may dispose of the suit citing the case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd [1961] EA 696.
3. Counsel argued that for this Honourable Court to have Jurisdiction to hear the present suit, the Plaintiff must demonstrate that he has the requisite locus standi to file and prosecute the suit. Further, that the 3rd Defendant has demonstrated in paragraphs 3 to 8 of his Replying Affidavit as to why the Plaintiff lacks locus standi in the matter.
4. He urged that the Plaintiff produced limited grant of letters of administration ad litem limiting him specifically to filing the present suit. That he produced a title deed for the parcel of land known as South Sakwa/Kogelo/479 registered in the name of his late father Samwel Onyango Milula. He pointed out that the suit property herein is South Sakwa/Kogelo/477 and not South Sakwa/Kogelo/479 that was the subject of the limited grant endowing the Plaintiff with legal standing to file a claim in court.
5. He submitted that there is nothing before this court related to South Sakwa/Kogelo/479 and on this limb, the court should decline any invitation to entertain the Plaintiff's charade any further and down its tools.
6. The Respondent stated that the late James Obuya Opande purchased the suit property from one Barack Otieno Mainya in 1982 for valuable consideration, at a time when the Plaintiff was a minor at only 15 years of age. Further, that the said Barack Otieno Mainya has not been enjoined in this suit, and neither has the Plaintiff alleged that he's suing on his behalf.
7. The Respondent cited Section 7 of the Civil Procedure Act and cited the case of John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 Others [Petition 17 of 2015 [2021] KESC 39 [KLR] [Civ] [6 August 2021] [Judgment] on Res Judicata. He submitted that the Plaintiff has severally referred to Kisii HCC No. 279 of 1995 Samuel Onyango v James Opande & Anor. He summarised the facts of the case and urged that the subject matter parcel of land, the issues in controversy and the parties involved were similar to those pleaded by the Plaintiff in this matter. He urged the court to take judicial notice of the fact that the Kisii High Court conclusively dealt and determined the matters in controversy and therefore, the Plaintiff has no capacity to institute a new suit over the same subject matter.
8. The Respondent cited Order 3 Rule 1 of the Civil Procedure Rules 2010 and urged that the Plaintiff is not supported by a Verifying Affidavit, contrary to the express provisions of order 4 Rule 21. Further, that none of the mandatory particulars prescribed under Order 4 have been included in the Plaintiff's pleadings. He submitted that the omissions render entire suit incurably defective and it must be struck out. He urged that the suit fails to disclose any reasonable cause of action and is an abuse of the court process, relying on the case of County Council of Nandi v Ezekiel Kibet Ruto & 6 Others [2013] eKLR.
9. The Plaintiff, on his part, submitted that this court has Jurisdiction to determine this suit. Further, that the purpose of filing Title deed SOUTH SAKWA/KOGELO/479 is to show the Court that the Amalgamation/ Merger was not done on the title deed in terms of Acreage as per the land Adjudication Committee Resolution in Case No. 28 of 1970. He further submitted that there was no separate title



deed issued to late Samwel Onyango Milula and urged that the proposed misjoinder has no effect in the suit.

10. On Res Judicata, the Plaintiff stated that Kisii HCC 279 of 1995 was not conclusively determined as the court stood over the matter generally [S.O.G] pending the report from the then Land Registrar - Homa-Bay. He submitted that the Respondent had failed to prove that the matter is Res Judicata and urged that the objection lacks merit and should be dismissed.

Analysis & Disposition

11. The issue I am required to determine is what the Defendant calls a Preliminary Objection. Thus, it is important to understand what amount or is a preliminary objection in order to find out whether indeed that which is before me is one. The locus classicus case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696 defined a Preliminary Objection 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 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.

... 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.”

12. In the Mukisa matter [supra], Newbold, P further held as follows:

“ 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 has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing butt unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop.”

13. It is clear that a Preliminary Objection arises on a point of law only. Any factual point and matter that requires long drawn out argument to establish other than the law falls short of a Preliminary Objection. For these reasons, this court proceeds to analyse the points raised herein to consider whether or not they fall within the ambit of a Preliminary Objection. It therefore follows that all the grounds in the objection raised herein except the first do not pass for a preliminary objection because each of them requires the parties to adduce facts to support their contention, and the Court to analyse them in order to arrive at a conclusion. For instance, regarding the matter of res judicata, when raising the issue the Respondent urged that the issues herein were determined in Kisii HCCC No. 279 of 1995 – Samuel Onyango v James Opande & Anor. In order to determine whether there was indeed a determination of a suit similar to this, the court would have to probe evidence. It would have to call for the availability of the files referred to, look at the content thereof and compare them with the instant case. That would be a serious claw into the evidence.
14. Thus, in sum the rest of the grounds fail to meet the threshold of a preliminary objection as follows. The second point is that the plaintiff lacks demonstrable vested interest in the matter to initiate the suit and his right to be heard has therefore not accrued. This can only be proved through facts to be



