



**Kagunda v Watari & 5 others (Environment and Land Miscellaneous Case E033 of 2025) [2026] KEELC 1613 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1613 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E033 OF 2025**

**CK YANO, J**

**MARCH 19, 2026**

**BETWEEN**

**BEATRICE WAMBUI KAGUNDA ..... APPLICANT**

**AND**

**MARY WAMBUI WATARI ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPHAT KIHARA MWATHENDU ..... 2<sup>ND</sup> RESPONDENT**

**IBRAHIM THUKU THANG'A ..... 3<sup>RD</sup> RESPONDENT**

**THE DIRECTOR BRIGHT ACADEMY ..... 4<sup>TH</sup> RESPONDENT**

**ALICE WANJIKU GITHAIGA ..... 5<sup>TH</sup> RESPONDENT**

**JOHNSON KAMAU NG'ANG'A ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant herein Beatrice Wangui Kagunda filed a Notice of Motion dated 21<sup>st</sup> July, 2025 against the respondents herein seeking the following orders:-
  - a. Spent.
  - b. That there be and is hereby orders that all the respondents, their servants, agents or any other person howsoever acting under their authority are hereby restrained from selling, offering for sale, transferring or any manner of transactions whatsoever with the property of the estate of the late Simeon Kaniau Kuria Known As Eldoret Municipality Block 11/46.
  - c. That this Honourable court do issue eviction orders against Respondent's, their servants, agents and any other persons whomsoever acting under their authority.



- d. That this Honourable court do declare the Respondents', and howsoever acting under their authority as trespassers on a private property known as Eldoret Municipality Block 11/46 belonging to the Applicant's deceased father.
  - e. That such other orders be made as are just and expedient.
  - f. That costs be in the cause.
2. The application is premised on the grounds that the applicant is the daughter to the late Simeon Kamau Kuria who is the proprietor of the property known as Eldoret Municipality Block 11/46 and the applicant is also one of the beneficiaries of the said property together with her siblings.
  3. The application is further supported by the affidavit sworn by the applicant on 21<sup>st</sup> July, 2025 in which she annexed copies of certificate of confirmation of grant in Eldoret High Court Succession Cause No. 218 of 2017, lease title and demand letters.
  4. In affidavits of service sworn by Daniel Shiraho, a process server, on various dates, the process server stated that he received the application, supporting affidavit and annexures all dated 21<sup>st</sup> July, 2025 from the applicant with clear instructions to effect service upon the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents herein, and on 1<sup>st</sup> August, 2025, with the applicant's directions, he travelled to Mwanzo Shopping Centre-Uganda Highway where he met each of the respondents herein in person, and after explaining to each of them the purpose of his visit, he effected service upon them and each took and acknowledged the service by retaining his or her copies but declined to sign the principal copies. That the respondents were harsh and even threatened to beat up the process server should he not vacate the said place which he stated he adhered to. He therefore returned the principal copy to court allegedly duly served.
  5. The Estate of Mary Wambui Watari herein raised a Notice of Preliminary Objection dated 3<sup>rd</sup> February, 2026, seeking to have the application dated 21.07.2025 struck out on the following grounds That:-
    - i. A deceased person has no legal personality and the application is therefore incompetent, fatally defective and a nullity ab initio.
    - ii. The application discloses no cause of action known in law and therefore the orders sought cannot legally issue.
    - iii. No substantive suit has been filed to warrant consideration of the prayers sought.
    - iv. There is no nexus between the estate of Mary Wambui Watari and the property in issue, that is, Eldoret Municipality Block 11/46. The estate of Mary Wambui Watari is separate and distinct from the subject property.
    - v. The application before the court is alien in law and offends the Civil Procedure Rules, 2010 and the Civil Procedure Act, Cap 21.
    - vi. This court lacks jurisdiction to entertain the instant application.
    - vii. The application is an abuse of the court process and should be struck out with costs.
  6. When this matter came up in court on 23.02.2026 for directions on the application dated 21.07.2025, counsel for the 3<sup>rd</sup> respondent and 1<sup>st</sup> respondent informed the court that the application having been instituted against deceased persons, the same could not be sustained and thus urged the court to strike out the application against the 3<sup>rd</sup> and 1<sup>st</sup> respondents respectively.



