



**Ragui v Gitingu & 2 others (Environment & Land Case  
E085 of 2023) [2024] KEELC 1783 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1783 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E085 OF 2023**

**JG KEMEI, J**

**APRIL 12, 2024**

**BETWEEN**

**EDWARD NJUI RAGUI ..... PLAINTIFF**

**AND**

**SAMSON KARANJA GITINGU ..... 1<sup>ST</sup> DEFENDANT**

**HANNAH WAMBUI KAMAU ..... 2<sup>ND</sup> DEFENDANT**

**MARY WANJIRU KARANJA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before Court is the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Preliminary Objection dated 31/1/2024 against the Plaintiff's suit comprised in the Complaint and Notice of Motion both dated 8/12/2023 on grounds THAT;
  - a. The three Applicants are not registered owners of the suit property Dagoretti/Uthiru/2241.
  - b. Registered owner is deceased, and deceased person does not have capacity to be sued.
  - c. Section 65 and Section 66 of the *Law of Succession Act* (LOSA) CAP 160 and case law has clear directions on how to deal with property of a deceased person.
  - d. There is no suit pending before the Court as required by the provisions of order 1 of the Civil Procedure Rules on proper parties.
  - e. The Application before Court is ill conceived, an abuse of the Court process, bad in law and incompetent and should be struck out.
2. The Preliminary Objection is opposed and was argued orally before Court on 22/2/2024.



3. The Defendants through their Learned Counsel Ms. Kemunto submitted that they are not the registered owners of the land. That the land is registered in the name of their deceased father and therefore the Application is bad in law and should be struck out.
4. On the other hand, Learned Counsel Mrs. Kariuki on behalf of the Plaintiff submitted that the Plaintiff has no cause of action against the deceased owner of the land but he has sued the Defendants for trespass on his land.
5. The *Black's Law Dictionary, 10<sup>th</sup> Edition* defines a Preliminary Objection as-

“... in a case before an international tribunal, an objection that, if upheld, would render further proceedings before the tribunal impossible or unnecessary.”
6. The parameters of consideration of a preliminary objection are now well settled. A preliminary objection must only raise issues of law. The principles that the Court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd Vs. West End Distributors Ltd [1969] EA 696. At page 700 Law JA stated:

“A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the Court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
7. Applying the above test, the Defendants contend that they are not the registered owners of the land parcel no. Dagoretti/Uthiru/2241. That the registered owner of the said parcel is deceased and incapable of being sued. That the LOSA adequately provides how the property of a deceased person ought to be dealt with. That ownership of land or otherwise is a matter of fact proven by way of evidence. That the averments of ownership of the suit land or otherwise do not comprise pure point of law as envisioned in the case of Mukisa supra.
8. The second test is to the effect that a successful Preliminary Objection is argued on the assumption that all the facts pleaded by the rival party are correct. In this case, a glean of the plaint filed in Court accuses the Defendants of trespassing on the Plaintiff's land which is adjacent to parcel No. Dagoretti/ Uthiru 2241 by uprooting his fence thereby exposing him to danger. There is no evidence that the Defendants have admitted the allegations of trespass levelled against them and therefore the second limb is not satisfied.
9. Last but not least the averments on ownership by the Defendants cannot be summarily determined at this preliminary stage. Even if the Defendant's argument that they are wrongly sued is to stand (which is not the case), misjoinder of a party in a case is not on its own, a pure point of law to merit a successful Preliminary Objection. See Order 1 Rule 9 of the *Civil Procedure Rules* which provides;

“9. Misjoinder and non-joinder [Order 1, rule 9.]

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”



10. The upshot of the forgoing is that the Preliminary Objection is unmerited. It is for dismissal with costs to the Plaintiff.

11. Orders accordingly.

**DATED, SIGNED & DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 12<sup>TH</sup> DAY OF APRIL, 2024.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

Mrs. Kariuki for the Plaintiff

Ms. Wangari Njuguna for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants

Court Assistants – Phyllis / Oliver

