



**In re Estate of Wainaina Methu (Deceased) (Succession Cause 1627 of 2015)
[2024] KEHC 386 (KLR) (Family) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 386 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1627 OF 2015
HK CHEMITEI, J
JANUARY 25, 2024
IN THE MATTER OF THE ESTATE OF WAINAINA METHU (DECEASED)**

BETWEEN

VIRGINIA NYOKABI MWAURA APPLICANT

AND

MONICAH NJERI WACHIRA 1ST BENEFICIARY

LUCY WANGUI GAITHO 2ND BENEFICIARY

WANGU METHU KIMANI 3RD BENEFICIARY

AND

KIMANI METHU (DECEASED) 1ST RESPONDENT

MONICAH NJAMBI WAINAINA 2ND RESPONDENT

MILKAH NJAMBI KARUNGU 3RD RESPONDENT

RULING

1. The applicant filed an application dated 29th March 2023 seeking several orders including rectification of the grant. The 2nd and 3rd respondents have opposed the said application by way of a preliminary objection dated 21st July 2023 as follow:-

“(a) That the issues raised in this application are *res judicata*. The parties settled all the disputes herein via a mediation agreement that was adopted as an order of this court and the settlement of parties has been implemented and perfected.



- (b) That the application is an abuse of court process.
- (c) That the objectors herein are not the competent heirs to the estate of Wangu Methu and Kimani Wainaina.”

2. The respondent filed her response to the above objection stating that the matter was not *res judicata* since the administrators had not complied with Section 82 and 83 of the *Succession Act*, that there were three certificates of confirmation of grant and that the administrators had not released the funds to the 4th respondent.
3. When the matter came up for directions the court directed the parties to file written submissions which the court has perused and does not see the reasons to reproduce them here.
4. The court has perused the objection and basically the substantive issue has to do with whether the matter is *res judicata*. Looking at what is before me I do not think the same is *res judicata*. Actually, what is pending is compliance with Section 83 of the *Succession Act* as rightly explained by the applicant.
5. The issue of the subdivision and eventual transmission of parcel number Dagoretti/Mutuini/154 and the release of Kshs 850,000 as per the parties’ agreements or arbitration is the subject pending. It cannot be an issue already dealt with.
6. At the same time what the respondent terms a preliminary objection cannot be so for the reason that the division of the estate pursuant to the grants on record are factual issues. The court has to look into it and in particular the evidence to be advanced by the parties.
7. A preliminary objection must be on a point of law. The Court of Appeal in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 at page 700 paragraphs D-F Law JA as he then was had this to say:-

7. “...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.

At page 701 paragraph B-C Sir Charles Newbold, P. added the following:

A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion....” [underlining mine]

8. In the premises I do not find the preliminary objection merited and the same is hereby dismissed with no order as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 25TH DAY OF JANUARY 2024.

H K CHEMITEI

JUDGE

