



**In re Estate of Omar Chirchir Kipruto Chirchir (Deceased) (Succession Cause E007 of 2022) [2025] KEKC 14 (KLR) (23 April 2025) (Ruling)**

Neutral citation: [2025] KEKC 14 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT NAKURU  
SUCCESSION CAUSE E007 OF 2022  
IN NYABOGA, SRK  
APRIL 23, 2025**

**IN THE MATTER OF THE ESTATE OF OMAR  
CHIRCHIR KIPRUTO CHIRCHIR (DECEASED)**

**BETWEEN**

**MIRRIAM JEBASKOWNY CHIRCHIR ..... 1<sup>ST</sup> OBJECTOR  
MUSA KOSGE CHIRCHIR ..... 2<sup>ND</sup> OBJECTOR  
RUKIA JEPTOO CHIRCHIR ..... 3<sup>RD</sup> OBJECTOR  
LATIFA JEPKEMOI CHIRCHIR ..... 4<sup>TH</sup> OBJECTOR**

**AND**

**MEDINA CHIRCHIR ..... RESPONDENT**

**RULING**

1. The objectors through their counsel filed before this Court a preliminary objection on 16<sup>th</sup> July 2023 which is dated 15<sup>th</sup> July 2024 in which they raised their objection that this Honorable Court lacks jurisdiction to entertain this succession matter.
2. The grounds of objection as stated is that not all the parties, survivors and or beneficiaries herein profess Muslim faith/religion and do not wish to submit to the jurisdiction of this Honorable Court as provided under Article 170 (5) of the Constitution of Kenya, 2010 and Section 5 of the Kadhi's Court Act, Laws of Kenya.
3. The objection is supported by separate similar affidavits sworn by the four objectors respectively in which they stated that they are parties and participants in the proceedings herein and that they all together profess the Christian religion/faith.



4. In paragraphs 3 of their affidavits, the objectors further pointed out that they are advised by their counsel on record which advice they believe to be true that pursuant to Article 170 (5) of the Constitution of Kenya' 2010, and Section 5 of the Kadhis Courts Act, this Honorable Court has jurisdiction to determine questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion.
5. They finally stated that having understood the provisions of law therein above, they wish to assertively reiterate that they do not profess the Muslim religion and do not wish to submit to the jurisdiction of this Honorable Court.
6. No response was filed in regard to the objection and thus the matter came up for hearing before the late Honorable Principal Kadhi, T. Kunyuk (may God Almighty forgive him, have mercy on him and grant him paradise) on 29<sup>th</sup> August 2024 in which both parties were represented by their counsels.
7. The objection counsel on his submission stated that under Section 5 of the Kadhi's Court Act and Article 170 (5) of the Constitution, parties must profess the Muslim faith. He asserted that the objectors herein do not profess the Muslim faith and thus the Court does not have jurisdiction to handle the matter.
8. The counsel went on to state that the matter was secretly filed and they were moving around to ascertain where it was and that a preliminary objection can be raised at any time.
9. The respondents' counsel on his submission stated that the petition was filed on 24<sup>th</sup> October 2022 and he asserted that the first objector had filed an objection dated 2<sup>nd</sup> February 2023. He submitted that the objector filed an answer dated 11<sup>th</sup> May 2023 which was received by the Court on 15<sup>th</sup> May 2023 and the proposed administrator filed her replies on 23<sup>rd</sup> June 2023.
10. He went on stating that one year done the line the question of jurisdiction had not been raised and thus, the objector herein had submitted to the jurisdiction of the Kadhi's Court by responding to the application and this objection is an abuse to the court process.

#### **Analysis and Determination:**

11. The main contention herein is whether the Preliminary Objection meets the threshold laid down in law or not in order for the Court to hold it as merited or otherwise.
12. The leading authority invoked when dealing with Preliminary Objections is the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*. (1969) EA 696 in which Law, J.A., observed that:

“...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 contracted giving rise to the suit to refer the dispute to arbitration.”
13. Further, Sir Charles Newbold, P, in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* supra, reiterated regarding a preliminary objection that:

“It raises a pure point of law which is argued on the assumption that all 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 of preliminary objection does nothing but unnecessarily increase costs...”

