



Gichuki (Suing as the Legal Representative of the Estate of David Gichuki Muraya (Deceased)) v Nairobi City County & 2 others (Environment and Land Case E111 of 2024) [2025] KEELC 8325 (KLR) (28 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8325 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E111 OF 2024
CG MBOGO, J
NOVEMBER 28, 2025**

BETWEEN

**NAOMI WACHERA GICHUKI PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF DAVID
GICHUKI MURAYA (DECEASED)**

AND

**NAIROBI CITY COUNTY 1ST DEFENDANT
FRANCIS MBUGUA GATHECA 2ND DEFENDANT
DOMINIC WAMBUA MUTUA 3RD DEFENDANT**

RULING

1. Before this court for determination is the notice of preliminary objection dated 31st October, 2024 filed by the 3rd defendant in opposition to the suit on the following grounds:-
 - a. The suit is time barred having been brought outside the statutory limitation of 12 years in view of Section 7 of the Limitation of Actions Act, Cap 22.
 - b. The plaintiff lacks the locus standi to file and prosecute this suit.
 - c. The plaintiff's suit is incompetent, bad in law, barred in law, an abuse of the court process and should be dismissed with costs to the defendant.
2. The plaintiff filed her replying affidavit in opposition to the objection which was sworn on 2nd June, 2025. The plaintiff deposed that her husband passed on in the year 2000, and that she did not know much about his properties until she got the grant in the year 2019, when she had the authority to handle the estate of the deceased.



3. She deposed that when she visited the 1st defendant's office to pay land rates, she was informed that another person was paying for the same, while the property was still in the name of the deceased. Further, that the 1st defendant took her in circles in giving a definite answer on the details of the owner of Plot No. D1-211 Kayole. The plaintiff deposed that she conducted a search and she has never received results on the same, and that she believes that there is a plan to take away the property from the estate of the deceased.
4. The preliminary objection was canvassed through written submissions. The 3rd defendant filed his written submissions dated 11th June, 2025. The plaintiff filed her written submissions dated 18th September, 2025.
5. I have considered the preliminary objection and the written submission filed by the respective parties. The issue for determination is whether the objection ought to be upheld.
6. Law, J.A. in *Mukisa Biscuits Manufacturing Company Limited -vs- West End Distributors* (1969) EA 696 stated as follows:-

“So far as I am 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, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration...”
7. Also, the case of *John Musakali vs. Speaker County of Bungoma & 4 others* (2015) eKLR, it was held that: -

“The position in law is that a preliminary objection should arise from the pleadings and on the basis that facts are agreed by both sides. Once raised the preliminary objection should have the potential to disposing of the suit at that point without the need to go for trial. If, however, facts are disputed and remain to be ascertained, that would not be a suitable preliminary objection on a point of law.”
8. Further, *Ojwang J (As he then was) in Oraro -vs- Mbaja* (2005) KLR 141 where after quoting the statement of Law, J.A. in the *Mukisa Biscuits* case (supra) went on to state that:-

“A 'preliminary objection' correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point....

Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence...”
9. From the above cited authorities, it is clear that for a preliminary objection to succeed, the same must consist of a pure point of law, with the facts not disputed by the opposing party. Also, a preliminary objection should possess the ability to dispose of the issue that is before court without going to trial and lastly, the same ought to stem from and not outside of pleadings



10. In applying the above principles to the instant objection, I am not satisfied that the objection raises a pure point of law. I have read the plaint dated 12th March, 2024. The plaintiff begins by giving a history of the ownership of the suit property by her late husband. Particularly, paragraph 7 she pleaded as follows:-

“The purchaser, David Gichuki Muraya died on the 18th of June 2000 and the plaintiff continued paying ground rates as was required and as she was in the process to be registered as the beneficiary of the said plot she was informed that plot had been re-allocated to Francis Mbugua Gatheca who later sold it to Dominic Wambua Mutua on 16th July 2002.”

11. In his statement of defence dated 18th November, 2024, particularly paragraph 5, the 3rd defendant states as follows;

“The 3rd defendant admits the contents of paragraph 7 of the plaint and states that vide a sale agreement dated 16/7/2002 he bought the suit property from the 2nd defendant and conducted due diligence before the purchase of the property.”

12. While the 3rd defendant contends that the suit is time barred by virtue of Section 7 of the *Limitation of Actions Act*, it is not entirely the case that the cause of action arose in the year 2002, and thus an action cannot be brought forth to recover the suit property. The plaintiff pleaded the history leading to the filing of the suit, and stated that while she was in the process of registration as a beneficiary, it is when she discovered that the suit property had been re-allocated to someone else. From this statement, it appears that she may have discovered this later as she was used to paying the land rates. The period within which the 3rd defendant entered into an agreement for the said purchase does not necessarily infer that the plaintiff was aware unless she witnessed the said sale.

13. The 3rd defendant did not make any submissions with regard to grounds 2 and 3 of the objection. This court assumes that the same were abandoned.

14. From the above, it is my finding that the preliminary objection dated 31st October, 2024 does not have merit, and it is hereby dismissed. Costs in the cause.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 28TH DAY OF NOVEMBER, 2025.

HON. MBOGO C.G.

JUDGE

28/11/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Kisoi holding brief for Ms. Ombwori for the 1st Defendant

Ms. Gaichura for the Plaintiff.

Ms. Mule holding brief for Ms. Mutuku for the 3rd Defendant

