



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT NAROK**

**ELC SUIT NO. 121 OF 2017**

**FORMELRY NAKURU ELC NO. 152 OF 2015**

**SUIYANKA MAYUNE.....PLAINTIFF**

**-VERSUS-**

**ELIZABETH K. ESHO.....DEFENDANT**

**RULING**

The Defendant in the suit raised a Preliminary Objection on point of law to the effect that the Defendant is incapable of being sued for lack of capacity and that the suit herein is an abuse of the court process.

The Defendant contends that she is the widow of one Retati Ole Esho and that she was sued without her taking out letters of administration for the estate of her late husband.

The Plaintiff contends that she has no interest in the estate of the deceased and that the Notice of Preliminary Objection can't qualify as one.

I have read the Preliminary Objection and heard the submissions by counsel. From the onset it is worth noting that this is a dispute over a boundary between two neighbouring widows. The Plaintiff contends that the Defendant has encroached on her land and it's the Defendant's objection that she can't be sued since she has not taken out any letter of administration for the estate of her late husband.

It is my view that a Preliminary Objection on a point of law should be a point that will fundamentally settle the issues between the parties without the taking of evidence. In the instant suit the Defendant has raised a Preliminary Objection on point of law on the ground that she lacks capacity to be sued.

A look at the pleadings in the matter will point out that the Plaintiff in bringing the suit herein has not sued the Defendant in pursuant of the estate of her late husband but in respect of a cause of action that is directly attributable to her individual capacity in respect of encroachment of the Plaintiff's land. The Plaintiff has no claim whatsoever in the estate of the deceased and I thus find that the Preliminary Objection does not qualify and does not meet the threshold for the same to conclusively settle the matter.

From the foregoing I find that the Preliminary Objection is not merited and I dismiss the same. Costs in the cause.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 31<sup>ST</sup> day of JULY, 2018.**

**Mohamed N. Kullow**

**Judge**

**31/7/18**

In the presence of:

Mr Kambo holding brief for Nchoe for the Respondent

N/A for the applicant

CA:Chuma

**Mohamed N. Kullow**

**Judge**

**31/7/18**