



**Kibwambok v Rono & 2 others (Enviromental and Land Originating Summons
E016 of 2025) [2025] KEELC 6650 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6650 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E016 OF 2025**

CK YANO, J

OCTOBER 2, 2025

**IN THE MATTER OF ADOPTION OF MEDIATION AGREEMENT
DATED 8 NOVEMBER, 1984 TO 18TH MARCH, 1997 AS COURT
IN THE MATTER OF PARCEL NO. UASIN GISHU/SOSIONI/87**

BETWEEN

MALAKWEN SEUREI KIBWAMBOK APPLICANT

AND

MARY KAPTINGEI RONO 1ST RESPONDENT

ELIZABETH JEPTUMO RONO 2ND RESPONDENT

GRACE JEPKERING CHERUIYOT 3RD RESPONDENT

RULING

1. The Applicant approached this court by way of Originating Summons dated 6th May, 2025. He seeks to adopt mediation proceedings of 8th November, 1984 to 18th March, 1997 over Uasin Gishu/Sosioni/87 measuring approximately 68 Acres (the suit property) and Chemalal Farm measuring approximately 10 Acres, and the subsequent appeal to the chief.
2. The Applicant also claimed that the Respondents are in violation of the mediation agreement arising therefrom and the final decision of the chief, and he sought to have the land subdivided. Alongside the OS, the Applicant also filed a Notice of Motion Application seeking both a temporary and permanent injunction against the Respondents.
3. The Respondents filed a Notice of Appointment of Advocates on 15th May, 2025 as well as a Notice of Preliminary Objection dated 14th May, 2025 opposing the application as well as the entire suit on the following grounds:-



1. The Applicant's Application herein offends sections 2, 79 and 82 of the *Law of Succession Act* as he is not a legal representative or executor of the Estate of Kirwa Rono Teigut (deceased).
2. That the Applicant has no Locus standi and Capacity to institute proceedings or defend any suit on behalf of the Estate of estate of the deceased Kirwa Rono Teigut in the absence of Grant of Letters of Administration.

Submissions:

4. On 15th May, 2025 when the matter was mentioned, the court directed that the PO be canvassed by way of written submissions, and the parties complied.

Respondents' Submissions;

5. The Respondents filed their submissions dated 18th July, 2025 in support of the PO. In the said submissions, Counsel argued that the suit property is registered in the name of Kirwa Rono Teigut (now deceased), whose estate/probate is yet to be commenced. Counsel pointed out that the Applicant claims the land registered in the name of the deceased and claiming a beneficial interest over it, yet he is neither legal representative nor creditor to the estate. That for this reason, the Applicant has no locus standi or capacity to file or defend any suit in the absence of letters of administration.
6. Counsel for the Respondents submitted that Sections 2, 79 and 82 of the *Law of Succession Act* authorise only the personal representatives and/or administrators to run the affairs of a deceased person's estate. He submitted that the Applicant was neither a beneficiary nor administrator of the estate. He submitted that the instant suit cannot be sustained for want of requisite capacity.
7. Counsel relied on the following cases to support his arguments; Nyeri ELC Case No. 185 of 2014 (O.S) Joseph Maina Gatugi vs Njuki Wambugu & Another (2018) eKLR, Trouistik Union International vs Mbeyu & Another (2008)1 KLR (GF) 730, Rajesh Pravinjivani Chudasama vs Sailesh Pranjivani Chudasama (2014) eKLR, Machakos Civil Appeal 52 of 1991 Patrick kiseki Mitisyia (Suing as the Personal Representative of the Estate of Nzomo Mutisyia (deceased) vs V.K.B. Shanghani & Sons Limited & Another (2012) eKLR, Virginia Wambui Otieno vs Joash Ochieng Ougo (1982-88)1 KAR 1049 and Wankford vs Wankford (1702). Out of these authorities, Counsel argued that the suit was incompetent as at inception, is premature, ill-advised and ought to be struck out with costs to the Respondents.

Applicant's Submissions;

8. The Applicant's submissions opposing the PO are dated 15th August, 2025. Counsel submitted that any party to the mediation agreement has the capacity to move the court for its adoption, including the facilitator without need of letters of administration. That being a party to the mediation agreement, the Applicant has capacity to bring the instant application to court, adding that the subject mediation agreement has all the ingredients laid down under Order 46 of the Civil Procedure Rules.
9. Counsel for the Applicant termed the Respondent's Preliminary objection as a calculated attempt to cancel and/or avoid the trust created over family property and portray him as a beneficiary over the land. Counsel argued that the Preliminary objection missed the point since it raised a succession question instead of focussing on the issue of adoption of the mediation agreement. Counsel submitted that even though the Respondents lack capacity to respond as they had not carried out succession for their husband, they could also present the mediation agreement as Interested parties.



10. Counsel further argued that the Respondents' Preliminary objection has not met the threshold of a proper PO laid down in *Mukhisa Biscuits (sic)* as it requires evidence and does not address the real legal question in the application. In addition Counsel cited the case of *Isack M'Inanga Kiebia vs Isaaya Theuri M'linturi & Another (2018) eKLR* on the issue of customary trusts and an Article by Jacqueline Waihenya in *Chartered Instituted of Arbitration Kenya Journal on Alternative Dispute Resolution*, Volume 8, November, 2020. Counsel urged that the present PO is misplaced and should be dismissed with costs.

Analysis and Determination

11. Having considered the PO and the respective submissions filed by the parties, the only issues for determination are whether the Respondents' Preliminary Objection is merited, and the issue of costs of the PO.

