

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC LAND CASE NO.E007 OF 2025

VIRGINIA WANGARI MATHERI.....1ST

PLAINTIFF

ANTHONY MUKUHA MURAGE.....2ND

PLAINTIFF

ROBERT MATHERI WANGARI.....3RD

PLAINTIFF

JANE WAIRUMU WANGARE.....4TH

PLAINTIFF

-VERSUS-

JOHN WAMBUGU MUKUHA

**(Being sued in his own capacity and as the administrator
of the estate of MUKUHA MURAGE MUKUHA (Deceased))**

.....DEFENDANT

AND

JOSEPH MWANGI KARIUKI.....1ST INTERESTED

PARTY

STEPHEN MUTURI.....2ND INTERESTED

PARTY

RULING

1. This ruling relates to the Preliminary Objection dated 22.7.2025 raised by the defendant on the following grounds; That the 1st and 2nd plaintiffs have no locus standi to institute the suit as no proof has been tendered to indicate that they are wife and daughter of the defendant respectively, that the 1st plaintiff lacks the legal capacity to institute the suit in respect of the estate of her father in law, that the issues raised herein are resjudicata as they were raised in Rumuruti SPMs court case no 13 of 2024 and that the plaintiffs ought to have appealed against the decision in the above mentioned case, rather than filing a fresh suit.

2. In response thereof, Jane Wairimu Wangare, the 4th plaintiff filed a replying affidavit dated 30.7.2025 (erroneously identifying herself as the 4th respondent), asserting a claim that the 1st -4th respondents are wife, sons and a daughter of the deceased. She avers that in the Nyahururu Succession case no. 148 of 2007, the applicant had admitted to having sired children with the

1st respondent. She avers that the issue of trust is yet to be heard and determined.

3. I have considered all the issues raised herein in support of or against the preliminary objection including the rival submissions. The fundamental nature of a preliminary objection was given in **Mukhisa Biscuits manufacturing Co. Ltd Vs. West End Distributors (1969) E. A 696** as follows;

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication of pleadings and which if argued as a preliminary point may dispose of the suit”.

4. Firstly, the issue regarding the relationship between the parties is not a point of law, it is in the realm of facts which have to be subjected to proof. Secondly, the defendant has already filed a defence to the suit but has not raised the issues at hand in form of a preliminary objection. On the question of relationship cited at paragraph 3 of his defence, the defendant simply asserts

a denial of the relationship, while at the second last paragraph, he acknowledges the existence of other suits but avers that there are no other suits pending between the parties.

5. Thirdly, the claim of the plaintiff is hinged on customary trust. No material information has been availed before this court to indicate that the issue of customary trust had been determined before other courts or tribunals.

6. In **Benina Wairimu Kabui v John Kinyua Kabui & another [2016] Eklr**, the court while dealing with the question as to whether the issue of trust had been dealt with in other forums stated as follows;

“What is clear from all those cases is that whereas the parties were the same litigating over the suit land, the issues did not involve trust as is now the case before me”.

7. The court in **Benina Wairimu Kabui v John Kinyua Kabui & another (supra)** cited the case of **KERUGOYA L.D.T CASE No. 6 of 2007**, where it was stated that;

“The Tribunal did not determine the Trust as it had been asked to do. If the applicants still feel that Trust should be determined, then they should go ahead and file the suit before a Court seized of jurisdiction to determine the matter”.

8. As rightly submitted by the plaintiffs, the issues raised in the preliminary objection ought to be canvassed in the normal manner, through evidence where contested facts would be subjected to proof. In the final analysis, I find that the preliminary objection is not merited, the same is hereby dismissed with costs to the plaintiffs.

**DATED, SIGNED AND DELIVERED AT NYAHURURU
THIS 3RD DAY OF DECEMBER 2025 THROUGH
MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

Vanessa - Court Assistant
Ms. Kimani for Defendant and Interested Parties
Gakuhi Chege for Respondent

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