



Okunya (Suing as personal representative of the Estate of Arasto Amanyo Orunya) v Ogolah & 2 others (Environment & Land Case E017 of 2022) [2024] KEELC 13905 (KLR) (16 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13905 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE E017 OF 2022
BN OLAO, J
DECEMBER 16, 2024**

BETWEEN

JOHN RASITO OKUNYA (SUING AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ARASTO AMANYO ORUNYA) PLAINTIFF

AND

STEPHEN SIBALE OGOLAH 1ST DEFENDANT

VINCEHT AGWOGO OKUMU 2ND DEFENDANT

CHRISTINE AKELLO ONDATO 3RD DEFENDANT

RULING

1. John Rasto Okunya (the Plaintiff herein and suing as the legal representative to the Estate of Rasto Amanyo Orunya) moved to this Court *vide* his plaint dated 13th October 2022. He seeks against Stephen Sibare Ogolah, Vincent Agwogo Okumu And Christine Akello Ondato (the 1st, 2nd and 3rd Defendants respectively) the main remedy that:
 - a. An order directing cancellation of sub-division of LR No. Bunyala/Bulemia/73 into LR No Bumala/Bulemia/2617 and 2618 and sub-division of LR No. Bunyala/Bulemia/2617 into Bunyala/Bulemia/4717, 4718, 4719, 4720, 4721, 4722, 4723, 4724, 4725 and 4726 and restoration of LR No. Bunyala/Bulemia/73 in the names of Rasto Omanyo, Peter Ongola And Agwogo Okumu.
 - b. Costs of the case.
2. The Court has been informed by counsel for the Plaintiff Mr Otanga that the 2nd Defendant is deceased. Indeed on 2nd May 2024, the suit as against the 2nd Defendant was withdrawn.



3. Meanwhile, by a chamber summons application dated 18th December 2023, the 3rd Defendant sought an order that the suit against him be struck out. On 2nd May 2024, this Court directed that the said application be canvassed by way of written submissions. Mr Abok counsel for the 3rd Defendant was to file and serve those submissions within 14 days and Mr Otanga counsel for the Plaintiff was to respond within 7 days. However, on 3rd June 2024, Mr Otanga informed the Court that he would not be opposing the application by the 3rd Defendant.
4. The suit as against the 3rd Defendant was struck out. That leaves only the 1st Defendant who is acting in person although his defence dated 9th November 2022 was filed by the firm of Moruri & Company Advocates.
5. The 1st Defendant acting in person filed a Preliminary Objection dated 9th December 2024 and when the matter came up on 11th December 2024 for directions, the 1st Defendant told the Court that he wanted to prosecute it by adopting the grounds set out therein. Mr Otanga stated that he had not been served but would nonetheless be prepared to argue it orally. This Court conceded to the request in order to save on time.
6. This ruling is therefore in respect to the 1st Defendants Preliminary Objection dated 9th December 2024.
7. It is a 15 paragraph Preliminary Objection which makes no reference to any legal provision. Instead, the 1st Defendant is clearly prosecuting the whole suit rather than raising a Preliminary Objection. He is making reference to a sale agreement in respect to the land parcel No. Bunyala/Bulemia/73, the Green Card thereof, a boundary dispute in 2015 and other issues which are factual and not legal.
8. In oral response, Mr Otanga pointed out that the Preliminary Objection is blurred with factual issues contrary to what a Preliminary Objection should contain. Counsel made reference to the case of *Hassan Ali Joho & Anor v Suleiman Said Shaabar & 2 Others* 2014 eKLR.
9. I have considered the 1st Defendant's 15 paragraph Preliminary Objection which he has adopted as well as the oral response by Mr Otanga.
10. The 1st Defendant is acting in person and being a pro-se litigant, it is obvious that the term "Preliminary Objection" is alien to him. I can do no more than cite the locus classicus case of *Mukisa Biscuit Manufacturing Company Ltd v West End Distributors Ltd* 1969 E.A 696 where LAW JA said:

“... so far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleading and which, if argued as a Preliminary point, may dispose of the suit...”

In the same case, Sir Charles Newbold P described it as follows:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any facts have to be ascertained or if what is sought is the exercise of judicial discretion.”

Discussing the same issue, Ojwang J (as he then was), had the following to say in the case of *Oraro v Mbaja* 2005 1 KLR 141 at page 145:

“A Preliminary Objection correctly understood, 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.” Emphasis mine.

Looking at the 15 paragraph Preliminary Objection filed by the 1st Defendant herein, it is obvious, as rightly stated by Mr Otanga, that it is blurred with factual issues which can only be determined at a trial. As stated earlier in this ruling, there is no reference to any statutory provision in the Preliminary Objection yet, as is clear from judicial precedents, it should raise “a pure point of law”. A perusal of the Preliminary Objection shows that the 1st Defendant is infact simply regurgitating the same issues pleaded in his defence dated 9th November 2022.

11. The up-shot of all the above is that the 1st Defendant Preliminary Objection dated 9th December 2024 is devoid of merit. It is accordingly dismissed with no orders as to costs.

BOAZ N. OLAO

JUDGE

16TH DECEMBER 2024

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT ON THIS 16TH DAY OF DECEMBER 2024.

Mr Otanga for the Plaintiff present

1st Defendant in person present

BOAZ N. OLAO

JUDGE

16TH DECEMBER 2024

