



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of Shadrack Oichoe Oisebe (Deceased) (Succession Cause
30 of 2014) [2026] KEHC 765 (KLR) (16 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 30 OF 2014**

TA ODERA, J

JANUARY 16, 2026

**IN THE MATTER OF THE ESTATE OF SHADRACK
OICHOE OISEBE (DECEASED) AND IN THE MATTER OF:**

BETWEEN

JOE OICHOE OISEBE 1ST PETITIONER

BILIA BOSIBORI OISEBE 2ND PETITIONER

AND

FLORENCE OICHOE BENEFICIARY

RULING

1. Before me for determination is a preliminary objection dated 17th March 2025 against the summons for revocation of grant dated 24.1.25. The preliminary objection is based on the grounds that;
 1. The 2nd Petitioner/Respondent was made a party to the Estate on an Application for Revocation of Grant made to this court on 17/8/2016 in the Summons dated 28/12/2019 by Justice Okwany for good reasons stated therein which remain undisputed and this application is misplaced and without foundation.
 2. Property number 111/36 was expressly removed from this court's determination and jurisdiction until and after a determination on its status is made by the Environment and Land Court. No order regardless, on rent accruing therefrom, can issue from this court.
 3. The prayers no. 2 and 3 of the Summons for Revocation of Grant have previously been dealt with and determined the issue now raised is Res Judicata.
 4. As regards property no. Gesima Settlement Scheme/234, the Honorable court in its judgment and decision made on 12/5/2017 in the Environment and Land Court Case No. 385 of 2014



determined it not to belong to the estate. It is the only court seized of jurisdiction over the applicant's claim to the property

5. As for property no. Wanjare/Bogiakumu/100, the said property was sold (fraudulently) to 3rd parties by the 1st Petitioner and can only be recovered through a suit in the Environment and Land Court, a fact already determined by this court (Justice Ougo) in this Cause.
2. The summons dated 24.1.25 for revocation of grant filed by Florence Oichoe sought the following orders;
 1. Spent
 2. Spent
 3. That the 2nd petitioner be directed to render a true and accurate account of all monies collected as rent from the premises situated on land parcel No. Kisii Municipality /Block 111/36 running from the month of April 2004 to January 2025.
 3. That the grant of letters of administration issued jointly to Joel Oichoe Oisebe and Billiah Bosibosi Oisebe on 17.8.2016 be revoked, annulled and a fresh grant to issue to Florence Oichoe the applicant or any other beneficiary the court may deem fit.

2nd respondent's submissions

3. That Bilia Bosibori Oisebe 2nd respondent submitted that the grounds for revocation of grant as set out in Section 76 of the [Law of Succession Act](#) have not been cited to warrant revocation of grant issued on 17.8.2016 by Hon. Lady Justice Okwany. On the issue of accounts relating to land parcel Kisii Municipality /Block 111/36, the 2nd respondent submitted that in her ruling dated 21.12.22 Justice R. Ougo removed that land from the estate of deceased until the Environment and land court determines its ownership. On land parcel Gesima settlement scheme /234, it was submitted that in the said ruling Justice Ougo found that it does not form part of the estate of deceased. Also, that the summons dated 24.1.25 is thus Res judicata and is for dismissal for want of jurisdiction. The 2nd Respondent also urges that the ex-parte Orders would greatly affect her and that she was not afforded an opportunity contrary to rules of natural justice. Also, that the exparte orders were on rendering accounts on land parcel no Kisii Block 111/36 from April 2004 to January 2025 which land was removed from this cause by Hon. Lady Justice R. Ougo vide her ruling herein dated 21.12.22

The objector's submissions

4. Florence Oichoe the applicant herein submitted that the issue of whether the 2nd respondent / Petitioner should render accounts or not or whether the exparte orders are prejudicial are matters of fact which cannot be dealt with by way of a preliminary. She submitted that land parcel No. Kisii Municipality/Block III/36 duly registered in the name of the late Shadrack Oichoe Oisebe (deceased now) at the time of his demise and not in the name of the late Sweney Manasseh Oisebe, the late husband of the 2nd Petitioner. Also, that there is no evidence of the alleged purchase of land parcel Kisii Block III/36 by the late Sweney Manasseh Oisebe has been tabled before this Honourable Court by the 2nd Petitioner. In any event, that ought to have formed part of the estate of the deceased awaiting confirmation and distribution of the late Shadrack Oichoe Oisebe's estate 18. Furthermore, land parcel No. Kisii Municipality/Block III/36 did not form part of the Estate of the late Sweney Manasseh Oisebe. See Exhibit FO-2(b) annexed to the Applicant's affidavit. Further that since the 2nd Petitioner is the administrator of the estate of the late Sweney Manasseh Oisebe who initially wrongfully and unlawfully collected the rent until his demise, she is bound to account as the administratrix. The 2nd



