



In re Estate of Lukarito Njoroge alias Richard Njoroge alias Lokorito Kamau (Deceased) (Miscellaneous Succession Cause E031 of 2025) [2026] KEHC 321 (KLR) (13 January 2026) (Ruling)

Neutral citation: [2026] KEHC 321 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS SUCCESSION CAUSE E031 OF 2025**

DO CHEPKWONY, J

JANUARY 13, 2026

IN THE MATTER OF THE ESTATE OF LUKARITO NJOROGE ALIAS RICHARD NJOROGE ALIAS LOKORITO KAMAU (DECEASED)

BETWEEN

MARGARET WANGUI RICHARD APPLICANT

AND

HANNAH WAMATHWE 1ST RESPONDENT

PATRICK KAMAU RICHARD 2ND RESPONDENT

LAND REGISTRAR KIAMBU 3RD RESPONDENT

RULING

1. For determination is the court is the Notice of Motion application dated 21st June, 2025 in which Margaret Wangui Richard seeks the following orders:-
 - a. Spent.
 - b. That there be an interim order restraining the Respondents from selling any subject property related to estate of the Lokarito Njoroge (Deceased) pending the hearing and determination of this application.
 - c. That there be a DECLARATION that Limuru/ Bibirioni/383, Limuru/ Bibirioni / 1571 and Limuru/ Bibirioni / T.17, distributed to the 1st Respondent in trust of her eight children belong to the estate of LUKARITO NJOROGE (Deceased) and the same shall be shared out equally among the eight children.



- d. That the 3rd Respondent be and is hereby ordered to reinstate the Green card of Limuru/ Bibirioni / 383, Limuru/ Bibirioni/1571 and Limuru/ Bibirioni/ T.17 and cancel all transfers of the said parcels of land.
 - e. That the estate herein should and hereby distributed equally among the Deceased and beneficiaries herein.
 - f. That costs of the application be awarded.
2. The Application is based on the grounds set out on its face and the Supporting Affidavit sworn on 21st June, 2025, wherein the Applicant has deponed that she is a daughter and one of the bona fide beneficiaries of the Estate belonging to the Deceased, Lokarito Njoroge alias Richard Njoroge alias Lokarito Kamu, that the Succession proceedings of her Deceased father's Estate were concluded in 1980 by Public Trustee. She has also deponed that the deceased was polygamous as he had two families his Estate was equally distributed to both families with each widow holding half of the Estate in trust for her respective children. Further, the Applicant has stated that in the year 2009, without consulting other beneficiaries, the 1st Respondent, who is one of the widows subdivided and distributed the entire estate to only two dependants leaving out all others. While the 2nd Respondent is planning to sell everything and leave other beneficiaries destitute as land brokers are busy advertising the Estate. The Applicant thus seeks the orders sought to be granted so as to reserve the Estate.
 3. The Respondents have opposed the application through a Notice of Preliminary Objection dated 24th September, 2025, wherein they have raised the following grounds:-
 - a. The present application is res judicata within the meaning of Section 7 of the [Civil Procedure Act](#) (Cap 21, Laws of Kenya) the issues raised herein having already been heard and determined in Limuru Succession Application No. 2 of 2020 where a ruling was delivered on 18th February, 2021, declining to cancel the subject titles.
 - b. The orders now sought by the Applicant are therefore barred by law, the matter having been finally adjudicated by a court of competent jurisdiction and the same cannot be relitigated.
 - c. The present proceedings are incompetent, in that substantive and final reliefs sought including cancellation of registered titles and redistribution of land) cannot be granted in miscellaneous application which is a procedure meant for limited or interlocutory reliefs and not for substantive determination of succession disputes.
 - d. Consequently the Notice of Motion dated 21st June, 2025 is fatally defective, misconceived, an abuse of court process and should be struck out with costs.
 4. In response to the Preliminary Objection, the Applicant filed a Replying Affidavit sworn on 3rd October, 2025, whereby she has averred that it contains disputed issues which require to be ascertained by evidence to be adduced by the parties and the matters mentioned therein do not relate to the subject issues. She further argues that the Preliminary Objection is not based on pure issues of law and thus has not met the threshold. She urges that the court strikes off the Preliminary Objection as the same is an abuse of court process.

Analysis and Determination

5. Having read through the pleadings filed by the parties herein, the Court finds that a Notice of Preliminary Objection having been raised herein, it is only prudent that it first addressed the Notice of Preliminary Objection as it has the effect of disposing of the entire application if it is successful.



This was the court's finding in the case of Pius Kamau Kinuthia –vs- David Mueithi Kanyi & Another (Environment & Land Case No.E007 of 2023)[2024] KEELC 1625 (KLR), where it was held that:-

“ A Preliminary Objection rests on the proposition that when raised, its fundamental accomplishment will have a bearing on disposing of a matter because it raises pure points of law. It also underscores the need for prudent management of time as a court resource by summarily flagging out a frail and hopeless suit that if admitted to full trial, will be a wash of judicial time and will not serve the interest of justice. One will not be required to look elsewhere to find an answer as to whether a Preliminary Objection is sustainable or not, but to look at the pleading and discover that the suit is a non-starter.

6. On what a Preliminary Objection is, the case of Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors (1969) EA 696 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. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:-

“ 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”.

7. The Supreme Court in the case of Independent Electoral & Boundaries Commission –vs- Jane Cheperenger & 2 Others[2015]eKLR made the following observation with regard to Preliminary Objections:-

“ The true Preliminary Objection serves two purposes of merit; firstly, it serves as a shield for the originator of the Objection against profligate deployment of time and other resources. And secondly, it serves the public cause of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. 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”.

8. I have read through the Preliminary Objection in this particular case and find the same has been raised on grounds that it is res judicata and the application is seeking substantial orders which cannot issue in a miscellaneous application.
9. To begin with the latter, the court confirms that the Applicant is seeking for orders which are indeed substantive orders as they relate to distribution and transfer of the Estate of the Deceased, Lukarito Njoroge alias Richard Njoroge alias Lokarito Kamu. In the case of Rockland Kenya Limited v Commissioner General of the Kenya Revenue Authority & Another [2020] eKLR, W. A. Okwany



(J) had the following to say on the issue of a party seeking substantive orders on a Miscellaneous applications:-

“ 12. Courts have taken the position that substantive orders cannot be issued in Miscellaneous Applications. This is the position that was adopted by Limo J. in *Witmore Investment Limited v County Government of Kirinyaga & 3 Others* [2016] eKLR wherein it was held:-

“So where a party such as an applicant herein seeks an order that in effect appears to resolve with finality an issue in controversy or a contested issue, the application ceases to be interlocutory and it is a misconception to describe it as such. If the applicant wanted to move this court for a final resolution of the issues in controversy raised in the application, it should have moved this court properly in the manner provided by law.”

10. With respect to the issue of the application being res judicata, the court notes that the original proceedings in the case of *Limuru Succ. Appl No. 2 of 2020* has not been availed for the court's perusal to enable it confirm whether the issues raised therein were handled and adjudicated with finality.
11. Be that as it may, this Court finds that since substantive orders cannot issue in a Miscellaneous application, the Notice of Preliminary Objection raised is merited. The upshot is that the entire application herein is struck out with costs to the Respondents.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 13TH DAY OF JANUARY ,2026.

D. O. CHEPKWONY

JUDGE

In the presence of:

Applicant in person – present

Court Assistant- Martin/Sakina

