



**Githire v Githire & 11 others (Environment and Land Originating Motion  
E001 of 2025) [2025] KEELC 5941 (KLR) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5941 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND ORIGINATING MOTION E001 OF 2025**

**CG MBOGO, J  
AUGUST 14, 2025**

**BETWEEN**

**ARTHUR NDURU GITHIRE ..... PLAINTIFF**

**AND**

**FRANCIS GEORGE GITHIRE ..... 1<sup>ST</sup> DEFENDANT**

**GEORGE GITHIRE NGICHU ..... 2<sup>ND</sup> DEFENDANT**

**DAVID MARIGI GITHIRE ..... 3<sup>RD</sup> DEFENDANT**

**RUTH WANJA OTSYULA ..... 4<sup>TH</sup> DEFENDANT**

**REBECCA NJOROGE ..... 5<sup>TH</sup> DEFENDANT**

**BEATRICE WAMAITHA ..... 6<sup>TH</sup> DEFENDANT**

**ROSELINE NJERU WAWERU ..... 7<sup>TH</sup> DEFENDANT**

**EUNICE WANJIRU ..... 8<sup>TH</sup> DEFENDANT**

**LUCY MUTHONI MWAURA ..... 9<sup>TH</sup> DEFENDANT**

**JAMES NJOROGE ..... 10<sup>TH</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 11<sup>TH</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 12<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is the notice of preliminary objection dated 15<sup>th</sup> January, 2025 filed by the 4<sup>th</sup> and 5<sup>th</sup> defendants challenging the notice of motion dated 31<sup>st</sup> December, 2024 on the following grounds: -



- i. That this honourable court lacks jurisdiction to hear and determine this matter since the application and by extension the entire suit relates to the estate of one Eliud Ngichu Githire (deceased) which devolves upon all the parties herein except the 11<sup>th</sup> and 12<sup>th</sup> respondents to which the law confers jurisdiction on Probate and Administration Courts.
  - ii. That the application and by extension the entire suit is res judicata since the High Court Family Probate and Administration Division has in the past considered and heard and determined the facts in issue herein conclusively in Succession Cause No. 113 of 1995.
2. The preliminary objection was canvassed by way of written submissions. The 1<sup>st</sup> to 10<sup>th</sup> defendants filed their written submissions dated 24<sup>th</sup> March, 2025 where they raised two issues for determination as follows: -
  - a. Whether the honourable court has jurisdiction to entertain the matter, and
  - b. Whether the suit is res judicata.
3. On the first issue, the 1<sup>st</sup> to 10<sup>th</sup> defendants submitted that the preliminary objection challenges the legality of this suit being res judicata which are both pure points of law. While relying on the cases of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696 and Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR, the 1<sup>st</sup> to 10<sup>th</sup> defendants submitted that the suit properties L.R No. 239/7, L.R 239/2/3/1 and L.R No. 143/6 are the property of one Eliud Ngichu Githire who is now deceased. They submitted that no party contests that the properties form part of the estate of the late Eliud Ngichu Githire, and that it is trite that issues on the estate of a deceased person is the preserve of the succession court. They submitted that the plaintiff has no title with the registered owner, and that his interests are on his status as a beneficiary being a son to the deceased.
4. The 1<sup>st</sup> to 10<sup>th</sup> defendants further submitted that the plaintiff’s primary concern is the manner in which the estate of the deceased was administered and devolved which falls within the purview of the succession court. They relied on the cases of Beatrice Wambui Kiarie v Beatrice Wambui Kiarie & 9 Others [2018] eKLR, and Lucy Njoki Gichuru v Hannah Wanjiku [2021] eKLR.
5. On the second issue, the 1<sup>st</sup> to 10<sup>th</sup> defendants submitted that the parties in the present suit are the same parties in Succession Cause No. 113 of 1995 where the matter was duly adjudicated. Further, that the plaintiff has failed to disclose this material fact to this court and circumvented the proper appellate process in the succession court. To buttress further on this issue, reliance was placed in the cases of Henderson v Henderson (1843) 67 ER 313 and Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR.
6. The plaintiff filed his written submissions dated 8<sup>th</sup> April, 2025 and submitted that the preliminary objection does not arise out of clear implication of the pleadings, that it cannot dispose the suit and it raises contentious issues. He submitted that he has not lodged a suit for inheritance either by a clear indication from his pleadings or otherwise. He submitted that had the late Eliud Ngichu Githire amalgamated the suit property in his lifetime, he would surrender the original title deeds to the registrar of lands. The plaintiff further submitted that the suit is not res judicata as the issues of fraud have never been heard and determined before any other court of competent jurisdiction. He submitted that parties are different in this suit and the succession cause. Further, that the issues arise post transmission and issuance of the certificate of confirmation of grant.
7. While relying on the cases of Re Estate of Mbai Wainaina (deceased) [2015] eKLR and Re Estate of Alice Mumbua Mutua (deceased) [2017] eKLR, the plaintiff submitted that the dispute relates