Petitioner is also bound to individually account for the money collected from the premises from the date of the demise of her husband to date. It was also submitted that the issue of acquisition of Land parcel No. Gesima Settlement Scheme/234 cannot be a claim between the Petitioners herein rather a claim by the estate of the late Shadrack Oichoe Oisebe against the 2nd Petitioner on one part and the legal representatives of the estate of the late Sweney Manasseh Oisebe on the other side. Further that the administrators of Sweney Manasseh Oisebe cannot be the Plaintiffs and Defendants at the same time hence the need to have legal representative who is not conflicted to commence legal proceedings against the Petitioners herein for intermeddling with the deceased's estate. The fraud committed can easily be discerned from the register (see exhibit Fl)-4) entry No's. 2 and 3 i.e, Property properly registered in the name of the actual owner by the settlement fund trustee as "Shadrack Oichoe Oisebe" (see entry no. 2) Strangely Manasseh Oisebe (see entry No. 3) notwithstanding that the late Shadrack Oichoe Oisebe was the father of Sweney Manasseh Oisebe and not one and the same person. He also argued that these critical issues cannot be determined by way of a Preliminary Objection but through a plenary trial before a competent court.

Res Judicata

5. On Res Judicata it was submitted that Section 7 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya defines the doctrine of Res Judicata in the following terms: -

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

6. In the dicta in re Estate of Riunga Nkuuri (Deceased) [2021] eKLR the court stated as follows:

“The test for determining the Application of the doctrine of res-judicata in any given case is spelt out under Section 7 of the [Civil Procedure Act](#). In Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR, the Supreme Court while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked. That is:(a) The suit or issue was directly and substantially in issue in the former suit. (b)That former suit was between the same parties or parties under whom they or any of them claim (c) Those parties were litigating under the same title. (d) The issue was heard and finally determined in the former suit. (e)The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.” Also, case of Attorney General & another ET vs (2012) eKLR where it was held that; “The courts must always be vigilant to guard litigants evading the doctrine of res judicata. by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi s NBK & Others (2001) EA 177 the court held that “parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit”. In that case the court quoted Kuloba J, (as he then was) in the case of Njanju vs Wambugu and another Nairobi HCC No. 2340 of 1991 (unreported) where he stated: If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent



jurisdiction merely because he gives his case some cosmetic face lift in every occasion he comes to court, then I do not see the use of doctrine of res judicata.....".

7. In essence therefore, the doctrine implies that for a matter to be res judicata, the matters in issue must be similar to those which were previously in dispute between the same parties and the same having been determined on merits by a court of competent jurisdiction. The court in the English case of Henderson v Henderson (1843-60) All E.R 378, observed thus:

“...Where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

8. In the case of Julia Muthoni Githinji v African Banking Corporation Limited [2020] eKLR the court stated thus:

“After a careful reappraisal of the application for injunction before the lower court, I have come to the conclusion that the application was res judicata and the entire suit was subjudice as there was an active pending suit before a court of competent jurisdiction being Nakuru ELC No. 272 of 2017. All issues raised in the suit before the subordinate court could be properly litigated in the suit pending before the ELC. The filing of the suit by the appellant in the subordinate court when she had a similar suit in the ELC Court was an abuse of the Court process which the Court cannot countenance.”

9. It was submitted that in the instant case the 2nd Respondent erroneously avers that the issue of land parcel No, Kisii Municipality/Block 111/36 has been, dealt with by the Honourable court vide its Ruling dated 21st December, 2022. Further that the issues raised in the Application for Revocation of Grant is not res judicata considering the parties in Application that led to the Ruling dated 21st December, 2022 are not the same, the Petitioners herein are conflicted having personal interests in some properties forming part of the estate of the deceased thus, are unable to properly administer the estate of the deceased and/or take steps to faceguard the estate of the deceased, in addition to the fact that there is no suit that has been filed and/or heard and determined on merit regarding land parcel No. Kisii Municipality/Block III/36 between the land parcel No. Kisii Municipality/Block III/36 between the Applicant and the Petitioners.
10. It is thus necessary that the Petitioners be substituted by other beneficiaries who have no personal interest in the estate to facilitate the filing of a constitutional Petition or normal suit on the right to property and/or on what is the Position in law regarding the land illegally acquired. In conclusion, she submitted that the grounds of the Preliminary Objection do not raise points of law and thus the preliminary Objection lacks merit and seeks the same to be dismissed with costs to the Applicant.



