



**Kurgat (Suing as Personal Representative to the Estate of Mua Jesang alias Mauwa Jesang (Deceased)) v Menjo & 12 others (Environment and Land Case E009 of 2024) [2025] KEELC 6316 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6316 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT AND LAND CASE E009 OF 2024  
GMA ONGONDO, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**DANIEL KIPRUTO KURGAT ..... PLAINTIFF  
SUING AS PERSONAL REPRESENTATIVE TO THE ESTATE OF MUA JESANG  
ALIAS MAUWA JESANG (DECEASED)**

**AND**

**KIPKEMBOI MENJO ..... 1<sup>ST</sup> DEFENDANT  
SOLOMON CHEPSIROR LELMENGIT ..... 2<sup>ND</sup> DEFENDANT  
GIDEON SAWE ..... 3<sup>RD</sup> DEFENDANT  
JEREMIAH KIPSONGOK SAWE (SUING AS SONS AND PERSONAL  
REPRESENTATIVE OF THE ESTATE OF KIMENJO LELEI ALIAS SAWE LELEI  
(DECEASED) ..... 4<sup>TH</sup> DEFENDANT  
JOSEPH KIPKOECH ..... 5<sup>TH</sup> DEFENDANT  
DAVID NGETICH ..... 6<sup>TH</sup> DEFENDANT  
PAUL CHIRCHIR ..... 7<sup>TH</sup> DEFENDANT  
ELICKY TOO ..... 8<sup>TH</sup> DEFENDANT  
JOEL KOGO ..... 9<sup>TH</sup> DEFENDANT  
SAMWEL YATOR ..... 10<sup>TH</sup> DEFENDANT  
SARAH ROTICH ..... 11<sup>TH</sup> DEFENDANT  
TOROTEA YAMA ..... 12<sup>TH</sup> DEFENDANT  
LAND REGISTRAR NANDI COUNTY ..... 13<sup>TH</sup> DEFENDANT**



## RULING

1. The 1<sup>st</sup> to 12<sup>th</sup> defendants through Lagat Joshua and Company Advocates, lodged a preliminary objection dated 30<sup>th</sup> May 2024 to the present suit on the grounds infra;
  - a. The suit plaintiff lacks requisite locus standi to institute these proceedings on behalf of the estate of late Maua Jesang -Deceased.
  - b. The suit defeats the express provisions of section 7 of the Civil Procedure Act (The CPA herein) which provides that;

‘No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.’
  - c. The suit is incurably defective.
  - d. The suit is frivolous, vexatious and otherwise is an abuse of the court process.
2. The plaintiff through Cheruiyot Kirui and Company Advocates, opposed the preliminary objection by grounds of opposition dated 3<sup>rd</sup> August 2024 on the grounds that;
  - a) The preliminary objection as raised is fatally defective, has no legs to stand on as the Defendants has not pegged the issues raised therein in their defence hence the same has not been properly raised.
  - b) The Plaintiff obtained limited Grant of Letters of Administration Ad Litem in this matter to institute the suit hence he has a requisite locus standi.
  - c) The Preliminary Objection as raised is vague and does not raise any pure points of law, rather, the issues herein are matters of facts that invite the Court to examine and test the facts and evidence preferred. The Respondent’s preliminary objection does not fit the definition of a preliminary objection as per the leading authority of Mukhisa Biscuits Manufacturing Co. Ltd – vs – West End Distributors Ltd (1969) E. A. 696.
  - d) As such, the Preliminary Objection herein be dismissed with costs to the Plaintiff.
3. It is noteworthy that by way of a plaint (multi-Track) dated 10<sup>th</sup> April 2024, the plaintiff sued the defendants jointly and severally for, inter alia;
  - a) a declaration that the suit land parcel Nandi/Kipkaren Salient/363 measuring approximately 22.0 ha legally and solely belongs to Maua Jesang alias Mauwa Jesang and that the registration and insertion of Sawe Lelei as a joint proprietor over the parcel was irregular, unlawful and fraudulent and therefore null and void abinitio.
  - b) An order for cancellation of the said registration of the suit parcel in the joint names of Maua Jesang and Sawe Jesang and the same to revert to the name of Maua Jesang alone as the proprietor of the same hence the 11<sup>th</sup> Defendant be directed to effect that changes in the register.



