REPUBLIC OF KRNYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELCL CASE NO. E119 OF 2025

JULIUS KALOKI MUUTU

SOLOMON MUUTU MUTISYA

BENATTA MUMBUA

SUSAN MUTISO (Suing as the legal administrators of the Estate of Simeon Muutu Mutisya**)::PLAINTIFF/APPLICANT**

VERSUS

CALEB AMBOGA::::::::::::::::::::::::::::1ST DEFENDANT/RESPONDENT

MARGARET WANJIRU NDEITHI::::::::2ND DEFENDANT/RESPONDENT

MWANZIA MUUTU MUTISYA::::::::::::3RD DEFENDANT/RESPONDENT

RULING

The 2nd Defendant's Counsel raised a preliminary objection dated the 27th October 2025law against the whole suit on the following grounds inter alia;

1. The whole of these proceedings are incompetent and amount to a gross abuse of the process of this Honorable court.
2. The Plaintiffs lack locus standi to bring this suit as a whole and are guilty of non-disclosure of material facts.
3. The suit ought to be dismissed in limine for want of jurisdiction.

This court has considered the preliminary objection and the submissions therein. The Respondent submits that the Applicants have no *locus standi* to institute this suit and the same is *res judicata*. The leading decision on Preliminary Objections is the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd. (1969) EA 696, where the Court held as follows:

> *"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".*

Similarly, the Supreme Court in Independent Electoral & Boundaries Commission vs Jane Cheperenger & 2 Others (2015) eKLR made the following observation as relates 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."*

In the case of Alfred Njau & Others vs City Council of Nairobi (1982) KAR 229, the court held as follows;

> *"The term locus standi means a right to appear in court and conversely to say that a person has no locus standi means that the has no right to appear or be heard in such and such proceedings."*

Similarly, in the case of Law Society of Kenya vs Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000, the court held that;

> *"Locus standi signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in court of law."*

Therefore, locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard

because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.

In the case of Kenya Bankers Association vs Kenya Revenue Authority,2019 eKLR the court had this to say on the issue of *Res sub judice*;

> *‘‘in addition, it is clear that the maters in issue in the suits or proceedings are directly and substantially the same. The parties in the suits or proceedings are the same. The ex parte applicant herein, is litigating on behalf of its 47 members, some of whom are parties in the existing suits. The suits are pending in the High Court which has jurisdiction to grant the relied claimed.*
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> *A cursory look at the prayers sought in this case show that they relate to the same subject matter. However, the principle of sub judice does not talk about the ‘‘prayers sought’’ but rather ‘‘the matter in issue’’ I find that the matters in issue in the suits are substantially the same. In Re the matter of the Interim Independent Electoral Commission, the Supreme Court cited with approval the Australian decision where it was held: -*
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> *‘‘…. we do not think that the word ‘‘matter’’ …means a legal proceeding, but rather the subject matter for determination in a legal proceeding. In our*

opinion there can be no matter…unless there is some right, duty or liability to be established by the determination of the court…''

Section 7 of the Civil Procedure Act Provides

"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."

Expounding further on the essence of the doctrine this Court in John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others (2015) eKLR pronounced itself as follows;

"The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of

judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably."

The 2nd Defendant submitted that in CMELC 188 of 2018 and ELCA No. 16 of 2023 the 2nd Defendant had sued the 1st and 3rd Defendant and the Land Registrar in respect of ¾ and acre of LR Donyo Sabuk/Komarock Block 1/18279 currently registered in the name of the 1st Defendant herein. The 2nd Defendant claimed that the 1st Defendant had fraudulently acquired her portion and amalgamated it in his one acre. During the trial in the lower court the 1st and 2nd Plaintiff testified in support of the 1st Defendant and against the 2nd Defendant and they have concealed this material fact. The matter is re judicata and they have no locus to bring this suit. The Respondent admits that these cases exist but are distinct as the Plaintiff in this suit is the estate of Simeon Muutu Mutisya represented by the administrators of the estate. That the fact that three of the beneficiaries appeared as witnesses in those matters did not make them parties therein.

I have perused the pleadings of the above- mentioned cases and find that the parties are the similar and the subject matter is the same. This is informed by the Plaintiff's own pleadings and is not disputed. I find from the pleadings that the 1st

and 2nd Plaintiffs testified in the lower court matter and have now metamorphosized to become Plaintiffs. The matter went on appeal and judgement was delivered on the 23rd September 2025, this matter is clearly res judicata. I find the preliminary objection is merited and I uphold the same. I find this suit is an abuse of the court process and not merited and is struck off with costs to the 2nd Defendant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24TH DAY OF FEBRUARY 2026.

N.A. MATHEKA

JUDGE