1st respondent / petitioner

11. The 1st respondent/petitioner filed submissions similar to those of the applicant and basically supported the Justice Mutungi in *Joel Oichoe Oisebe v Agriculture, Fisheries and Food Authority and others* [2017] eKLR.

Issue for determination.

12. I have carefully considered the objection and the submissions herein, the sole issue for determination is whether the preliminary objection is merited.

Analysis and determination

13. The threshold of preliminary objections was laid down in the case of *Mukisa Biscuits Manufacturing Ltd v West End Distributors* (1969) EA 696 where Sir Charles Newbold P. observed 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. Similarly, the Supreme Court decision in the case of *Hassan All Joho & another v Suleiman Said Shabal & 2 others* SCK Petition No 10 of 2013 [2014] eKLR held 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.”

15. Further in the case of *Hassan Nyanje Charo v Khatib Mwashetani & 3 others*, [2014] eKLR the court held that: -

“Thus, a preliminary objection may only be raised on a 'pure question of law. To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”

It is trite law that a preliminary objection must raise points of law which may summarily dispose of the case.

On the issue of Res Judicata

16. Section 7 of the *Civil Procedure Act* Cap 21 Laws of Kenya defines the doctrine of Res Judicata in the following terms: -

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”



17. In the dicta in re Estate of Riunga Nkuuri (Deceased) [2021] eKLR the court stated as follows:

“The test for determining the Application of the doctrine of res-judicata in any given case is spelt out under Section 7 of the *Civil Procedure Act*. In Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR, the Supreme Court while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked. That is; a) The suit or issue was directly and substantially in issue in the former suit. (b) That former suit was between the same parties or parties under whom they or any of them claim (c) Those parties were litigating under the same title. (d) The issue was heard and finally determined in the former suit. (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

18. In the instant case the 2nd Respondent avers that the issue of land parcel No. Kisii Municipality/Block 111/36 has been, dealt with by the Honourable court vide its Ruling dated 21 December, 2022. I have perused the court file and it's true that the issue of land parcel 36 was held in abeyance till the ownership was determined by the land court. It has been admitted that no land case has been filed in respect to that land. The though the applicant was not a party to the application which gave rise to the ruling dated 23.3.23, the said land is thus still not available for distribution and or administration herein. Ground 2 and 3 objections touching on land parcel 36 succeed as the issue of that land is thus Res judicata until such a time that the dispute will be resolved.

19. On the issue of revocation of grant raised objections to prayer 4 based on grounds 1 and 3 of the objection The Objector and the 1st respondent/petitioner Joel Oichoe Oisebe argued that there is a conflict of interest as the 2nd respondent is likely to be a defendant in a suit intended to be filed in the land court relating to land parcel no. 36 which she alleged was owned by her husband and is also alleged to form part of the estate of the deceased herein yet she is also an administrator of the estate of deceased herein husband in land court. This issue of revocation or removal of an administrator is a matter of fact which cannot be heard conclusively by way of a preliminary objection.

20. On grounds 4 and 5, there are no prayers on the face of the application regarding them and so they are not in issue.

21. In the upshot, I allow the preliminary objection on grounds 2 and 3. Each party to bear its own costs.

22. Consequently, only Prayer 4 of the application dated 24.1.25 remains for determination.

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

T.A ODERA

JUDGE

16. 1.26

Miss Theuri holding brief for Mr. Oduk for the 2nd respondent.

Miss Nyaenya for the objector

Court Assistant - Kipchirchir

Order: Response on prayer 4 of the application dated 24.12.25 be filed within 14 days from today. The applicant is granted to file a further affidavit, if need be, within 7 days of receipt of the responses. Mention on 7.5.26



Miss Theuri: We seek a copy of the ruling.

Order: Same be supplied upon payment.

