



REPUBLIC OF KENYA



**In Re Estate of Kimase Sambai (Deceased) (Succession Cause
184 of 2015) [2025] KEHC 5246 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5246 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 184 OF 2015
JK NG'ARNG'AR, J
APRIL 29, 2025
IN THE MATTER OF KIMASE SAMBAI (DECEASED)**

BETWEEN

RICHARD KIPRONO LANGAT APPLICANT

AND

PAUL KIPNGENO MASE 1ST RESPONDENT

RICHARD KIPYEGON RUTO 2ND RESPONDENT

JOHN KIPLANGAT MASE 3RD RESPONDENT

PETER KIBET BII 4TH RESPONDENT

RULING

1. This Ruling is in respect to a Preliminary Objection dated 5th March 2025 and filed by the Applicant stating that the Notice of Motion Application dated 26th February 2025 was res judicata. He relied on the following grounds that: -
 - I. Having been previously determined by the High Court between the same parties vide Judgement dated 9th July 2009 between Kiplangat Arap Sitienei (Deceased), the Applicant and Kimase Arap Sambai (now deceased)
 - II. A similar issue had been raised prior to the issuance of the Judgement which directed the Land Registrar to cancel the illegally obtained Title Deeds and subdivided the land parcel referred to as Kericho/Kipsonoi/SS/321 into two portions between the parties herein.
 - III. The Petitioner, after the demise of Kimase Sambai in Citation Cause Number 35 of 2012 cited the widow and the 1st Respondent herein and were both served on 30th January 2013, failed to enter appearance and the Petitioner filed this Succession Cause.



- IV. The Petitioner filed the Succession and a Grant was issued on 20th April 2017 in an equitable share between the 1st Respondent, Paul mase and the Petitioner to hold in trust for the respective families in this matter.
2. The Respondents did not file their response to the Preliminary Objection.

Applicant's written submissions

3. Through his written submissions dated 13th March 2025, the Applicant submitted that the Respondents through their Notice of Motion Application dated 26th February 2025 sought stay of proceedings in the present Succession Cause pending the hearing and determination Kericho ELC Case Number 009 of 2018. He further submitted that the matter in Kericho ought to have been instituted in this court where the subject matter was situated.
4. It was the Applicant's submission that the matter had been previously determined by Kericho High Court vide a Judgement dated 9th July 2009 and similar issues had been raised prior to the issuance of the Judgement. That the Judgement directed the Lands Registrar to cancel the illegally obtained Title Deeds and further subdivide the subject land, Kericho/Kipsonoi/SS/321 into two equal portions. He relied on sections 6, 8, 11 and 12 of the *Civil Procedure Act*.

Respondents' written submissions.

5. Through their written submissions dated 20th March 2025, the Respondents submitted that their Application dated 26th February 2025 sought stay of these proceedings pending the hearing and determination of Kericho ELC Number 009 of 2018. That the Application was intended to prevent conflicting Judgements as the substantive issue was that the Land Registrar in Bomet unprocedurally and fraudulently cancelled Kericho/Kipsonoi/1072,1073 and 1074.
6. It was the Respondents' submission that the Kericho ELC matter had not been determined and the claim of res judicata was premature. That the Applicant failed to prove that a similar case (2009 matter) had been heard and determined and they relied on section 107 of the *Evidence Act*. It was their further submission that even if the 2009 matter existed, the fraudulent cancellation of their Titles had not been litigated. They relied on *Pop-in (Kenya) Ltd & 3 others vs Habib Bank AG Zurich* (1990) KLR 609.
7. The Respondents submitted that the Preliminary Objection ought to be dismissed.
8. It was the Respondent's submission that the Applicant was misleading the court by claiming for costs in non-existent legal proceedings. That the Applicant's Bill of Costs should be struck out.
9. I have considered the Preliminary Objection dated 5th March 2025, the Applicant's written submissions dated 13th March 2025 and the Respondent's written submissions dated 20th March 2025. The only issue for my determination was whether the Preliminary Objection was sustainable.
10. What constitutes a Preliminary Objection was set out in the oft cited case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* (1969) EA 696, where it was held that: -

“ 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... 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 fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

11. In *Daqare Transporters Limited v Zainab Hashi* [2021] KEHC 2600 (KLR), Mogeni J. held: -

“In the case of *Abmed Noorani & another v Rajendra Ratilal Sanghani* [2020] eKLR the Court of Appeal held that: “For a preliminary objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid preliminary objection should, if successful, dispose of the suit.”
12. The Applicant contended that the Respondents through their Notice of Motion Application dated 26th February 2025 sought to stay the current proceedings pending the hearing and determination of Kericho ELC Number 69 of 2018. The Applicant further stated that the issues raised in Kericho ELC Number 69 of 2018 were res judicata as the same issues had been determined by Kericho High Court in Civil Suit Case Number 59 of 2003.
13. Section 7 of the *Civil Procedure Act* provides that: -

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
14. The Court of Appeal in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] KECA 477 (KLR) held that: -

“The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common sensical (sic!) protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”
15. I have looked at the Respondents’ Application dated 26th February 2025 and they attached the Amended Plaint in Kericho ELC Number 69 of 2018. The Respondents in the said suit were dissatisfied with the Land Registrar’s cancellation of title numbers Kericho/Kipsonoi/SS/ 1072, 1073 AND 1074 and sought a declaration that the cancellation was irregular and further sought the reinstatement of the said titles.
16. In supporting his claim of res judicata, the Applicant stated that the issue of the titles Kericho/Kipsonoi/SS/ 1072, 1073 and 1074 had been determined by the High Court in Kericho Civil Suit Number 59 of 2003. That the High Court ordered the cancellation of the said Titles and further ordered the subdivision of the suit land (Kericho/Kipsonoi/SS/321) into two equal portions.



17. The Applicant attached the Judgement in Kericho High Court Civil Suit Number 59 of 2003. I have looked at it and I have noted that the court did not discuss the issue of Kericho/Kipsonoi/SS/ 1072, 1073 and 1074. The Judgement found that the suit land, Kericho/Kipsonoi/SS/321 was to be divided equally between Kiplangat Arap Sitienei (deceased) and Kimase Arap Sambai (deceased). I have equally gone through the proceedings and I have noted that the suit land was subdivided after the Judgement in Kericho High Court Civil Suit Number 59 of 2003 had been delivered on 3rd July 2009. That it to say that the titles Kericho/Kipsonoi/SS/ 1072, 1073 and 1074 did not exist when the Judgment was being delivered and as such, it meant that the said titles were not litigated before Kericho High Court Civil Suit Number 59 of 2003 and could not therefore be res judicata.
18. In the end, it is my finding that the Preliminary Objection dated March 5, 2025 had no merit and is dismissed with costs to the Respondents.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 29TH DAY OF APRIL, 2025.

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HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence of for the J.K.Koech for the Petitioner, N/A for J.K. Rono for the Respondents. Siele/Susan (Court Assistants).

