



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC E030 OF 2022 (O.S.)**

**ELIZABETH** **MUNANIE**  
**KINGOO.....PLAINTIFF**

**VERSUS**

**ALEXANDER MUTUKU MWANGANGI .....**  
**DEFENDANT**

**RULING**

1. The notice of motion before this court is dated 13/06/2025 and has been filed by the defendant's estate, which has invoked the provisions of **Sections 59, 60, and 82** of the **Evidence Act, Section 3A** of the **Civil Procedure Act, Orders 51 Rule 1 and 2, Rule 15 (b), (c), (d), and (3), and 19 Rule 2** of the **Civil Procedure Rules Cap 21** of the **Laws of Kenya**, along with all other enabling provisions of the Law. They seek the following reliefs from this court.

**a. THAT the plaintiff, Elizabeth Munanie Kingoo, be ordered to attend court to be cross-examined on whether she instructed and signed the pleadings in this suit, in particular the originating summons and supporting affidavit filed on 19/12/2022.**

**b. THAT this honourable court be pleased to strike out the originating summons and supporting affidavit filed on 19/12/2022, and to dismiss the suit herein as against the defendant.**

**c. THAT the costs of this application be provided for.**

2. The motion is supported by several grounds on its face and by the supporting affidavits of Florence Mueni Mutuku and Irene Njina Mutuku, wife and daughter of the defendant, respectively. The former serves as an administrator of his estate, and both affidavits were sworn on 13/06/2025.

3. In summary, the parties informed the court that the defendant passed away on 12/10/2018. As the suit was filed on 19/12/2022, subsequent to the defendant's death, it is considered a nullity *ab initio*. The plaintiff denies initiating the

suit and disclaims having signed or filed any court documents. Hence, this suit constitutes an abuse of the court process.

4. They submitted documents confirming the defendant's long-deceased status, noting that his estate was the subject of probate proceedings, with a certificate of confirmation of grant being granted on 30/01/2024, in **Kangundo CMSC E295 of 2021**, naming Florence Mueni Mutuku as the beneficiary of **Ndalani/Mavoloni Block 1/232 (“suit property”)**. They also tendered an extract of an alleged record of the plaintiff allegedly denouncing her signatures in these proceedings.
5. On service, the plaintiff filed a notice of preliminary objection (PO) dated 18/06/2025, where the following points of law were raised: -

***a. That the application filed by the administrators of the estate of the defendant, by the said Florence Mueni Mutuku, is bad in law because the applicant has no capacity to apply for cross-examination of the plaintiff as she has not sought leave to be substituted as the defendant as is enshrined under Section 1A 1B of the Civil Procedures Act (Cap 21) and Order 1 Rule (10) and (14) of the Civil Procedure Rules (2010) Laws of Kenya.***

***b. That the applicant's application is misconceived and bad in law in its entirety owing to the fact***

***that all the affidavits annexed therein are sworn by strangers in this suit.***

***c. That the suit was filed on 19/12/2022, and the alleged confirmation of grant was issued on 30/01/2024. At the time of filing this suit, the records at the Land Registry indicated that Alexander Mutuku Mwangangi was the proprietor of the subject plot in dispute herein.***

***d. That the allegations by the defendant that the plaintiff herein did not institute this suit cannot be sustained in this honourable court until the documents signed by the plaintiff have been taken to forensic experts and the signatures by the plaintiff are ascertained that they do not belong to the plaintiff.***

***e. That the orders sought by the defendant are not available for her.***

6. Shortly after filing the instant PO, the law firm **Ms Bamomin Advocates & Associates** filed a notice to withdraw from acting dated 10/10/2025, which is a strange document as they ought to have applied to cease acting, as stipulated in **Order 9 Rule 13** of the **Civil Procedure Rules (CPR)**. Therefore, this irregular document is hereby struck out from the record.

7. When parties appeared before this court on 19/06/2025, they were directed to canvass the motion by written submissions. Only the law firm of **Ms RSM Law LLP** for the defendant's estate complied and filed written submissions dated 12/10/2025. After carefully considering the motion, its grounds, affidavits, and the defendant's estate's submissions, the issues that arise for resolution are (a) **whether the PO has met the legal threshold**, (b) **whether a suit instituted against a deceased person is sustainable** (c) **whether the plaintiff should be cross-examined**. These issues shall be dealt with sequentially.

**a. Whether the PO has met the legal threshold**

8. This issue was addressed by the counsel for the defendant's estate. The well-cited decision of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd. (1969) EA 696** has long established the tests that a PO must satisfy, and it is vital to reaffirm the relevant principles derived from the landmark case, which articulated 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 the contract giving***

***rise to the suit to refer the dispute to arbitration ... 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.”***

9. In affirming **Mukisa Biscuit (*Supra*)**, the Supreme Court of Kenya in **Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 others [2015] KESC 23 (KLR)** emphasised the following on the threshold of a PO: -

***“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.”***

10. Thus, based on these principles, when addressing this issue, the court shall inquire whether the points of law are clear; whether the facts are settled and correct; whether there is no necessity for further ascertainment; and whether the court is not being asked to exercise its prudent discretion. Counsel has submitted that grounds (b), (c), and (d) raise matters of fact. Without belabouring the point, this court concurs with counsel,

as these grounds, including ground (e), are factual matters requiring evaluation and the presentation of evidence from the parties. Consequently, this court finds that these legal points fail.

