



REPUBLIC OF KENYA



**Bitah & 3 others v Bitah & 2 others (Environment & Land Case  
E010 of 2024) [2025] KEELC 3867 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3867 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT & LAND CASE E010 OF 2024**

**BM EBOSO, J**

**APRIL 24, 2025**

**BETWEEN**

**MARGARET GATAKAA BITAH ..... 1<sup>ST</sup> PLAINTIFF  
JOYCE CIAMBAKA BITA ..... 2<sup>ND</sup> PLAINTIFF  
DORIS KAGENDO BITA ..... 3<sup>RD</sup> PLAINTIFF  
VIOLET NJERI BITA ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**PATSON GITARI BITA ..... 1<sup>ST</sup> DEFENDANT  
HUDSON KINYUA BITA ..... 2<sup>ND</sup> DEFENDANT  
PETER MURITHI GITARI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Through a notice of preliminary objection dated 15/1/2025, the 1st and 3rd defendants invited this court to strike out this suit on the following verbatim grounds:
  1. This court lacks jurisdiction to entertain the matters in issue in this suit as they relate to the administration of deceased person's estates which are exclusively within the jurisdiction of the probate court under the *Law of Succession Act*.
  2. The plaint has been improperly filed before this court as the aggrieved plaintiffs should have applied for revocation of the grant of letters of administration in the original succession suit in the Magistrate's Court per the procedural requirements set out in Section 76 of the *Law of Succession Act* as read with Rule 44 of the Probate and Administration Rules.



3. The plaint is a misadventure, an abuse of this honourable court's process, and is foredoomed to fail by operation of law as it seeks to circumvent the established legal framework for addressing grievances related to succession matters and thus should be struck out with costs.
2. The preliminary objection was canvassed through written submissions dated 19/2/2025 and now falls for determination through this ruling. The case of the two objectors is that, the dispute in this suit is a succession dispute relating to the estate of the late Mbita Mbogori. They contend that the court vested with jurisdiction to adjudicate the dispute is the court seized of the succession cause relating to the estate of the late Mbita Mbogori, to wit, Embu SPMC which is seized of Embu SPMC Succession Cause No 175 of 1994.
3. The plaintiffs opposed the preliminary objection through written submissions dated 5/2/2025, filed by M/s Njeru Ithiga & Co Advocates. Their case is that their claim against the 1st and 3rd defendants is based on fraud in relation to parcel number Karingani/Mugirirwa/1240. They further contend that their claim is also based on breach of customary trust on part of the defendants. It is their case that they pleaded and particularized both limbs of their claim.
4. The court has considered the gist of the preliminary objection, the record before it and the parties' respective submissions. The two key questions to be determined in the preliminary objection are:
  - (i) Whether the dominant issue in this dispute relates to succession of the estate of the late Mbita Mbogori; and
  - (ii) If so, whether this court is the proper court to adjudicate the dispute.
5. The four plaintiffs are blood sisters of the 1st and 2nd defendants. The six siblings are all children of the late Mbita Mbogori and Esther Ciambii Mbita. The 3rd defendant is a son to the 1st defendant. Land parcel numbers 1238, 1239, 1240, 1241 and 1242 are all subdivisions out of land parcel number Karingani/Mugirirwa/324 which was registered in the name of Mbita Mbogori on 30/9/1969 as the absolute proprietor. The plaintiffs do not contend that the late Mbita Mbogori held the said land as a trustee. If it were their case that the late Mbita Mbogori held the land as a trustee, they would have sued the estate of the late Mbita Mbogori.
6. From a clear reading of their plaint, the plaintiffs contend that the 1st defendant secretly initiated succession proceedings relating to the estate of the late Mbita Mbogori and procured a distribution of the suit land to the sons and widow of the late Mbita Mbogori while excluding the daughters of the deceased (the plaintiffs). They are aggrieved by the exclusion. Essentially, they want the subdivision titles that were the results of the certificate of confirmation of grant annulled so that provisions are made for them as daughters and dependents of the late Mbita Mbogori.
7. The plaintiffs want this court to find that the certificate of confirmation of grant dated 31/6/1995 which distributed the suit land to the widow and to the two sons of Mbita Mbogori was irregularly procured through fraudulent concealment of material facts or fraudulent exclusion of a section of the beneficiaries. Clearly, the succession court is the proper court vested with jurisdiction to revisit the issue of distribution of the estate of the late Mbita Mbogori. In that regard, the succession court is the proper court to annul the impugned registrations, including the subsequent registration which the 1st defendant effected in favour of his son (the 3rd defendant).
8. By inviting this court to sit and review succession orders of a succession court, the plaintiffs are inviting the court to exercise jurisdiction that it does not have. I would hasten to add that this court's view would be different if the plaintiffs sued the estate of the late Mbita Mbogori as one of the defendants



and contended that the late Mbita Mbogori was not the absolute proprietor of the suit land. That is not their case in this suit. The plaintiffs do not contend that the late Mbita Mbogori held the land as a trustee.

9. The admission/defence by the 2nd defendant clearly reinforces the view that this is a succession dispute relating to the estate of the late Mbita Mbogori. The 2nd defendant pleaded thus:

“3. The 2nd defendant further states that the plaintiffs were denied their inheritance and their shares in land parcel No Karingani/Mugirirwa/324 belonging to their late M’mbogori Bitu fraudulently by the 1st and 3rd defendants.

4. The 2nd defendant is ready to forfeit his land parcels Nos Karingani/Mugirirwa/1238 and 1242 which resulted from the subdivision of land parcel No Karingani/Mugirirwa/324 in order to share with the plaintiffs who are his blood sisters.”

10. For the above reasons, I find, on the basis of the pleadings and the materials placed before court, that this is a succession dispute relating to the estate of the late Mbita Mbogori. The proper adjudicatory body to deal with the succession dispute is the court seized of the succession cause relating to the said estate. Consequently, the preliminary objection dated 15/1/2025 is upheld to the above extent and the suit is struck out for want of jurisdiction.

11. Taking into account the disclosed blood relationship of the parties to this suit and the alleged conduct of the 1st and 3rd defendants, parties will bear their respective costs of the ill-fated suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 24TH DAY OF APRIL, 2025.**

**B M EBOSO [MR**

**JUDGE**

In the Presence of:

Mr. Njeru Ithiga for the Plaintiffs

Mr. Muchiri for the 1st and 3rd Defendants

Court Assistant – Mr. Mwangi