4. The defendants denied the plaintiff's claim in their statement of defence dated 10<sup>th</sup> May 2024 and stated, inter alia, that plaintiff lacks locus standi to institute the instant proceedings against them as the plaintiff has no grant of representation over the estate of the deceased, Maua Jesang.
5. The preliminary objection was heard by way of written submissions further to the court's directions given on 29<sup>th</sup> May 2025.
6. By the submissions dated 8<sup>th</sup> July 2025, learned counsel for the plaintiff referred to the preliminary objection, the grounds of opposition and stated that he obtained a limited grant of letters of administration in respect of the deceased and that the suit is not res judicata as the elements thereof have not been satisfied by the defendants. That thus, the preliminary objection is vague and not based on points of law. Counsel relied upon the cases of Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors (1969) EA 696, Henry Wanyama Khaemba -vs Standard Chartered Bank Ltd and another (2014) eKLR, Oraro -vs- Mbaja (2005) 1 KLR 141, Independent Electoral and Boundaries Commission (IEBC) -vs- Maina Kiai and others (2017) eKLR, among others to reinforce the submissions. So, counsel implored the court to find the preliminary objection without merit and dismiss it with costs to allow the suit to be heard on merit.
7. In the submissions dated 22<sup>nd</sup> July 2025, learned counsel for the defendants set out the grounds of the preliminary objection and the grounds of opposition thereto and urged that the plaintiff is trying to revive matters already litigated and settled through this suit. That the essential elements of res judicata and locus standi have been established as the matter had been litigated and concluded in Eldoret Civil Suit No. 75 of 1974 involving the deceased and Sawe Lelei (deceased-2) whom the plaintiff is suing and the defendants are being sued over the suit land respectively. That therefore, the suit should be struck out with costs to the defendants. Counsel cited, inter alia, Mukisa Biscuit and IEBC cases (both supra) as well as Otieno-vs-Ougo (1986-89) EALR 468, Alfred Njau & 5 others-vs-City Council of Nairobi (1983) eKLR, the 5<sup>th</sup> Schedule to The Law of Succession Act Chapter 160 Laws of Kenya and section 7 of the CPA herein, to fortify the submissions.
8. In the foregone, is the preliminary objection sustainable?
9. On locus standi, the same is raised also at paragraph 3 of their statement of defence. Plainly, it is a point of law that calls for the prompt pronouncement by the court as noted in Mukisa Biscuits case (supra) and Kakuta Maimai Hamisi -vs-Peris Pesi Tobiko and others (2013) eKLR.
10. According to the Black's Law Dictionary, 10<sup>th</sup> Edition at page 1084, 'Locus standi means;  

'The right to bring an action or to be heard in a given forum.'
11. The defendants stated that there is no grant of letters of administration obtained by the plaintiff as a representative of the estate of the deceased, Maua Jesang. In the case of Alfred Njau case (supra), the Court of Appeal held as follows;  

'The term locus standi' means a right to appear in court and, conversely, as stated in Jowitt's Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.'
12. Further, the decision in Omari Kaburu -vs- Industrial and Commercial Development Corporation (2007) eKLR, is quite instructive and W. Karanja J (Now, JA) noted therein as follows;  

'.....the plaintiff/applicant needed to re-address the issue of his locus standi before proceeding with the matter.....the law is that the Grant is what clothes a person with



the locus standi to stand in and sue on behalf of the estate of the deceased. It becomes operational from the date of issue.....’

13. The list of the plaintiff’s documents dated 10<sup>th</sup> April 2025 do not contain any grant of letters of administration with details or at all in respect of the estate of the deceased, Maua Jesang. There is no such limited grant annexed thereto or disclosed even in the plaintiff’s submissions bearing in mind the definition of the term ‘Legal Representative’ under section 2 of the CPA.
14. At paragraph 17 of the statement of defence, the defendants stated that there were previously two other cases on the same matter in dispute. Paragraphs 4, 13 and 14 of the statement of defence refer to the Maua Jesang and Kimenjo Lelei alias Sawe Lelei (both deceased) and the plaintiff’s list of documents dated 10<sup>th</sup> April 2023 reveal the existence of Eldoret HCC NO. 75 of 1974 involving the both deceased who were parties therein. The decree showing conclusion of the suit, warrant and letter to Deputy Registrar from District Commissioner serial numbers 2, 3 and 4 respectively in the plaintiff list of documents are plain that the names of the same parties through the plaintiff and the defendants are litigating over suit land herein.
15. In the Black’s Law Dictionary (supra) at page 1504, the term ‘Res Judicata’ is defined as ‘an issue that has been definitely settled by judicial decision’ and the three essential elements thereof are;
  - a. An earlier decision on the issue.
  - b. A final judgment on the merits, and
  - c. The involvement of the same parties or parties in privity with the original parties.
16. It is therefore, the finding of this court that the preliminary objection meets the threshold of a preliminary objection as observed in Mukisa Biscuit, IEBC and Khaemba cases (supra). Litigation has to come to an end. Also, the suit is bad in law for the plaintiff’s lack of legal capacity to lodge the same which is res judicata.
17. A fortiori, I proceed to allow the preliminary objection which is meritorious and hereby dismiss the suit originated by way of a plaint dated 10<sup>th</sup> April 2024 with costs to the defendant.
18. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**Hon. G M A ONGONDO**

**JUDGE**

In the presence of; -

Mr Lagat Joshua learned counsel learned counsel for the defendants

Walter, Court Assistant