11. Regarding ground (a), this court concludes that it satisfies the legal threshold. Since the resolution of issue (b) has a direct influence on its outcome, it shall be addressed as the final matter.

**b. Whether a suit instituted against a deceased person is sustainable**

12. Concerning this matter, as presented by the counsel representing the defendant's estate, it is now established legal doctrine that a lawsuit filed against a deceased individual is inherently null and void from the outset. This principle has been consistently affirmed in a series of judicial decisions.

In **GEETA BHARAT SHAH & 4 OTHERS v OMAR SAID MWATAYARI & ANOTHER [2009] KECA 126 (KLR)**, the Court of Appeal made the following rendition: -

***“In the result, as Bhartkumar Nathalal Shah was already dead by the time the suit was filed, we hold the view that the suit was a nullity and Mr. Oddiaga, is with respect right in conceding the appeal in respect of him on that score.”***

Lastly, [Manyange \(Deceased\) v TG \(Minor suing through her mother and next friend WMG\) \[2024\] KEHC 1083 \(KLR\)](#), in reiterating on the settled law cited several court decisions which this court concurs with:-

***'In the case of [Viktar Maina Ngunjiri & 4 others v Attorney General & 6 others](#) [2018] eKLR, the court stated as doth: -***

***“The estate of a deceased person may take over proceedings against him if that person were alive at the time the suit was filed. That notwithstanding, the estate must be made a party and authorized by the court through an executor or a personal representative. A formal application has to be filed to facilitate this. No grant of representation has been presented to court. In the instant case this cannot happen because the deceased died before the suit was filed and the representative of the estate has not been identified. Even if the representative were identified it is not possible to take over a nullity.***

***In the Indian case of C. Muttu v. Bharath Match Works AIR 1964 Kant 293 the court observed,***

***“If he (defendant) dies before the suit and a suit is brought against him in the name in which he carried on business, the suit is against a dead man and it is a nullity from its inception. The writ of summons issued in the suit by whomsoever accepted is also a nullity. Similarly, an order made in the suit allowing amendment of plaint by substituting the legal representative of the deceased as the defendant and allowing the suit to proceed against him is also a nullity. It is immaterial that the suit was brought bona fide and in ignorance of the death of such a person.”***

***In yet another Indian Case of Pratap Chand Mehta v Chrisna Devi Meuta AIR 1988 Delhi 267 the court citing another decision observed as follows,***

***“.... if a suit is filed against a dead person then it is a nullity and we cannot join any legal representative; you cannot even join any other party, because, it is just as if no suit had been filed. On the other hand, if a suit has been filed against a number of persons one of whom happens to be dead***

***when the proceedings were instituted, then the proceedings are not null and void but the court has to strike out the name of the party who has been wrongly joined. If the case has been instituted against a dead person and that person happened to be the only person then the proceedings are a nullity and even Order 1 Rule 10 or Order 6 Rule 17 cannot be availed of to bring about amendment.”***

13. Having reviewed the uncontested documents that the estate of the deceased defendant presented to this court, it is evident that the lawsuit was instituted against a person who had already passed away, as he died four years before the filing date of the suit on 19/12/2022. Guided by jurisprudence, the lawsuit against the defendant is deemed irregular and null and void. This court also finds that it lacks the necessary jurisdiction to hear this case.

#### **Whether the plaintiff should be cross-examined**

14. Flowing from the finding of issue (b), the court concludes that this relief is unwarranted, as there is no appropriate defendant available to cross-examine the plaintiff. Florence Mueni Mutuku, serving as the administrator of the defendant's estate, is not a party to these proceedings and cannot be joined as one. As raised in the PO, she lacks the capacity to

cross-examine the plaintiff. Consequently, this court finds that this prayer fails.

15. Ultimately, based on the aforementioned reasons and findings, and since the entire suit lacks validity and the plaintiff's identity has been questioned by the defendant's estate, each party shall bear its own costs associated with the motion and PO. No orders shall be issued regarding the suit itself. Consequently, the following final disposal orders are hereby issued.

***a. The plaintiff's entire suit is hereby struck out with no orders as to costs.***

***b. Each party shall bear their respective costs on the notice of motion dated 13/06/2025 and the preliminary objection dated 18/06/2025.***

***c. The file is hereby effectively marked as closed.***

Orders accordingly.

**Delivered and Dated at Machakos this 17<sup>th</sup> February, 2026.**

**HON. A. Y. KOROSS**

**JUDGE**  
**17.02.2026**

**Ruling delivered virtually through Microsoft Teams Video  
Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant

Mr. Malebe for the defendant's estate

No appearance for plaintiff

ORIGINAL