



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
FAMILY DIVISION
ORIGINATING SUMMONS NO. E033 OF 2023

**MARGARET WANJIRU NGUNJIRI (AS THE PERSONAL REPRESENTATIVE OF RUTH WANJIRU NGUNJIRI).....
PLAINTIFF**

VERSUS

GEOFFREY NGUNJIRI WAINAINA

DEFENDANT

RULING

INTRODUCTION

1. The defendant herein challenges the competence of this suit *vide* preliminary Objection dated 11th June 2025. It is contended that the Plaintiff lacks *locus standi* to present the Suit as any rights that the deceased may have had were extinguished at death. It is further urged that the plaintiff being a stranger to the contract of marriage has no *locus* to present this suit. Finally, it is urged that upon death, the applicable law in relation to a deceased person is the law of Succession Act.

2. The Plaintiff did not file a response to this Preliminary Objection. The Defendant has filed written submission dated 12th September 2025. He submits **MUKISA BISCUIT MANUFACTURING CO. LTD V WEST END DISTRIBUTORS LTD (1969) EA 969.**
3. It is submitted that absent *locus standi* the suit is a non starter, reference is made to the decision in **LAW SOCIETY OF KENYA ...VS... COMMISSIONER OF LANDS & OTHERS, NAKURU HIGH COURT CIVIL CASE No.464 of 2000; JULIAN ADOYO ONGUNGA & ANOTHER -V- FRANCIS KIBERENGE BENDERA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF FANUEL EVANS AMUDA VI) DECEASED 2016 eKLR.**
4. It is submitted that the Plaintiff should be condemned to pay costs.

ANALYSIS AND DETERMINATION

5. Notwithstanding that the Plaintiff did not respond to the Preliminary Objection, I am obligated on account of the ramifications of an order of dismissal to consider the application on its merits, specifically because the Article 159

(d) requires that the Court dispense substantive justice. This is the reason why in **Independent Electoral and Boundaries Commission v Jane Cheperenger and others (2015) eKLR**, the Supreme Court stated;

[21]...The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection- against the 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.

6. The import of the direction of the Supreme Court is that Courts should be hesitant to dismiss cases on preliminary points except in the clearest of cases. In the current case the Preliminary Objection is hinged on the fact that the defendant is the sole registered proprietor of the land, his title is unassailable especially by the Plaintiff.
7. In raising the Preliminary objection, the defendant challenges the standing of the plaintiff to present this suit as his daughter, but does not speak to her **locus standi** as the legal representative of the deceased. He makes no reference to the

provisions of the law under which the Originating Summons are presented. It is my considered view, that the provisions under which the plaintiff presents the suit do cloth her with the requisite *locus standi*. The question of whether or not her claim will be successful is a matter that needs to proceed to trial.

8. In the circumstances, I dismiss the preliminary objection. Since the plaintiff did not participate there shall be no orders as to costs.

9. The defendant having filed a reply, the matter will proceed to hearing. The plaintiff is granted leave to file further affidavit within 7 days. The matter will proceed by way of *viva voce* evidence. The Parties will file and exchange witness statements within 45 days from the date hereof. Mention before the Deputy Registrar on **21st April 2026** to confirm compliance and take further directions.

It is so ordered

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 13th day of February, 2026.

**P.M NYAUNDI
JUDGE**

In the presence of:

Fardosa Court Assistant

Ms. Wanjiru for Kamau for Defendant

ORIGINAL