



**Siele (Suing both in his Personal Capacity as well as Administrator of the Estate of Taprokoï w/o Kipsiele Tele (Deceased)) & another v Bett alias Charles Kipsang Bett (Sued in his Capacity as Administrator of the Estate of James Maroboi Siele alias Maroboi Siele (Deceased)) & 4 others (Environmental and Land Originating Summons E001 of 2024) [2025] KEELC 5514 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5514 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2024**

**LA OMOLLO, J  
JULY 24, 2025**

**BETWEEN**

**PHILIP KIPROTICH A SIELE (SUING BOTH IN HIS PERSONAL CAPACITY AS WELL AS ADMINISTRATOR OF THE ESTATE OF TAPROKOI W/O KIPSIELE TELE (DECEASED)) ..... 1<sup>ST</sup> APPLICANT**  
**BENARD RONO (SUING IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF JOHANA KIPRONO SIELE (DECEASED)) ..... 2<sup>ND</sup> APPLICANT**

**AND**

**CHARLES BETT ALIAS CHARLES KIPSANG BETT (SUED IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF JAMES MAROBOI SIELE ALIAS MAROBOI SIELE (DECEASED)) ..... 1<sup>ST</sup> RESPONDENT**  
**HENRY KIPKOECH BETT ..... 2<sup>ND</sup> RESPONDENT**  
**CHEROTICH SIELE ..... 3<sup>RD</sup> RESPONDENT**  
**MARY CHEMUTAI SIELE ..... 4<sup>TH</sup> RESPONDENT**  
**VINCENT KIPLANGAT BETT ..... 5<sup>TH</sup> RESPONDENT**



## RULING

### Introduction.

1. This ruling is in respect of the 1<sup>st</sup> Respondent's preliminary objection dated 10<sup>th</sup> November, 2024. It is on the following ground;
  - "i. That it contravenes the provision of jus Accrescend (sic) or the survivorship doctrine as provided in the Registration of *Land Act*."

### Factual Background.

2. The Applicants commenced the present proceedings vide the Originating Summons dated 30<sup>th</sup> May, 2024. It was amended on 26<sup>th</sup> July, 2024. They seek the determination of the following questions;
  - a. Whether there exists a trust relationship between the Applicants and the initial registered proprietors of LR No. Kericho/Kimulot/601.
  - b. Whether there has been breach of trust by the registered proprietors of LR No. Kericho/Kimulot/601 on dealings pertaining the said land parcel, sub-divisions (if any) and transfer; inclusive. (sic)
  - c. Whether the Applicants and by extension all the dependants (sic) of one Kipsiele Tele (Deceased) are entitled to all that property known as LR No. Kericho/Kimulot/601 by virtue of trust, if any. (sic)
  - d. That the Applicants are entitled to costs of this suit.
3. As at the time of writing of this ruling, the Respondents had not filed their responses to the Originating Summons.
4. On 10<sup>th</sup> December, 2024 the Court issued directions that the Preliminary Objection under consideration be heard by way of written submissions.
5. The matter was mentioned on 10<sup>th</sup> February, 2025 to confirm filing of submissions and on 4<sup>th</sup> March, 2025 it was reserved for ruling.

### Issues for Determination.

6. The Applicants filed their submissions on 3<sup>rd</sup> March, 2025 while the Respondents did not file any submissions.
7. The Applicants submit that the suit property was initially registered in the joint names of Taprokoi w/o Kipsiele Tele (deceased) and Maroboi Siele (deceased).
8. The Applicants also submit that the parties in this suit are descendants of Kipsiele Tele (deceased). Taprokoi w/o Kipsiele Tele (deceased) was the wife of Kipsiele Tele (deceased) while James Maroboi Siele (deceased) was their eldest son.
9. The Applicants further submit that Kipsiele Tele (deceased) had three wives. Chebobwang w/o Tele who lives on land parcel No. Kericho/Tebesoni/142, Taprokoi w/o Kipsiele Tele alias Recho Cheptonui Tele who lived on land parcel No. Kericho/Kimulot/601 and Zippora w/o Kipsiele Tele (deceased) who lived on land parcel No. Kericho/Kimulot/602.



