



**Lebanguti v Mwambingu (Environment and Land Appeal E008 of 2024)
[2025] KEELC 723 (KLR) (Environment and Land) (21 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 723 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E008 OF 2024
EK WABWOTO, J
FEBRUARY 21, 2025**

BETWEEN

PETER LEBANGUTI APPELLANT

AND

PHOEBE MKAKINA MWAMBINGU RESPONDENT

*(Being an appeal from the Ruling and Order by Hon. E. M. Kadima
(PM) in Taveta Principal Magistrate's Case No. MCELC No. 2 of 2019)*

JUDGMENT

1. The proceedings leading to this appeal are rather strange. The record of the trial court shows that the suit before it was dismissed for want of prosecution by Hon. Khapoya (PM) vide his Ruling delivered on 17th December 2020. In the said Ruling the Learned Magistrate held as follows:-

“The Plaintiff instituted this case against the Defendant on 4th January 2019. Since then she has not taken any meaningful stages at prosecuting the same and this matter failed to kick off severally at her instance. Despite being served, the Plaintiffs never responded or attended court when the matter came up for hearing. Action of service is duly filed to this end. In the circumstances, the notice of motion application dated 24th November 2020 stands unopposed. The same is allowed as prayed. The Plaintiffs suit is dismissed with costs to the Defendant.”

2. From the said record, upon dismissal of the suit with costs to the Defendant, the matter proceeded for assessment of the Defendant's costs of which was assessed at Kshs. 44,565/= on 2nd September 2021. The Plaintiff was unable to pay the said costs and was subsequently committed to civil jail for one month a sentence which she served until her release.



3. In an interesting turn of events, the Defendant later filed a Preliminary Objection dated 24th April 2023 which was premised on the following grounds:-
 - a. That the Plaintiff herein Phoebe Mkakina Mwambingu lacks locus standi to present the instant suit against the Defendant.
 - b. That the Defendant herein Mr. Peter Lebanguti lacks locus standi to be sued in the instant suit.
 - c. That the plaint dated 3rd day of January 2019, is bad in law fatally defective and an abuse of the court process and the same ought to be struck out with costs.
4. The trial court in considering the said Preliminary Objection issued its directions on 13th March 2024 directing the same to be canvassed by way of written submissions. Parties duly complied and a Ruling was delivered on 5th June 2024 wherein the trial court stated as follows:-

“I have read and perused the proceedings and it’s the humble opinion of the court that to strike out the suit as against the Plaintiff will be discharging or depriving her of the right to the parcel of land which she claims her late husband co-owned with the Defendant’s father. A proper practice would be to invite the Sub-County Surveyor to show each party a portion of what they are entitled to from the deceased and a further subdivision of Plot Number Kimorigo/Mgoghoni/1010 to bring this matter to a closure.”
5. In view of the foregoing, the Learned Magistrate essentially dismissed the said Preliminary Objection.
6. The Defendant now Appellant in this appeal was aggrieved by the said Ruling and filed the instant appeal vide a Memorandum of Appeal dated 29th June 2024. The Memorandum of Appeal was premised on the following grounds:-
 - i. That the learned Magistrate erred in law and in facts by dismissing the Appellant preliminary objection citing the Plaintiff will be disclosed or deprive her of the right to parcel of land which she claims despite not following the laid down procedure in filing a succession cause before filing this suit or obtaining a limited grant.
 - ii. That the learned Magistrate erred in law and in fact by failing to exercise his discretion in favour of the Appellant.
 - iii. That the learned Magistrate erred in law and in fact disregarding the Appellant Preliminary Objection and dismissed the P.O not taking into account Mboghoni Adjudication Section Plot 1010 was in dispute and pending before Hon. Minister of Land and Settlement for hearing.
7. The Appellant thus sought for the following reliefs:-
 - i. That the appeal be allowed.
 - ii. That the ruling and order made on 5th June 2024 dismissing the appellant preliminary objection be varied and/or set aside.
 - iii. That cost of the appeal be granted to the appellant.
8. This court directed the appeal to be canvassed by way of written submissions. The Appellant filed written submissions dated 10th December 2024 while the Respondent filed written submissions dated 28th November 2024.



9. The court has considered the said submissions and the main issue for consideration is whether this appeal is merited.
10. A perusal of the trial court records indicates that after the suit was dismissed on 17th December 2020, there is no indication that the Respondent even moved the court with an application seeking for reinstatement of the suit. In view of the foregoing the suit before the lower court stands dismissed to date and the trial court had no basis in considering the said Preliminary Objection post the dismissal of the suit. The only proceeding that ought to have been rightfully considered were execution proceedings in respect to the costs of the suit that had been awarded to the Appellant who was the Defendant before the lower court.
11. In view of the foregoing, it is the finding of this court that this appeal is not properly before this court, this court has no basis in considering it and as such this court proceeds to dismiss the same with an order that each party bears own costs of the Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 21ST DAY OF FEBRUARY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Peter Lebanguti the Appellant in person.

Pheobe Mkakina Mwambingu the Respondent in person.

Court Assistants: Mary Ngoira & Norah Chao