7. In response to the submission made by the counsel, the applicant who was appearing in person, admitted that the 1<sup>st</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondents were all deceased and added that she had also instituted the proceedings herein on behalf of the estate of her deceased father. This was despite the fact that from the pleadings filed, the same had been filed in her own name.
8. This court thereafter issued directions on the ruling date on the objection raised by the various parties as well as the notice of preliminary objection filed on behalf of the 1<sup>st</sup> respondent.

**Analysis and Determination:**

9. From the foregoing, it is my considered opinion that the main issue arising for determination is whether the PO dated 03.02.2026 is merited on account of: -
  - i. Whether the present application and proceedings can be sustained against deceased persons.
  - ii. Whether the applicant has the requisite capacity to institute the present proceedings.
  - iii. Who shall bear the costs of the P.O.

**Whether the present application and proceedings can be sustained against deceased persons**

10. The law on what constitutes a preliminary objection was outlined in the case of Mukhisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd 1969 E.A. 696, where the Court defined Preliminary Objection as follows;

“...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.”
11. The preliminary objection herein has been raised on among other grounds that the present application is incompetent, null and void on the basis that the same has been brought against deceased persons.
12. It is on that account that counsel for the 1<sup>st</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondents contends that the present application raises no cause of action against the said 1<sup>st</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondents and thus cannot be sustained against them. They consequently urged the court to strike out the suit against them.
13. It is not in dispute that the 1<sup>st</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondents are since deceased. The 1<sup>st</sup> respondent died on 19.02.2008, the 3<sup>rd</sup> respondent died on 22.01.2011 while the 6<sup>th</sup> respondent died on the 03.01.2018, way before the filing of the present suit.
14. The question that therefore follows is whether the present application and proceedings can be sustained against the said 1<sup>st</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondents.
15. My answer to the above is in the negative. It is trite law that no cause of action can be sustained against a deceased person. A deceased person lacks the legal capacity to be sued. Any action against such a deceased person should be brought against their estate.
16. In the premises, it is the finding of this court that the present application and proceedings cannot be sustained against the 1<sup>st</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondents who are since deceased.



**Whether the applicant has the requisite capacity to institute the present proceedings;**

17. On her own admission in court on 23.02.2026, the applicant stated that she had instituted the present proceedings on behalf of the estate of her late father. However, from a cursory look at the suit and the pleadings filed herein, the same shows that the suit has been filed in her own name.
18. Thus, the question that follows is whether the applicant has the requisite capacity to file the present suit on behalf of her late father's estate.
19. From a look at the application and the annexures in the supporting affidavit, it is evident that succession proceedings were instituted and concluded in respect to the estate of Simeon Kamau Kuria and the Grant thereto confirmed.
20. However, no such grant has been placed before this court and I am therefore unable to ascertain whether the applicant herein was indeed the duly appointed administrator or whether the application has been brought in respect to her share entitlement as a beneficiary of the said estate. As already stated hereinabove, the applicant admitted that she instituted the proceedings on behalf of the estate of her deceased father, but their pleadings indicate otherwise. The general rule is that suits and actions must be prosecuted and against living parties.
21. The issue on the capacity of a party to sue goes to the root of the court's jurisdiction, and if a suit is brought on behalf of a deceased person by a litigant who has no grant of letters of administration the same is a nullity from its inception.
22. The upshot of the above is that the preliminary objection is merited. The present application cannot be sustained against the respondents and the same is thus struck out.

**Costs;**

23. It is a well settled principle that costs follow the event unless the court directs otherwise.
24. In this case, having held that the notice of Preliminary Objection is merited I find that the respondents are entitled to the costs.

**Conclusion:**

25. In view of the foregoing, it is the finding of this court that the Notice of Preliminary Objection dated 3<sup>rd</sup> February, 2026 is merited.
26. Consequently, the applicant's suit vide the Notice of Motion Application dated 21<sup>st</sup> July, 2025 is hereby struck out.
27. Costs of the application and the preliminary objection to be borne by the applicant.
28. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 19<sup>TH</sup> DAY OF MARCH, 2026.**

**HON. C.K. YANO**

**JUDGE**

Ruling delivered in open court/virtually in the presence of:-

The Applicant present in person.

Mr. Kinyanjui for 3<sup>rd</sup> Respondent.



Ms. Chebet for 1<sup>st</sup> Respondent.

Ms. Satia holding brief for Mr. Kitiwa for 5 & 6<sup>th</sup> Respondents.

No appearance for 2<sup>nd</sup> & 4<sup>th</sup> Respondents.

Court Assistant – Laban

