



**Chege v Njaga (Environmental and Land Originating Summons
E018 of 2023) [2025] KEELC 5589 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5589 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E018 OF 2023
MN GICHERU, J
JULY 28, 2025**

BETWEEN

JOYCE KABURA CHEGE PLAINTIFF

AND

AUSTIN MACHARIA NJAGA DEFENDANT

RULING

1. This ruling is the preliminary objection dated 13-6-2024. The preliminary objection reads as follows.

“Take notice that the Defendant herein shall on the hearing dated of the suit raise objection in limine on the ground that the Plaintiff has no locus to institute this suit.

Wherefore the said Defendant prays that the objection be sustained and the suit be struck out with costs to the Defendant.”

2. Counsel for the parties were to file written submissions but the only ones that I see are those by the Defendant. The Defendant’s counsel in the submissions dated 20-6-2025 urges that the Plaintiff’s suit is res judicata as the subject property has been subject to litigation by two courts of similar and competent jurisdiction.

3. I have carefully considered the preliminary objection in its entirety and I find that it has no merit for the following reasons. Firstly, I have not seen the judgment in the succession cause. It is not part of these proceedings. In paragraph 9 of the affidavit dated 20-8-2024, the Defendant states as follows.

“That the said Chege Mugwe (deceased) did not object to the Succession proceedings filed by both Njaga Chege(deceased) and myself as the property belonged to Chuba Chege(deceased) at all materials times”

This means that Chege Mugwe the husband of the Plaintiff was never heard by the Succession Court.



4. Secondly, the outcome of ELC Case No. 171 of 2015 at Nairobi is not known. It was upon the Defendant to file this outcome in order to properly anchor his preliminary objection on it. It is not known if the suit was heard and determined on merit.
5. Thirdly, High Court Civil Appeal Case No. 366 of 2009 clearly stated both the Kiharu Land Disputes Tribunal and Nyeri Provincial Land Appeals Committee did not have jurisdiction to deal with the dispute. The learned Judge stated as follows at the bottom of page 3 of the judgment.

“In my view, the dispute concerned the ownership of the 2 acres of the land which was not within the jurisdiction of the land tribunal.”

Then at page 4 of the judgment at paragraph 2 the learned Judge continues,

“In the end, I find that the Appeals Committee had no jurisdiction to hear the claim. The award dated 21st May 2009 is invalid...”

The learned Judge did not himself resolve the dispute.

6. Fifthly, even though the Defendant depones at paragraph 5 of the affidavit dated 20-8-2024 to have refunded the so called lease amounts in 1996, the receipts have not been attached.
7. From the above, it is clear that the Plaintiff’s claim was not heard by the ELC Court at Nairobi, it was not heard by the Succession Court, it was heard by the Land Disputes Tribunal at Kiharu and the Appeals Committee at Nyeri but the decision which was in favour of the Plaintiff’s husband was nullified by the High Court at Nyeri for lack of jurisdiction by the Land Disputes Tribunal and the Appeals Committee.

In short therefore, this claim has never been heard and determined on merit by court or a tribunal which has jurisdiction.

8. It goes without saying that the jurisdiction of the Environment and Land Court is different from that of the probate and administration Court. The ELC’s jurisdiction is limited to disputes relating to the environment, use of, occupation of and title to land. This dispute is about the use of, title to and occupation of L.R. No. Loc.8/Kari-Karuru/394. None of the pleadings on record shows that this dispute has been heard and determined by a court of competent jurisdiction. That is what the Defendant failed to file to support his notice of preliminary objection.
9. A preliminary objection can only be successful if it is based on a pure point of law. It should not involve disputed facts or require evidence. It consists of a point of law which has been pleaded or arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit. In *Oraro v. Mbaya* [2005] eKLR, it was held as follows.

“A preliminary objection cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

In the case of *IEBC v Jane Cheperenger and 2 Others* [2015] eKLR, the Court of Appeal held,

“A preliminary objection must be clear, specific and must not invite the court into determining contested matters.”

10. In this case, there are many facts that have to be ascertained as per paragraphs 4,5 and 6 above.



For the above stated reasons, I dismiss the preliminary objection dated 13-6-2024 with costs to the Plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 28TH DAY OF JULY, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Absent

Defendant's Counsel - Miss Wambui