to ownership, amalgamation, surrender and fraudulent dealings after confirmation which is within the jurisdiction of this court. He reiterated that this is a post transmission issue and it cannot fall for determination by the succession court. He relied on the case of David Ngugi Kamau & 8 Others v Waithira Mohoyo & 4 Others [2021] eKLR.

8. I have considered the preliminary objection and the rival submissions as well as the authorities cited. The issue for determination is whether the preliminary objection has merit.
9. Law, J.A. in Mukisa Biscuits Manufacturing Company Limited -vs- West End Distributors (1969) EA 696 stated as follows: -

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which raises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration...”

10. Also, the case of John Musakali vs. Speaker County of Bungoma & 4 others (2015) eKLR, it was held that: -

“The position in law is that a preliminary objection should arise from the pleadings and on the basis that facts are agreed by both sides. Once raised the preliminary objection should have the potential to disposing of the suit at that point without the need to go for trial. If, however, facts are disputed and remain to be ascertained, that would not be a suitable preliminary objection on a point of law.”

11. Further, Ojwang J (As he then was) in Oraro -vs- Mbaja (2005) KLR 141 where after quoting the statement of Law, JA. in the Mukisa Biscuits case (supra) went on to state that:-

“A 'preliminary objection' correctly understood is now well defined as and declared to be a point of law which must not be blurred by 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, 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 point....

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...”

12. From the above cited authorities, it is clear that for a preliminary objection to succeed, the same must consist of a pure point of law, with the facts not disputed by the opposing party. Also, a preliminary objection should possess the ability to dispose of the issue that is before court without going to trial and lastly, the same ought to stem from pleadings and not outside of that.
13. From a careful reading and keen understanding of the grounds upon which the objection is premised, it is clear that it does not raise a pure point of law. First and foremost, for a preliminary objection to succeed, the same must contain undisputed facts. The 1<sup>st</sup> to 10<sup>th</sup> defendants challenge the jurisdiction of this court to hear the instant suit on grounds that the same is a preserve of the succession court. The plaintiff on the other hand contends that the issues arose after confirmation of the certificate of grant and thus the suit and the application is well before this court. From the submissions, it is evident



that heavy reliance has been placed on material which would be considered as evidence for this court to establish the assertions.

14. The 1<sup>st</sup> to 10<sup>th</sup> defendants have also challenged that this suit is res judicata owing to the proceedings in Succession Cause No. 113 of 1995 which was heard and determined. To establish whether indeed this suit is res judicata, this court will be required to comb through evidence contained outside of pleadings more so on proceedings which stem from another jurisdiction. In doing so, the preliminary objection automatically becomes defeated on this ground alone.
15. In my view, parties have raised disputed facts, and the court is also invited to look at evidence. I do not think that a preliminary objection is the best avenue to argue jurisdiction and res judicata based on the circumstances of this case. The notice of preliminary objection dated 15<sup>th</sup> January, 2025 lacks merit and the same is dismissed. Costs in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY OF AUGUST, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**14/08/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

4<sup>th</sup> Defendant/Respondent

5<sup>th</sup> Defendant/Respondent

Ms. Neema Owando for the 4<sup>th</sup> and 5<sup>th</sup> Defendants

