

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT NAKURU
ELC MISCELLANEOUS APPLICATION NO. E003 OF 2026

JAMES MURGOR

APPLICANT

VERSUS

FRANCIS SIRMA KIOS.....

RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion dated 19th January 2026 brought under **Section 4 of the appellate Jurisdiction Act, Order 22 Rule 6 & 7 (2), Order 51 Rule 1 of the Civil Procedure Rule and Section 3A, 1A and 1B of the Civil Procedure Act).**
2. It seeks orders:
 - (1) Spent
 - (2) That this honorable court be pleased to order the Office Commanding Station (O.C.S) Subukia to provide security during sub-division and or survey of the property known as Waseges/Nyamanithi Block 4/57.
 - (3) Costs of this Application be provided for.

3. The grounds are on the face of the Application and are set out in paragraphs a to h.
4. The Application is supported by the affidavit of James Kipkoros

Murgor, the Applicant sworn on the 19th January 2026.

5. In response to the Notice of Motion, the Respondent filed a Notice of Preliminary Objection dated 10th February 2026 citing six(6) grounds.

The main ground is that this Honorable Court is functus officio

and lacks jurisdiction to entertain the present application, the

suit having been instituted without authority as provided under paragraph 82(a) of the Law of Succession Act Cap 160 Laws of Kenya.

6. The Notice of Motion was canvassed by way of written submissions.
7. The Applicant's submissions are dated 16th February 2026. They raise three issues for determination;
 - i. Whether the OCS Subukia should be ordered to provide security during the sub-division and or survey of the property know as Wasege/Nyamamithi Block 4/57.

- ii. Whether the preliminary objection dated 10th February, 2026 by the Respondent is merited.
- iii. Who should bear the Costs of the suit.

8. Counsel submitted that the High Court in **Civil Suit No.151 of 2004; Francis Sirma Arap Koros vs Kibore Sigilai Tele**

held that the registration of the Respondent's father was fraudulent and dismissed the suit and allowed the counter claim.

The Honorable court directed that the Land Registrar, Nakuru do rectify the register by cancelling the name of the Respondent father and substituting thereof the name of the Applicant's father.

9. It is also submitted that the said Judgment has not been set aside as the Appeal to the Court of appeal and the subsequent applications were all dismissed.

10. The Applicant further submitted that the Respondent has on several occasions interfered with the Applicant's quest to subdivide the property and attempts to have a surveyor have been met with resistance since the Respondent hires goons to curtail the process.

Reliance is placed on the case of **Wildlife Lodges Ltd Vs County Council of Narok and Another [2005] 2 EA 344**

(HCK); Central Bank of Kenya & Another Vs Ratilal Automobiles Limited & Others Civil Application No.Nai 257 of 2006.

11. Counsel submitted that the Preliminary Objection is not merited because the Applicant obtained Grant of letters of Administration before filing the suit on behalf of his Deceased Father.

Reliance is placed on the case of **Trouistik Union International & Another vs Jane Mbeyu & Another[2008]**

IKLR (G&F) 730.

The Applicant prays that the application be allowed.

12. The Respondent's submissions are dated 10th February 2026.

He submitted that a litigant ought to obtain Limited Grant ad litem or Grant of letters of Administration intestate before filing a suit on behalf of the estate of deceased. He has put forward the cases of **Juliana Adoyo Ongunga & Another vs Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi (deceased) Trouistik Union Internatonal & Another Vs Jane Mbeyu & Another(supra);Wallace Kinuthia Vs Anthony Ndungu Muongi & 3 others [2013] eKLR.**

13. He prays that the Application be struck out with costs for lack

of locus as the subject property is an Estate of a deceased person and the Respondent does not have the said authority.

14. I have considered the Notice of Motion, the affidavit in support, the Preliminary Objection herein, and the written submissions.

15. It is not in dispute that the Judgment delivered in **HCCC**

NO.151 of 2004; Francis Sirma Arap Koros vs Kibore Sigilal Tele has never been set aside. The Appeal and the subsequent applications were dismissed.

16. These facts have not be rebutted by the Respondent. The main contention is that the Applicant herein lacks the *locus standi* to bring this application.

17. The Applicant has demonstrated that he is the legal representative of the Estate of his late father.

18. I find merit in this Application and grant the orders sought namely: -

(a) That the Officer Commanding Station Subukia Police Stations hereby ordered to provide security during the sub-division and or survey of the property known as Waseges/Nyamamithi Block 4/57.

(b) That there be no orders as to costs.

**Ruling dated, signed and delivered virtually at Nakuru this
29th day of April 2026.**

L KOMINGOI

JUDGE

In presence of :-

Mr Bitok for the Applicant

The Respondent in person

Court Assistant: Derick