



REPUBLIC OF KENYA



**In re Estate of Late Daniel Mbatha Ngumu (Deceased) (Succession Cause 787 of 2014) [2025] KEHC 9120 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9120 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 787 OF 2014**

**RC RUTTO, J**

**JUNE 19, 2025**

**BETWEEN**

**PATRICK MUTETI MBATHA ..... 1<sup>ST</sup> OBJECTOR**

**DELFINA KALUNDE MBATHA ..... 2<sup>ND</sup> OBJECTOR**

**AND**

**MUSYOKA MBATHA ..... 1<sup>ST</sup> RESPONDENT**

**ONESMUS NGUMU MBATHA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me for determination is a Preliminary Objection dated 18<sup>th</sup> March 2025 filed by the 1<sup>st</sup> and 2<sup>nd</sup> objectors. The preliminary objection raises the following issues set out herein verbatim;
  - a. The Honourable court lacks the jurisdiction to hear and determine the Application dated 30<sup>th</sup> October, 2024 and the replying affidavit therein by the interested parties for the objectors/ applicants application is premised upon Sections 47 and 76 of the *Law of Succession Act* (Cap 160) Laws of Kenya and Rules 44 and 73 of the *Probate and Administration Rules* which only the High Court is mandated with jurisdiction
  - b. That that if the Interested parties have any legitimate claim of purchase then the best court to ventilate their issues falls under the purview of the Environment and Land Court, which is clothed with jurisdiction to hear and determine land disputes in accordance with Article 162(2)(b) of the *Constitution* of Kenya and which jurisdiction is further grounded on section 13 of the *Environment and Land Court Act*.
  - c. That the Interested parties have contravened section 45 of the *Law of Succession* and in the foregoing do not have any locus before the Honorable Court.



- d. The Application under Certificate of Urgency dated 30th October,2024 and the Replying Affidavit dated 10th day of February,2024 be struck out with costs; both aggravated costs and costs of the suit.
2. At the outset, I wish to highlight the glaring grammatical errors in the drafting of the preliminary points raised in the objection. The document lacks precision and falls significantly short of the standard expected from an advocate's draft. The poor structuring and careless phrasing reflect a lack of meticulous attention, resulting in an unrefined presentation that undermines the clarity and professionalism typically required in legal drafting.
3. The facts leading to the filing of the Preliminary Objection are that Farmers Choice and Hesbon Wairi Kamau (herein after referred to as 1<sup>st</sup> and 2<sup>nd</sup> interested parties respectively) moved court by way of a Notice of Motion Application under certificate of urgency seeking inter alia the following orders;
  - a. Spent
  - b. That the court be pleased to grant/allow the proposed interested parties leave to be enjoined in this suit as Interested parties
  - c. That the status quo be maintained pending hearing and determination of this application
  - d. That status quo be maintained pending hearing and determination of the summons for revocation of grant dated 20<sup>th</sup> September 2024
4. This application is supported by the affidavit of Hesbo Wairi Kamau and on the grounds on the face of the application. The grounds are summarised as follows that the proposed interested parties purchased and transferred to its name the listed title deeds and further subdivided and transferred to its members; they conducted due diligence on the properties and discovered that the said titles had been subdivided from Donyo Sabuk/Komarock Block 1/532 and that the vendors had registered proprietor had procured the title in their names as an inheritance from the estate of the late Daniel Mbatha Ngumu; that the objectors have filed a suit seeking to annul the grant and revoke all transfers made on assets of the late Daniel Mbatha Ngumu; they seek to be enjoined in the suit to enable them vindicate their proprietary rights; they are likely to suffer irreparable loss and no prejudice will be occasioned to the respondents herein if the orders sought are granted.
5. The Preliminary Objection was argued by way of oral submissions, the objector submitted that this court has no jurisdiction to hear and determine the application dated 30/10/2024 on grounds that the Objector applicant seeks revocation of grant on the basis of Section 47 and 76 of the Law of succession and Rule 44 and 73 of the probate and Administration Rules. That the subject matter is probate while the applicants are purchasers from the impugned 1<sup>st</sup> and 2<sup>nd</sup> Respondent administrators; that they did not purchase land from the deceased and as such are not creditors of the estate. He further submitted that it would be unfair to bring them on board in this probate and administrators where the court is dealing with the estate of the deceased.
6. He prayed that the issue of purchase be referred to the ELC court under Article 162(2)5 and Section 13 of the ELC Act. The Objector also urged that the joining of the interested party defeats a pure family issue when they can still have their issue determined by the ELC court. They made reference to Section 45 of the Law of Succession to urge that interested parties are intermeddlers and cannot participate in the proceedings.
7. In opposing the preliminary objection, the interested party submitted that the court had already made a determination on the application dated 30/10/2024. That a Ruling to that effect was rendered on



- 6/11/2024. They referred to the case of *Julius Ochieng Oloo & another Versus Lilian Wanjiku Gitonga* (2019) KECA 343 to urge the court that the Objector should proceed and file an appeal before the Court of Appeal if aggrieved by decision allowing the application dated 30/10/2024.
8. It was further submitted that the court had the jurisdiction to make the decision it did pursuant to Section 47 of the *Law of succession Act* and Rule 73 of the *Probate and Administration Rules*. It urged that the interested party is the current registered owner of some of the properties from the beneficiaries who at the time had already transmitted title from the estate to their names as beneficiaries by dint of confirmation of grant issued by the court hence, they submitted that it will be highly prejudicial for the hearing of the revocation to proceed without their participation and yet their rights were being challenged. They therefore urged the court to dismiss the preliminary objection with costs.
  9. In response to the interested party submission, the Objector submitted that the interested party had gone to the substantive application. That the issue for determination was on the jurisdiction and locus standing of parties. They urged the court to uphold the preliminary objection and strike out the application dated 30/10/2024 and Replying Affidavit sworn on 10/2/2025 and grant the Objector/Applicant costs.
  10. From the parties' submissions, two key issues arise: first, whether the court has already ruled on the application dated 30th October 2024, and second, whether this court should allow the preliminary objection dated 18th March 2025.
  11. Regarding the first issue, as a court of record, the proceedings speak for itself and provides clarity. Upon reviewing the record, I note that on 6th November 2024, this matter came before the court, and the following directions were issued:
    - a. The application dated 30th October 2024 was allowed, and the 1st and 2nd interested parties were joined in the proceedings.
    - b. The 1st administrator and the interested parties were granted 21 days to file their responses.
    - c. Upon service, the appellant was given 14 days to file a supplementary affidavit, if necessary, along with written submissions.
    - d. Both the administrators/respondents and the interested parties were each granted 14 days to file their submissions.
    - e. A mention was scheduled for 18th December 2025 to set a ruling date.
  12. Based on these directions, the court finds that the application dated 30th October 2024 was fully addressed and dispensed with.
  13. Regarding the preliminary objection, the applicant specifically asserts that this court lacks jurisdiction to rule on the application. However, since the court had already made a determination on the application allowing the interested parties to participate and provided directions on how the matter should proceed the preliminary objection has effectively been overtaken by events.
  14. As a result, this court no longer has jurisdiction to entertain the preliminary objection. The appropriate course of action for the applicant now lies with the Court of Appeal.
  15. Given this finding, the second issue concerning the preliminary order dated 18th March 2025 no longer requires determination, as it is rendered moot by the court's ruling on the first issue.
- Orders accordingly.

**DATED SIGNED AND DELIVERED AT MACHAKOS THIS 19<sup>TH</sup> DAY OF JUNE 2025.**



**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Applicant

.....Respondent

Sam, Court Assistant

