



Leparakuo (Suing as the Administratrix of the Estate of the Late Daniel Konana Leparakuo) v Estate of Robert Shena Leparakuo & 3 others (Environment & Land Case E110 of 2024) [2025] KEELC 3241 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEELC 3241 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E110 OF 2024
LC KOMINGOI, J
MARCH 27, 2025**

BETWEEN

**FAITH NJERI LEPARAKUO PLAINTIFF
SUING AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE DANIEL
KONANA LEPARAKUO**

AND

**ESTATE OF ROBERT SHENA LEPARAKUO 1ST DEFENDANT
ZIPPORAH LEPARAKUO (SUED AS THE ADMINISTRATRIX OF THE
ESTATE OF ROBERT SHENA LEPARAKUO) 2ND DEFENDANT
BENSON SALATON LEPARAKUO (SUED AS THE ADMINISTRATOR OF THE
ESTATE OF ROBERT SHENA LEPARAKUO) 3RD DEFENDANT
KAJIADO NORTH LAND REGISTRAR 4TH DEFENDANT**

RULING

1. This Ruling is in respect of preliminary objection dated 29th of November 2024. The grounds are;
 - i. That there is an existing case being Ngong Chief Magistrate ELC NO. E018 OF 2024 between the same parties and subject that is yet to be concluded.
 - ii. That the Plaint is incompetent, incurable, fatally defective and untenable in the eyes of the law as this Court does not have the jurisdiction to hear the issues raised and the orders sought in the Plaint as the right court is the Succession/Family Court.
 - iii. That the Plaint does not raise any triable issues/cause of action against the Defendants but is a concoction of stories and is a waste of this Court's and other parties' time.



2. On the 4th of December 2024, the Court directed that the Preliminary Objection be canvassed by written submission.
3. I have considered the Preliminary Objection, the response thereto, the rival submissions and the authorities cited. The issue for determination is whether the Preliminary Objection is merited.
4. The test as to whether this is a proper Preliminary Objection has been stated in the case of Equity Bank Ltd VS Bryan Yongo & another [2014] eKLR where the court held that, “Any true Preliminary Objection should not be entangled with factual issues.”
5. Similarly, in Oraro VS Mbajja [2005] eKLR, J.B Ojwang’ J. held; “I think the principle is abundantly clear. Apiyo correctly understood is now well identified as, and declared to be the point which must not be blurred which factual details liable to be contested and in any event to be through the processes of evidence. Any assertion which claims to be Apiyo and yet it bears factual aspect calling for proof, or seeks to adduce evidence for its authentication is not a matter of legal or a true Preliminary Objection which the Court should allow to proceed. I am in agreement...that where a Court needs to investigate facts; a matter cannot be raised as Apiyo. I am satisfied that Apiyo hearing is a proper one.”
6. In The Owners of Motor Vessel “Lillian” S VS Caltex Oil (Kenya) Ltd [1989] KLR 1, Nyarangi J.A stated thus, “Jurisdiction is everything. Without it, the Court has no power to take one step. Where a Court has no jurisdiction, there would be no basis for continuation of proceedings pending the evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that is without jurisdiction.”
7. The gist of the Plaintiff and the Notice of Motion dated 28th October 2024, is the failure by the 2nd Defendant to transfer two suit properties; Ngong/Ngong 17237 and 17238 to the Plaintiff.
8. The 2nd Defendant is sued as the Administratrix of the Estate of Robert Shena Leparakuo. This means the suit properties are still registered in the name of the late Robert Shena Leparakuo.
9. I agree with the 1st, 2nd and 3rd Defendants’ submissions that the proper Court to adjudicate over this matter is the High Court (Family Division).
10. The Plaintiff has also not denied that there is a pending suit being Ngong MC ELC E018 of 2024 which is in respect of the same parties and the same subject matter. This goes against the provisions of Section 6 of the Civil Procedure Act.
11. It is not in dispute that the Plaintiff’s late husband passed on before the suit properties were transferred to his name. In essence the suit properties are still in the name of Robert Shena Leparakuo and that is why the Plaintiff took the 1st Defendant before the elders.
12. It is my view that this is a matter that involves beneficiaries of the Estate of Robert Shena Leparakuo. The right forum to determine this dispute is the High Court (Family Division).
13. I therefore find merit in the Preliminary Objection and the same is upheld.
14. The Suit and the Notice of Motion are hereby struck out for want of jurisdiction.
15. As this is a matter that involves family members, I order each party to bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27TH DAY OF MARCH 2025.

L.KOMINGOI
JUDGE



In the Presence of:

Mr. Gituma for the Plaintiff

Mr. Isahi for the 1st, 2nd and 3rd Defendants

N/A for the 4th Defendant

Court Assistant Mutisya