10. It is the Applicants submissions that the 1<sup>st</sup> Applicant is the son of Taprokoi w/o Kipsiele Tele (deceased). Taprokoi w/o Kipsiele Tele (deceased) lived with her children on the suit parcel until her demise in the year 2003. The 1<sup>st</sup> Applicant's brothers namely James Maroboi Siele (deceased), Philip Kiprotich Siele, Johana Kiprono Siele (deceased) continued living on the said parcel of land after her demise.
11. It is also the Applicants submissions that their deceased father acquired land parcel No.Kericho/Kimulot/601 but at the time of his death in the year 1952, land adjudication was yet to be completed.
12. It is further the Applicants submissions that upon completion of the adjudication exercise, the 1<sup>st</sup> Applicant's elder brother one James Maroboi Siele (deceased) registered himself alongside their deceased mother as co-owners of the suit parcel. He was registered as the eldest male family member.
13. The Applicants submit that the suit parcel is family land even though James Maroboi Siele (deceased) was registered as co- owner.
14. The Applicants also submit that the 1<sup>st</sup> Respondent commenced succession proceedings with regard to the estate of James Maroboi Siele (deceased) without disclosing their (Applicants) interests.
15. The Applicants further submit that in the year 1999, their deceased mother obtained a consent from the Land Control Board to have the suit property sub-divided equally between the 1<sup>st</sup> Applicant, James Moroboi Siele (deceased) and Johana Kiprono Siele (deceased).
16. It is the Applicants submissions that the proposed subdivision was not completed due to financial constraints and their deceased mother's ill health.
17. After giving the above detailed background, the Applicants submit on the following issues;
  - a. Whether the preliminary objection dated 10<sup>th</sup> November, 2024 is merited.
  - b. Whether the doctrine of survivorship applies in the circumstances.
18. On the first issue, the Applicants rely on the judicial decisions of Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696, Moses Mbatia v Joseph Wamburu Kihara [2021] eKLR and submit that the main issue for determination in the present proceedings is whether the suit parcel is being held in trust for them.
19. The Applicants also submit that the 1<sup>st</sup> Respondent's preliminary objection is premised on the doctrine of Jus Accrescendi (survivorship).
20. The Applicants further submit that there are competing claims between the parties which require evaluation of evidence.
21. It is the Applicants submissions that the Court has to probe evidence to determine whether the doctrine of survivorship applies in this suit and it is therefore not a pure point of law that can be determined through a preliminary objection.
22. The Applicants rely on Section 28(b) of the *Land Registration Act* and submit that the fundamental issues raised by the parties in this case cannot be determined at the preliminary stage. They require the presentation of evidence for the dispute to be resolved.
23. The Applicants rely on the judicial decision of Oraro vs Mbaja (2005) 1KLR 141 and submit that the preliminary objection raises a question of fact.



24. With regard to the second issue, the Applicants reiterate that land parcel No. Kericho/Kimulot/601 is registered in the names of James Maroboi Siele (deceased) and Taprokoi w/o Kipsiele Tele (deceased).
25. The Applicants submit that they were registered as tenants in common and add that had they been registered as joint tenants; the register would have indicated so.
26. The Applicants also submit that the register states that the suit property is held in half undivided shares and therefore the doctrine of survivorship is inapplicable.
27. The Applicants rely on the judicial decisions of Josephat Thuo Githachuri v James Gaitho Kibue & another; Gladys Nduta Mbugua (Interested Party) [2021] eKLR, Moses Bii v Kericho District Land Registrar & another [2015 eKLR in support of their submissions.
28. The Applicants conclude their submissions by urging the Court to dismiss the preliminary objection with costs.

### **Analysis and Determination.**

29. I have considered the 1<sup>st</sup> Respondent's preliminary objection and the Applicants submissions. It is my view that the only issue that arises for determination is whether the 1<sup>st</sup> Respondent's preliminary objection dated 10<sup>th</sup> November, 2024 has merit.
30. The judicial decision of Ushago Diani Investment Limited v Abdulwahab (Environment & Land Case 12 of 2023) [2023] KEELC 20213 (KLR) (27 September 2023) (Ruling) cited with approval Oraro v Mbaja [2005] eKLR 141 where the Court held as follows on the nature of preliminary objections;
 

“A preliminary objection is now well identified as and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary objection anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”
31. A preliminary objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained. Further, a preliminary objection must stem from the proceedings and raise pure points of law and should not deal with disputed facts nor should it derive its foundation from factual information.
32. The 1<sup>st</sup> Respondent's preliminary objection is on the ground that the Applicant's suit contravenes the doctrine of survivorship.
33. The Applicants submit that the 1<sup>st</sup> Respondent's preliminary objection does not raise a pure point of law as its determination requires the Court to consider factual issues.
34. In the judicial decision of Waititu alias Ferista Wanjiku v Lutatwa (Environment & Land Case E015 of 2022) [2023] KEELC 18852 (KLR) (13 July 2023) (Ruling) the Court held as follows;

- “13. A Preliminary Objection is defined in Mrao Ltd Vs. First American Bank of Kenya Ltd & 2 Others [2003] eKLR. The issue of jurisdiction is definitely a



matter that may be raised in a Preliminary Objection. The question is whether the objection is merited.

14. The Court notes that the Respondent has not enclosed a grant appointing her as the administrator of the estate. Further it is not known if the suit land is part of the assets of the estate of the deceased. Further the issue of whether property was jointly owned or held as tenants in common requires to be determined by way of evidence. It (sic) was jointly owned then the principle of survivorship would kick it. Conversely if it was a tenancy in common then the issue of division of shares would arise.
15. In all the above the Court would have to call and examine evidence to reach a determination on the objection, hence ousting the objection from being a pure point of law.
16. Consequently, the Preliminary Objection is not merited. It is dismissed with costs to the Plaintiff.”

35. In the above cited judicial decision, the Court held that the issue of whether or not the doctrine of survivorship applies in a suit requires the examination of evidence and it does not fall within the ambit of a preliminary objection; which should be purely on a point of law.
36. Similarly, in the present matter, the 1<sup>st</sup> Respondent’s preliminary Objection is on the ground that the Applicants suit contravenes the doctrine of survivorship. As was held in the above cited judicial decision, whether or not the principle of survivorship is applicable requires examination of evidence and it cannot therefore be considered as being a pure point of law.

**Disposition.**

37. Taking the foregoing into consideration, I find that the 1<sup>st</sup> Respondent’s preliminary objection dated 10<sup>th</sup> November, 2024 lacks merit and it is hereby dismissed with costs.
38. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 24<sup>TH</sup> DAY OF JULY, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Kipkorir for the Applicants

Mr. Nyangiri for the Respondent – Absent.

Mr. Pkukat – Court Assistant

