



REPUBLIC OF KENYA



**In re Estate of Francis Kariuki Gikonyo (Deceased) (Succession Cause
57 of 2005) [2025] KEHC 5063 (KLR) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5063 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 57 OF 2005**

JM NANG'EA, J

APRIL 28, 2025

BETWEEN

**JOSEPH WAINAINA KAMAU T/A UNITEX COMMERCIAL
AGENCIES OBJECTOR**

AND

SAMUEL MAINA KARIUKI RESPONDENT

RULING

1. Grant of Letters of Administration herein issued on 27th September 2005; was confirmed on 2nd February 2007 and amended on 16th May 2007. The Grant was further amended by order of the court issued on 6th January, 2025.
2. One Joseph Wainaina Kamau T/A Unitex Commercial Agencies (“the Objector”) has brought a Summons dated 6th December 2025. Claiming to be a beneficiary of the estate, he prays for revocation and/or nullification of the Grant for various reasons stated in the Summons. Samuel Maina Kariuki (“the Respondent”) reacted to the application by lodging a Notice of Preliminary Objection to the Summons, dated 22nd January 2025. This ruling is on the preliminary point.
3. The Respondent contends in the Preliminary Objection that;-
 1. The Summons is Res Judicata; the issue of ownership of land to wit Nakuru Municipality Block 22/1719 (Muguga) has been heard and determined in suits, to wit, Nakuru HCCC No. 130 of 2010 and Nakuru CACA No. 33 of 2015.
 2. The Applicant has no locus standi and lacks capacity to bring the summons herein for reasons that;
 - a. The Applicant and the Respondent do not have any agreement over the land to wit, Nakuru Municipality Block 22/1719 (Muguga)



- b. The Applicant has never been the owner and has never had any interest or right over the land to wit Nakuru Municipality Blok 22/1719.
3. The Applicant is guilty of non-disclosure of material facts particularly matters disclosed in grounds 1 and 2 herein.
4. There has been complete distribution of the Estate of the late Francis Kariuki Gikonyo (deceased), to the beneficiaries hence the deceased is no longer the owner of the said property.
5. The issue raised by the Applicant in the summons are “Sub Judice” since they are the same issues raised in the suit to wit, ELC Petition E009/2024 and the criminal matter; CR 1923/21 which are yet to be determined by the Environment and Land Court and the Chief Magistrate’s Court respectively.
6. The facts giving rise to this Application do not qualify to be articulated or litigated upon in the probate court, the matters in issue are best dealt with in a normal Environment and Land Court since the matters in issue relate to land, thus this honourable court lacks jurisdiction to hear matters concerning land through a summons for revocation of a grant.
7. This court is “Functus Officio” with regard to the suit property.”
4. The Objector contends inter alia in his application that property known as Nakuru Municipality Block 22/1719 (Muguga) does not form part of the deceased’s estate as he lawfully purchased it during the deceased’s lifetime. He therefore craves a protection order and injunction restraining the Respondent from interfering or intermeddling with the property to his detriment.
5. Learned Counsel for the parties filed Written Submissions on the Objection. The Respondent argues that the Objector’s application is res judicata because the issue of ownership of the land in question was settled in Nakuru HCCC No. 130 of 2010 and Nakuru CACA No. 33 of 2015. It is further contended that the Objector lacks locus standi as there was no agreement of sale between the parties over the land and further that the objector has never had any interest or right over the land.
6. It is also the Respondent’s Submission that the Summons for Revocation of the Grant is Res Judicata given that the same issues are raised in Nakuru ELC Petition No. E009 of 2024 and Nakuru Chief Magistrate Court’s Criminal Case No. 1923 of 2021. The Respondent therefore contends that this court is bereft of jurisdiction and/or is functus officio. Reference is made to various decided cases including in Kenya Commercial Bank Limited vs Muiji Coffee Estate Limited and 3 Others (Motion 42 & 43 of 2014 (consolidated [2016] KRSC 6 (KLR) (19 May 2016) (Ruling). In this case the Supreme Court explained the law thus;

“Res Judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined such verdict stands as a conclusive statement as to these rights....”
7. With regard to the doctrine of locus standi, the Respondent submits that the Objector has no right to be heard since the dispute has been settled with finality (see case law in Matemu vs Trusted Society of Human Rights Alliance & 5 Others (Civil Application No. 29 of 2014) decided by the Supreme Court, among other authorities the respondent relied upon as showing that this court has no jurisdiction).
8. On his part, the Objector does not seem to have filed Submissions.
9. The main issue arising for determination is whether the court has jurisdiction to order transmission of the subject property in light of the arguments by the Respondent. The legal position on the question of



Res Judicata has been well captured in the Respondent's Submissions. Once a dispute pitting the same or substantially the same parties contending over the same subject matter has been finally determined by a court of law, it is not open to be re-litigated by either of the parties before the same court or other court of concurrent jurisdiction. This is the *functus officio* principle. The same logic applies to sub judice matters which should await determination by a competent court adjudicating the dispute.

10. I have perused copies of pleadings and judgement of Nakuru HCCC No. 130 of 2010 and Nakuru CACA No. 33 of 2015 exhibited in the Respondent's Affidavit in reply to the Objector's Summons dated 6th December 2024. I have also read through copies of Nakuru ELC Petition No. E009 of 2024 and charge sheet in Nakuru Chief Magistrate's Criminal Case No. 1923 of 2021 annexed to the affidavit as well. The exhibits show that the High Court's decision dismissing the Respondent's claim to the disputed land parcel No. Nakuru Municipality Block 22/1719 (Muguga) was faulted by the Court of Appeal which determined that the Respondent is the rightful owner of the land. The Objector was not actually a party to the litigation but Unitex Commercial Agencies the Objector trades in claimed to have bought the land through one John N. Kagunyi also trading in the same name.
11. Whereas the High Court's Judgment was rendered on 15th March 2013 following a suit instituted on 2nd June 2010 the Court of Appeal's decision was given on 18th October 2017. This Succession Cause was brought earlier in 2005 and the subject land was transmitted to the Respondent as his share of the deceased's estate. This is the basis of registration of the land in his favour.
12. This brings me to the Nakuru ELC Petition No. E009 of 2024 by which the Objector faults the Respondent's acquisition of the subject land on the ground of fraud. He seeks various Constitutional remedies against the Respondent among others.
13. Regarding the Criminal Case, the Objector seems to have caused the prosecution of the Respondent alleging fraud over the same parcel of land.
14. The circumstances clearly show that not only is the matter *res judicata* by dint of the decisions cited, it is also sub judice. This finding alone is sufficient to dispose of the preliminary point.
15. Accordingly, the Preliminary Objection dated 22nd January, 2025 is sustained and the Summons dated 6th December 2024 for nullification and/or revocation of the Grant herein is struck out with costs to the Respondent.

J. M. NANG'EA - JUDGE

Ruling delivered virtually this 28th day of April, 2025 in the presence of:

Objector, Present in person

Respondent's Advocate, Mr. Mutonyi

Court Assistant (Jeniffer)

J. M. NANG'EA - JUDGE

