

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT FAMILY MISCELLANEOUS CASE NO. E017 OF**

**2022**

**IN THE MATTER OF THE ESTATE OF JOSEPH KANYI**

**(DECEASED)**

**SUSAN KANYI.....APPLICANT**

**VERSUS**

**STEPHEN KININI WANG'ONDU.....1<sup>ST</sup>**

**RESPONDENT**

**REGISTRAR OF LANDS NYERI.....2<sup>ND</sup>**

**RESPONDENT**

**RULING**

1. The 1<sup>st</sup> Respondent **STEPHEN KININI WANG'ONDU** has filed this

Notice of Preliminary Objection dated **20<sup>th</sup> August 2024**.

The same was canvassed by way of written submissions.

The Applicant filed the written submissions dated **16<sup>th</sup> June**

**2025** whilst the 1<sup>st</sup> Respondent despite being granted an opportunity to do so did not file any submissions.

2. The Succession Cause relates to the estate of the late **JOSEPH KANYI**

(hereinafter '**the Deceased**') who died intestate on **14<sup>th</sup> January 2000**. The estate of the Deceased was said to comprise of the two parcels of land known as **LR. No. AGUTHI/GATHAITHI/156** and LR No. **AGUTHI/GATHAITHI/213** (hereinafter referred to as the '**Suit Properties**'). Grant of representation to the estate was made to the widow **EVA KANYI** on **12<sup>th</sup> July 2004** and the said Grant was duly confirmed on **12<sup>th</sup> July 2006**.

3. The Applicant **SUSAN KANYI** a daughter of the Deceased had filed an Amended Summons dated **1<sup>st</sup> July 2024** seeking the following orders;-

**“1. This Honourable Court be pleased to make a declaration that the registration of Stephen Kinini Wang’onde (deceased) as the proprietor of L.R. No. AGUTHI/GATHAITHI/156**

**and L.R. No. AGUTHI/GATHAITHI/213 is null and void.**

- 2. That this Honourable Court be pleased to make a declaration that JOSEPH KANYI (deceased) is the lawful owner of LR No. AGUTHI/GATHAITHI/156 and LR. No. AGUTHI/GATHAITHI/213 and order the 2<sup>nd</sup> Respondent to effect the same in the Registry of Lands.**
- 3. That this Honourable Court gives an order for cancellation of the title deeds issued to STEPHEN KININI WANG'ONDU (deceased) on 16<sup>th</sup> August 2010.**
- 4. That a permanent injunction be issued restraining the 1<sup>st</sup> Respondent from entering remaining on or developing or in any way interfering with all that land known as L.R. No. AGUTHI/GATHAITHI/156 and LR. NO. AGUTHI/GATHAITHI/213**

**5. That costs herein be borne by the Respondents.”**

4. In response to this application the 1<sup>st</sup> Respondent filed this Preliminary objection which was premised upon the following grounds:-

**“1. THAT this being a dispute primarily concerning ownership of land and seeking cancellation of a Title Deed in favour of a third party, the High Court sitting in its Probate Division lacks jurisdiction pursuant to Article 162(2) (b) of the Constitution and Sections 13 (1) and (2) of the Environment and Land Court Act to entertain the Miscellaneous Application.**

**2. THAT this Court directing the Applicant on 6<sup>th</sup> June 2024 to amend her pleadings to reflect the correct description of the 1<sup>st</sup> Respondent, the amendment so done has not cured the “misdescription” unless the name (s) of the Personal Representatives are**

**indicated and in the circumstances, the 1<sup>st</sup> Respondent is not a legal person capable of being sued thereby divesting the jurisdiction of this Court to entertain the Miscellaneous Application.”**

### **ANALYSIS AND DETERMINATION**

5. I have carefully considered the Notice of Preliminary Objection filed in this cause as well as the written submissions filed by both parties.
6. A Preliminary Objection was described in **Mukisa Biscuits Manufacturing Co. Ltd Vs West End Distributors Ltd (1969) EA 696** to mean:-

**“So far as I am 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 a submission that the parties are bound by the contract giving**

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

7. Further Sir Charles Nebbold, JA stated that:-

**“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 had 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 not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”**

8. In the application dated **1<sup>st</sup> July 2024** the Applicant sought for orders declaring that the registration of the 1<sup>st</sup> Respondent as proprietor of the suit land was null and void. The Applicant further sought for a declaration that the Deceased was the lawful owner of the suit properties. She prayed that the title Deeds issued in the name of the 1<sup>st</sup>

Respondent be cancelled and that a permanent injunction be issued to restrain the 1<sup>st</sup> Respondent from interfering with the suit properties.

9. The dispute revolves around whether the suit property belongs to the estate of the Deceased and whether the sale of said properties to the 1<sup>st</sup> Respondent was lawful. In other words the dispute revolves around “**ownership**” of the said property.
10. This court is sitting as a probate Court with the mandate to overseeing the distribution of the estate of the Deceased to the genuine beneficiaries. In the case of **PRISCILLA NOUBI & ZIPPORAH MUTIGA -VS- GERISHON GATOBU MBUI [2013] eKLR** it was held that  
**“The primary duty of the Probate Court is to distribute the estate of the Deceased to the rightful beneficiaries. As of necessity the estate property must be identified.”**
11. The orders which the Applicant seeks in her application dated **15<sup>th</sup> July 2024** which include cancellation of Title Deed are substantive orders which will affect the ownership

status of the two properties. These are orders which this Court has no jurisdiction to make.

12. Matters relating to the ownership use and occupation of land have now under **Article 162** of the **Constitution of Kenya 2010** been mandated to be determined by a specialized court being the **Environment and Land Court ('ELC')**. **Section 13** of the **Environment and Land Court Act** provides for the jurisdiction of that court as follows:-

### **13. Jurisdiction of the Court**

**(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.**

**(2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes -**

- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land. [Rev. 2012] No. 19 of 2011  
**Environment and Land Court 9 [Issue 1]**

13. Therefore, the correct and proper forum before which Applicant ought to file suit over the 2 properties is the **ELC**. The **Environment and Land Court** is the only court exclusively mandated by law to determine questions of '**ownership**' of the land.

14. In **RE ESTATE OF STONE KATHUBI MUINDE (Deceased)** [2016] eKLR Hon. Justice William Musyoka held that:-

**“Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with provisions of the Civil Procedure Act and the Civil Procedure Rules. This could mean filing suit at the magistrate’s courts, or at the Environment and land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.”** [Own emphasis]

15. Based on the foregoing I find that the preliminary objection which raised the question of jurisdiction has merit and the same is allowed. The summons dated **1<sup>st</sup> July 2024** is struck out. The Applicant is at liberty to pursue the issue in the ELC. Each party to meet their own costs.

**Dated in Nyeri this 19<sup>th</sup> day of March 2026.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

ORIGINAL