

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**  
**ELC NO. E021 OF 2024**

**PRISCILLA NDINDA KAVIVYA.....1<sup>ST</sup> PLAINTIFF**  
**BEATRICE MBEKI KAVIVYA..... 2<sup>ND</sup> PLAINTIFF**  
**ALICE KAMENE MUOKA..... 3<sup>RD</sup> PLAINTIFF**  
**JOSEPHINE NDUKU KAVIVYA..... 4<sup>TH</sup> PLAINTIFF**  
**-VERSUS-**  
**MUSYOKI MBATHA.....1<sup>ST</sup> DEFENDANT**  
**NICHOLAS KYULE MBATHA..... 2<sup>ND</sup> DEFENDANT**  
**REUBEN MBATHA KAVIVYA..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of a preliminary objection dated 8<sup>th</sup> May, 2025 in which the Defendants raise the following grounds:

- 1) **That the Plaintiffs are pursuing this case on behalf of the estate of the late Kavivya Mbatha who died on 10<sup>th</sup> November, 1997.**
- 2) **That the Plaintiffs are not the legal appointed representatives of the estate of the late Kavivya Mbatha and they therefore lack the capacity to institute this suit.**
- 3) **That the Plaintiffs have no locus standi and the suit ought to be struck out with costs.**

2. The Plaintiffs are all sisters of the Defendants. Their father Kavivya Mbatha died on 10<sup>th</sup> November, 1997 before the Adjudication process. Subsequent to the death of Kavivya Mbatha, the Defendants were registered as owners of Makueni/Mavindini/2020 and Makueni/Mavindini/2022 to the exclusion of the Plaintiffs.

3. The Plaintiffs filed a suit against the Defendants in which they sought the following reliefs:

- a. **An order of declaration that Land Parcels Makueni/Mavindini/2020 and Makueni/Mavindini/2022 are properties of the late Kavivya Mbatha.**

- b. A declaration that the Plaintiffs herein and the Defendants are sons and daughters of the late Kavivya Mbatha and ought to share out land parcels Makueni/Mavindini/2020 and Makueni/Mavindini/2022 equally amongst themselves.
- c. An order cancelling and/or revoking title deeds to land parcels Makueni/Mavindini/2020 and Makueni/Mavindini/2022.
- d. An order directing the Defendants to share equally land parcels Makueni/Mavidini/2020 and Makueni/Mavindini/2022 with the Plaintiffs herein.
- e. Cost and interest of the suit.
- f. Any other relief that this honourable court deems fit and just to grant.

4. Before the Defendants could file a defence, they raised a preliminary objection which is the subject of this ruling.
5. The parties were directed to file written submissions in respect of the preliminary objection. The Defendants filed submissions dated 14<sup>th</sup> July, 2023. The Plaintiffs filed submissions dated 18<sup>th</sup> July, 2025.
6. I have considered the submissions by the parties. The only issue for determination is whether the Plaintiffs have locus standi to file this suit.
7. A preliminary objection was defined in the case of **Mukisa Biscuit Manufacturers Ltd –vs- West End Distributors Ltd (1969) EA 694** as follows:

*“In 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, 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.”*

8. From the case of **Mukisa Biscuit Manufacturers Ltd (Supra)**, it is clear that a preliminary objection cannot be raised if certain facts have to be ascertained. In the instant case, it is not known under what circumstances the Defendants were registered as owners of the two properties. The Plaintiffs have stated in submissions that their father died before land adjudication in the area and that the Defendants were registered after demarcation. If this be the case, then this is a matter where these facts have to be ascertained and therefore no preliminary objection can be allowed in the circumstances.
9. The Defendants have not filed a defence. A proper preliminary objection must arise from pleadings. If it be true as the Plaintiffs state that registration was done after their father had died, then the issue of the Plaintiffs requiring letters of administration before filing suit would not arise. The name of their father is merely mentioned as a background basis of their claim. I therefore find that the preliminary objection herein does not raise a pure point of law which will dispose of this suit. The preliminary objection fails and the same is dismissed with costs to the Plaintiffs.

It is so ordered.

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**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 18<sup>TH</sup> DAY OF DECEMBER, 2025.**

**IN THE PRESENCE OF:**

Mr. Muendo for Mr. Muthiani for Plaintiff

M/s Kyalo for Defendant

Court Assistant - Steve Musyoki