



**In re Estate of Patrick Mwangi Githinji (Succession Cause
531 of 1992) [2025] KEHC 6867 (KLR) (Civ) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6867 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

SUCCESSION CAUSE 531 OF 1992

PM NYAUNDI, J

MAY 15, 2025

RULING

1. Vide Notice of Preliminary Objection dated 29th January 2025, the 1st herein has raised a Preliminary Objection against the Applicant's application dated 22nd November 2024, premised on the following grounds;
 1. That this Honourable Court lacks jurisdiction to determine the issues raised, as they involve issues of land ownership and interests, which fall under the purview of the Environment and Land Court as per Article 162(2) & 165(5)(b) of the *Constitution* which confer exclusive jurisdiction over land disputes to the Environment and Land Court (ELC).
 2. That Section 13 of the *Environment and Land Court Act*, No 19 of 2011 grants the ELC original and appellate jurisdiction over disputes relating to land title, tenure, ownership, and transfer, matters at the heart of this dispute.
 3. The present dispute concerns an alleged transfer and contestation over ownership over LR No 4927, a matter which squarely fall under the jurisdiction of the Environment and Land Court. Jurisdiction over disputes concerning registration, sale, and transfer of land is exclusively conferred upon the ELC under Section 2 & 101 of the *Land Registration Act*, No 3 of 2012 and Section 2 & 150 of the *Land Act*, No 6 of 2012.
 4. It is trite law that jurisdiction is a fundamental prerequisite for the exercise of judicial authority. In *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, the Court of Appeal held that jurisdiction is everything and without it, a court must down its tools if it lacks jurisdiction. Since this Honourable Court lacks jurisdiction, the application should be struck out with costs.
 5. That the Application is misconceived and an abuse of the Court process as the Applicant has improperly joined the 1st Interested party who is a stranger to the succession cause nor a beneficiary of the estate of the deceased.



6. That the Application herein has been filed by parties who are not administrators of the estate and have no legal standing to do so contrary to the provisions and meaning of Section 47 of the *Law of Succession Act* for succession proceedings.
 7. That in the circumstances, the Application is fatally and incurably defective and should be dismissed in limine with costs.
2. Both parties have complied with the Court's directions that the Preliminary Objection be canvassed via written submissions. The Submissions of the Applicant are dated 7th February 2025 while those of the interested party are dated 13th February 2025
 3. In their submissions the Applicants state that the probate court has mandate to handle the dispute. Further it is submitted that preliminary objection is not on a pure point of law and therefore must fail.
 4. The interested party frames the following as the issues for determination-
 1. Whether the Court has jurisdiction to determine the issues raised in the application?
 2. Whether the 1st interested party has been improperly joined in the proceedings?
 5. It is submitted that the application dated 22nd November 2024 raises issues related to land ownership, which are in the purview of the Environment and Land Court, which has exclusive jurisdiction. Reference is made to Article 162(2) and 165(5)(b) of the *Constitution*.
 6. The Interested Party also relies on the decisions in *Owners of the Motor Vessel "Lillian S" v Caltex oil (Kenya)* (1989) KLR 1 on the centrality of question of jurisdiction and *Mukisa Biscuit Manufacturing Ltd v West End Distributors Ltd* [1969] EA 696 on a competent preliminary jurisdiction.
 7. Reference is made to the decision in *Samuel Kamau Macharia & another v Kenya Commercial Bank Ltd & 2 others* [2012] eKLR for the assertion that a Court can only derive its mandate from either the *Constitution* or a statute. The Probate Court jurisdiction it is submitted is limited to distributing the free estate of a deceased to the rightful beneficiaries and reference made to the decisions in *Kageche v Kamande & 2 others; Wanjohi (Proposed Interested Party)* [2024] KEHC 5637 (KLR) and *in re Estate of Julius Ndubi Javan (Deceased)* [2018] eKLR.
 8. On the 2nd issue it is submitted that the interested party's inclusion in the proceedings runs afoul of the *Law of Succession Act*, which limits the application of the *Civil Procedure Act* to succession proceedings and therefore does not provide for participation of interested parties. The Interested party cites the decision *in re Estate of David Aura Wesonga (Deceased)* (Succession Cause 257 of 2012) [2023] KEHC 20222 (KLR) (17 July 2023) (Ruling). In addition, it is submitted that their inclusion of the proceedings is without leave of the Court.

Analysis And Determination

9. Having considered the pleadings and submissions on record, alongside the relevant law the issue for determination is whether the preliminary objection raised herein has merit.
10. In *Independent Electoral and Boundaries Commission v Jane Cheperenger and others* (2015) eKLR, the Supreme Court stated;

(21) ...The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection- against the profligate deployment of time and other resources. And secondly, it serves the public cause of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a



party to resort to the preliminary objection as a sword for winning a case otherwise destined to be resolved judicially and on the merits.

11. The Mukhisa case (*supra*) set out the legal threshold of a preliminary objection as:

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 has to be ascertained or if what is sought is the exercise of judicial discretion.

12. As rightly stated jurisdiction is everything without it a Court must lay its pen down. It is submitted that the 2nd Administrator failed to transfer the assets herein in accordance with the grant. It is on the basis of this that the transfer of the land to the 1st interested parties is challenged. The interested party on the other hand argues that if the applicants wish to challenge their title the only arena for that contest is the Environment and Land Court.

13. From the pleadings I deduce that the property is currently registered in the name of the 1st interested party. I deduce further that the transfer was effected by the 2nd Administrator. As framed however, the Applicants herein have lodged their claim against the beneficiaries of the Estate, the registered owner of the land in dispute and the Advocates who likely acted for the parties in the contested transaction.

14. This framing by the Applicants necessarily changes the hue of the claim and slides it out of the reach of this Court. The limits of the mandate of probate court are now well established by judicial precedent. *In re Estate of Alice Mumbua Mutua (Deceased)* [2017] KEHC 8289 (KLR) the Court stated,

[27.] Disputes of course do arise in the process. The provisions of the *Law of Succession Act* and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the *Law of Succession Act* and the Probate and Administration Rules. Such have to be resolved through the structures created by the *Civil Procedure Act* and Rules, which have elaborate rules on suits by and against executors and administrators...

[29.] Clearly, disputes as between the estate and third parties need not be determined within the succession cause.... The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be functus officio so far as the property in question is concerned. The primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the court's work would be complete. The proposition therefore is that not every dispute over property of a dead person ought to be pushed to the probate court. The interventions by that court are limited to what I have stated above.

15. I am constrained in the circumstances to find that in so far as the dispute is between the applicants and a third party this court is not vested with the jurisdiction to adjudicate this matter. They may have a legitimate grievance but I am not equipped with the tools to resolve it. In the circumstances, I will



uphold the preliminary objection on the ground that this Court lacks jurisdiction. I will not venture into the other issues raised as I am compelled to lay down my tools.

16. The Application is accordingly struck out, each party will bear their own costs

It is so ordered.

SIGNED, DATED AND. DELIVERED VIRTUALLY IN NAIROBI ON 15th DAY OF MAY, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Fardosa Court Assistant

Mr. Nkatha for Respondent holding brief for Muturi for 1st Interested Party