adduced. Similarly, for one to show that the suit res judicata he has to analyze the proceedings in Kisii High Court Case No. 279 of 1995: Samuel Onyango v James Opande & Another and compare them with those in the instant matter. Regarding frivolity or vexation one must see how that occurs. Only the argument that the suit discloses no reasonable cause of action against the 3rd Defendant/Respondent would not require evidence, in terms of Order 2 Rul2 15 of the Civil Procedure Rules, 2010. However, this ground has been combined with other points that require support through affidavit evidence. Thus, this fails as a point of law. Lastly, the contention that the set of documents in this suit and its underlying application collectively and individually are not pleadings known in law and contravene the legal definition under Section 2 of the *Civil Procedure Act*, Cap 21 laws of Kenya and contravene the formal requirements prescribed under Order 2 of the Civil Procedure Rules, this has not been demonstrated through pleadings.

15. This issue was aptly discussed in the case of Henry Wanyama Khaemba v Standard Chartered Bank Ltd & Another [2014] eKLR, where the Court held as follows:

“That re-statement of the limited scope of a Preliminary Objection brings me to the point where I hold that the Preliminary Objection by the 1st Defendant is not a true Preliminary Objection in the sense of the law. The issues of res judicata, duplicity of suits and suit having been spent will require probing of evidence as it is already evident from the submissions by the 1st Defendant. They are incapable of being handled as Preliminary Objections because of the limited scope of the Jurisdiction on Preliminary Objection. Courts of law have always had a well-founded quarrel with parties who resort to raising Preliminary Objections in improperly.”

16. It follows that the issue of res judicata as raised herein cannot be determined by way of a Preliminary Objection. I would therefore dismiss each of the grounds except the first one which I ought to consider separately. This is on the basis that the issues raised would rather await inter partes hearing since they are factual or be raised in a different manner than through a preliminary objection.

17. Thus, the single remaining point of Preliminary Objection is premised on jurisdiction of this court to determine the suit. This Court’s jurisdiction flows from both *the Constitution* and the establishing statute, the *Environment and Land Court Act*.

18. On the jurisdiction of the Court, Article 162[2] of *the Constitution* of Kenya which provides that;

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-[b]the environment and the use and occupation of, and title to, land.”

19. Then Section 13 of the Environment and *Land Act* provides for the specific aspects this Court has jurisdiction over.

20. In the case of The Owners of the Motor Vessel Lilian ‘S’ v. Caltex Kenya Limited [1989] KLR 1 the Court of Appeal held that:

“..... it is reasonably plain that a question of Jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a Court has no Jurisdiction, there would be no basis for a continuation of proceedings pending other evidence.....’



21. The Defendant contends that the issue of jurisdiction arises from the point of law that the Plaintiff does not have the requisite locus standi to file and prosecute the suit. He argues that the Plaintiff pleaded that he is suing over parcel No. South Sakwa/Kogelo/479 which was registered in the name of his late father Samwel Onyango Milula. Further that he has the Grant of Letters Ad Litem to institute the suit. Further, that the Grant of Lettes is limited to suing over that parcel of land yet the pleadings show that the Plaintiff is suing over parcel No. South Sakwa/Kogelo/477. He then argues that since the parcels are different, this Plaintiff has no locus standi o bring the suit. Therefore, this Court does not have jurisdiction over the matter.
22. I have considered the whole point of contention. Indeed, the Plaintiff was granted Letters Ad Litem to sue over parcel No. South Sakwa/Kogelo/479 and not South Sakwa/Kogelo/477. For, the Court to assume jurisdiction the party approaching it must have locus standi. While the Court is enjoined to adjudicate over issues of nullification of title, eviction of parties and ordering amendment of title, and compensation if need be, the issues ought to be placed before it by parties who have capacity. That would legally place them within its jurisdiction. Thus, without capacity the parties are operating outside the realm of operation of the subject of to be before the Court.
23. Thus, Court finds that regarding capacity which would give the Plaintiff the basis for suit it is lacking. Therefore, that makes the court lack power to adjudicate over the dispute hence lacking in jurisdiction. The point is very nuanced here. Thus, the Preliminary Objection is merited only on the one ground one and is allowed. The suit is dismissed with costs to the Defendants.
24. Orders accordingly.

RULING DATED SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 18TH DAY OF JUNE 2025.

HON. DR. IUR NYAGAKA

JUDGE

In the presence of,

Mr. Ndegwa for the Respondent.

No Appearance for the other parties [date given earlier in their presence].