Whether the Respondents' Preliminary Objection is merited?

12. With regards to what constitutes a proper preliminary objection, in the case of *Mukisa Biscuits Manufacturing Ltd vs West End Distributors (1969) EA 696*, the Court of Appeal 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.”

13. In the same case, Sir Charles Newbold P. held that:-

“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 preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop.”

14. A preliminary objection therefore consists of a pure point of law which has been pleaded or arises by clear implication out of pleadings. By its very nature, a PO if successfully argued as a preliminary point may dispose of the suit. (See the decision of the Supreme Court in *Hassan Ali Joho & Another vs Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 (2014) eKLR*).
15. From the *Mukhisa Biscuits Case (supra)*, to discern whether a PO raises a point of law, the court has to be satisfied that there is no proper contest as to the facts. In other words, a party raising a PO must do so on the premise that the facts are deemed agreed as they are prima facie presented in the pleadings on record.
16. From the pleadings filed in the present suit, the Applicant claims to be entitled to a share of the Deceased's estate since his late brother held the land in trust for the family. Under paragraph 7 of his Supporting Affidavit to the Originating Summons, he deponed that he is a legitimate beneficiary of the said estate. According to the Applicant, his said interest were crystallised in the mediation proceedings and mediation agreement that he now seeks to be adopted by this court.
17. Even though the Respondents are yet to file a response to the summons, and it is thus not clear what their defence in this suit will be, it is possible to determine their position from their submissions filed



herein. Indeed, at page 2 of their submissions, the Respondents have clearly refuted the Applicant's claim that he is a beneficiary of the estate. The Respondents submit that he has no any interest over the suit property.

18. Clearly, it cannot be said in this case that the Respondents are not contesting the facts as laid out by the Applicant in the pleadings filed herein. For this reason alone, the PO is not a proper one and it ought to be dismissed.
19. However, the objection raised in the Respondents' PO is on the issue of locus standi. Locus standi is the right to appear and be heard in Court or other proceedings and literally, it means 'a place of standing'. Therefore, if a party is found to have no locus standi, then it means that they cannot be heard by the court, which means that issue of locus standi alone may dispose of the suit. Bearing in mind the centrality of issue of locus standi, this court will proceed to determine whether the PO as raised has any merit.
20. The Respondents objection is that the suit and the Application lodged thereunder offend Sections 2, 79 and 82 of the Law of Succession Act. Whereas Section 2 is on the application of the Act, Section 79 provides that:-
 79. Property of deceased to vest in personal representative
The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.
21. On the other hand, Section 82 sets out the powers of personal representatives. What I understand to be the core of the Respondent's objection however, is Section 82(a), which provides that:-
 82. Powers of personal representatives
Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—
 - (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
22. It is the Respondents' position therefore, that since the Applicant is not a personal representative of the Estate of the late Kirwa Rono Teigut, then he lacks the locus standi to institute and maintain this suit.
23. With regards to representation of estates of deceased persons, the Court of Appeal authoritatively delivered itself on the issue of locus standi in the case of Trouistik Union International & Another vs Jane Mbeyu & Another (2008) IKLR (G&F) 730, where it was held that:-

“To determine who may agitate by suit any cause of action vested in the deceased at the time of his death, one must turn to section 82 (a) of the law of succession Act. That section confers that power on personal representatives and on them alone”
24. In the instant suit, both the Applicant and the Respondents are in agreement that the registered proprietor of the suit land, Kirwa Rono Teigut, is deceased. The Applicant even annexed a copy of his Certificate of Death as proof of this fact. Since it is only an administrator who can sue on behalf of a deceased person under the Law of Succession Act, and the applicant in the summons herein does not have any grant of representation, then it is true that he would have no capacity to lodge any proceedings for and on behalf of Kirwa Rono Teigut.



25. However, the Applicant has been steadfast in his pleadings that he brings the suit as a beneficial owner of the suit property. He has not once alleged to represent the estate of the late Kirwa Rono Teigut. In their submissions, the Respondents have acknowledged that the Applicant claims to be a beneficiary of the estate and purports to have an interest in the suit land.
26. In addition, the suit has been brought against the Respondents personally as the people who have denied the applicant enjoyment of his alleged interest on the suit land. He has sued the Respondents as the people he alleges to have sent him out of the land, and also that they have threatened to interfere with his alleged beneficial interest over the suit land, and not as administrators of the Estate of the late Kirwa Rono Teigut. The Applicant acknowledges that they are not the beneficiaries of the estate of Kirwa Rono Teigut as no succession proceedings have been commenced over the said estate.
27. For reason that the Applicant has brought the suit on his own behalf, I do find that the Applicant has the requisite locus standi to commence and maintain the suit against the Respondents. The outcome therefore is that the Respondents' PO with regards to the Applicant's locus standi lacks merit.

Who shall bear the costs of the PO?

28. Under section 27 of the *Civil Procedure Act*, costs follow event. The Respondents filed the PO which this court has found lacks merit. Consequently, this court orders that the Respondents shall bear the costs of the PO.

Orders:

29. Therefore, I will order as follows:-
- a. The Respondents' Notice of Preliminary Objection dated 14th May, 2025 lacks merit and is hereby dismissed
 - b. The Respondents shall bear the costs of the PO.
30. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 2ND DAY OF OCTOBER, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

In the presence of;

Mr. Mwaka for Respondent.

Mr. Muhatia for the Applicant.

Court Assistant - Laban.