14. At a minimum, a preliminary objection should at least raise a true point of law and no fact among the facts raised therein need evidence to ascertain them.
15. The objection’s grounds in this instant preliminary objection are generally two, first, the jurisdiction of this Court as provided in Article 170 (5) and Section 5 of the *Kadhi’s Court Act* in that all parties must profess the Muslim faith, and that parties must submit to the jurisdiction of the Court as also provided by Article 170 (5) which are both contained in the one paragraph of their Preliminary Objection.
16. The ground on the jurisdiction of this Court is a pure point of law because it is something which can be argued and may finally dispose of the matter before this Court.
17. The second ground of objection raised is the faith of the objectors themselves which is a factual issue and not a legal issue as the Court finds that it needs to be ascertained to establish its credibility.
18. It is a matter of fact that the objectors averred in their affidavits that they do not profess the Muslim faith whereas the faith of the deceased and the other beneficiaries apart from the four, the objectors, is Islam as alleged, meaning that the deceased together with both two of his wives were Muslims. Children by virtue of their relationship to their parents automatically profess the faith of their parents until when they have reached majority, or parents allow them before that, then they can decide to retain that faith or renounce it.
19. By virtue of the faith of the parents of the children herein, all children were once professing the faith of their parents until when some, the objectors, rejected that faith or they all were not Muslims but at a particular time maybe, they embraced and converted to Islam except the objectors herein.
20. The question which may arises assuming that all the beneficiaries were once Muslims is, when exactly did the objectors herein renounce Islam the faith of their parents? Is it before the institution of the succession cause or after? Further, not all facts pleaded by the respondents in their application seems to be certain especially the will, distribution of the estate and the consent.
21. The faith of the deceased too has indirectly been disputed as a result of the alleged appearance of his names in his birth or death certificate and marriage certificate.
22. These issues cannot be addressed through a preliminary objection due to its limited scope of jurisdiction.
23. The respondents’ counsel objected to the objectors’ objection on grounds that the first objector had submitted to the jurisdiction of the Court as she had on several occasions filed pleadings including an objection which the court finds was not against the jurisdiction of the Court in a previous application. He contended that the instant objection is an abuse to the court process. He cited the case *in re Estate of Wario Guracha Dambi (Deceased)* (Miscellaneous Succession Cause E002 of 2021) in which Jesse N. Njagi, J stated that:

“The applicant had submitted to the authority of the Kadhis’ Court by responding to the petition. The act of the applicant in filing the instant application when he had already submitted to the jurisdiction of the Kadhis’ Court was an abuse of the process of the court.”
24. The objectors counsel responded that there was no substantive ruling that had been done in this matter. He alleged that the matter was secretly filed and they had moved round to ascertain where it was and a Preliminary Objection can be raised at any time.



25. It seems that the objection herein is an after-thought after discovering as a result of the objectors' counsel's advice on the jurisdiction of the Honorable Court contrary to what they were ignorant of before. That means, if they had not discovered, they might have proceeded with the matter until its finalization.
26. The legal maxim, *Ignorantia legis neminem excusat* holds that a person who is unaware of a law may not escape liability for violating that law merely by being unaware of its contents. That fact that the objectors were unaware of the provisions of Article 170 (5) of the Constitution and Section 5 of the Kadhi's Court Act does not excuse them in order to allow them file an objection after first having submitted to the jurisdiction of the Kadhi's Court.
27. Though the Constitution requires that parties before the Kadhi's Court must profess the Muslim faith and also submit to the Court's jurisdiction in order for the Court to be properly constituted, those provisions should not be undermined and abused for the sake of subverting justice or frustrating one another as that was not what the framers of the Constitution intended.
28. The Supreme Court in Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] eKLR observed that:
- “ .... It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits....”
29. From the analyses of the pleadings filed by the objectors and the submissions by counsels from both parties, I find that the preliminary objection against the jurisdiction of this Court is an after-thought idea and not credible. From that, the preliminary objection is hereby dismissed.
30. No order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 23<sup>RD</sup> APRIL 2025.**

**IDRIS N. NYABOGA**

**KADHI**

In the presence of:

Mohammad Michuki (court assistant)

Kamau Ngigi for respondents

Songoya for objectors

