



REPUBLIC OF KENYA



KENYA LAW
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**Nduati & 3 others v Chui & another (Environment and Land Case
E123 of 2024) [2026] KEELC 284 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 284 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E123 OF 2024**

**TW MURIGI, J
JANUARY 21, 2026**

BETWEEN

**LYDIA NJERI NDUATI 1ST PLAINTIFF
LEAH WANJIRU MWANGI 2ND PLAINTIFF
HANNAH WAMBUI KARIUKI 3RD PLAINTIFF
JAMES KIMITI NYAMBURA 4TH PLAINTIFF**

AND

**ANTHONY CHEGE CHUI 1ST DEFENDANT
NJERI MWANGI 2ND DEFENDANT**

RULING

1. By a Notice of Motion dated 5th July 2025, brought under Order 1 Rule 10(2) and (4) of the Civil Procedure Rules, the Applicant seeks the following orders:
 - i. This Honourable Court be pleased to issue orders that Njeri Mwangi be added as the 2nd Defendant in this suit.
 - ii. This Honourable Court be pleased to direct that the Plaint be amended to include Njeri Mwangi as the 2nd Defendant.
 - iii. That the costs of this application be in the cause
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Njeri Mwangi, sworn on even date.



The Applicants' Case

3. The Applicant averred that her late husband purchased the suit property from the Plaintiffs' father and that she has been in possession for the past 44 years. She further averred that her late husband died before the property was transferred to him. She contended that she would suffer irreparable harm if an interlocutory judgment were entered. In conclusion, she urged the court to allow the application as prayed.

The Respondents' Case

4. The Respondents filed a replying affidavit sworn on 25th October 2025 by Lydiah Njeri Kimiti alias Lydiah Njeri Nduati, in opposition to the application. The deponent contends that the Applicant is a stranger because she has not presented any sale agreement for the suit property or any proof of payment as claimed.
5. She argued that possession does not necessarily imply ownership. She maintained that the ownership of the suit property had neither been contested nor disproved.
6. She admitted that her mother had filed a similar suit, HCCC No. 3898 of 1998, which abated shortly after her mother's death.
7. She contended that the application was a waste of the court's time since the Applicant had not filed any defense to support her claimed interest in the matter. Ultimately, she urged the court to dismiss the application with costs.
8. The Applicant filed a preliminary objection dated 21st November, 2024, arguing that the suit is a nullity as it was filed after the 1st Defendant's death. She asserted that the court lacks jurisdiction to hear and determine the matter and therefore the suit should be struck out.
9. The preliminary objection was canvassed by way of written submissions.
10. The Applicant filed her submissions dated 2nd May 2025, which I have duly considered. She attached a funeral program indicating that Anthony Chege Chui died on 21st November 2004.
11. As of the time of writing this ruling, the Plaintiffs had not filed their submissions as directed.

Analysis And Determination

12. The law on preliminary objections is well settled. A preliminary objection must be based on a pure point of law. In *Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors Ltd (1969) EA 696*, Law JA stated as follows:

“So far as I'm 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 submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

13. Further on, Sir Charles Newbold JA stated;

“The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a 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 points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

14. In *Oraro Vs Mbaja* (2005) eKLR Ojwang J (as he then was) described it as follows;

“I think the principle is abundantly clear. “A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and, in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears 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.”

15. For a preliminary objection to be valid, it must be based on a point of law and on facts that are not in dispute. It should not be proved by facts or evidence, nor should it address disputed facts.

16. The Applicant is challenging this court's jurisdiction on the basis that the Defendant was deceased when the suit was filed.

17. The issue of jurisdiction is a pure point of law that can determine the matter without considering the merits of the case. This Court is therefore satisfied that the Preliminary Objection is based on a pure point of law.

18. It is trite law that jurisdiction is everything, and without it, the court cannot take one step further in the case. The locus classicus on jurisdiction is the celebrated case of *Owners of Motor Vessel ‘Lillian S’ vs Caltex Oil (Kenya) Limited* (1989) eKLR, in which the Court held that:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings...”

19. Similarly, in *Samuel Kamau Macharia & Another Vs Kenya Commercial Bank Limited & 2 Others* [2012] eKLR, the Supreme Court pronounced itself as follows;

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation....”

20. A court derives its jurisdiction from *the Constitution*, legislation, or both. The jurisdiction of this court is derived from Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*.

21. The Plaintiffs instituted this suit against the Defendant vide an amended Plaint dated 24th May 2024 seeking the orders therein.

22. Although pleadings and objections are ordinarily raised by parties to a suit, courts have consistently held that issues of jurisdiction and the competence of proceedings may be raised at any stage by any person, including the court suo moto.



23. Although the proposed 2nd Defendant has not been formally joined to these proceedings, the preliminary objection relates to the court’s jurisdiction and the competence of the suit. Once the issue of jurisdiction is brought to the court’s attention, whether by a party, an intended party, or by the court on its own motion, the court must determine it at the earliest opportunity. The objection does not seek substantive relief but challenges the very existence of a competent suit. It goes to the root of the matter.
24. Where a suit is alleged to be a nullity, the court cannot decline to consider the objection merely because the person raising it has not been joined.
25. The Applicant relied on a funeral program for Anthony Chege Chui to assert that the Plaintiffs filed a suit against a deceased person.
26. It is settled law that a suit brought against a deceased person is a nullity ab initio because a deceased person lacks the capacity to be sued. Once it is established that a Defendant was deceased at the time the suit was filed, the court is divested of jurisdiction over that party.
27. In Virginia Edith Wambui Otieno v Joash Ochieng Ougo & another (1987) eKLR, the court held that a suit filed against a deceased person is incompetent and cannot be sustained.
28. Similarly, in Trouistik Union International & another v Jane Mbeyu & another (1993) eKLR, the Court of Appeal held that:

“The legal representative of a deceased person is the only person who can sue or be sued on behalf of the estate of a deceased person.”
29. Whether a person is dead is ordinarily a question of fact. The issue of a person’s death can become a point of law for the purpose of a preliminary objection once the fact of death is not contested. Where the death of a party is admitted or proved by uncontested documentary evidence, the issue of death ceases to be factual, and the legal consequences of that death become a pure point of law.
30. In the present matter, the Applicant relied on a funeral program, which is not conclusive proof of death under the law. The Plaintiffs argued that the preliminary objection is based on facts.
31. To determine the objection, the court would need to confirm whether the Defendant is deceased and whether the death occurred before the suit was filed. Such confirmation would necessarily require the production of a death certificate. This would constitute a fact-finding exercise that falls outside the scope of a preliminary objection.
32. Accordingly, the preliminary objection is devoid of merit, and the same is hereby dismissed.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 21ST DAY OF JANUARY, 2026.

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HON. T. MURIGI

JUDGE

In The Presence Of: -

Ms Wangari for the Plaintiffs

Muriuki for the proposed 2nd Defendant

Ahmed – Court assistant

