



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of the Late Madan mohan Singh (Deceased) (Succession Cause 1254 of 2017) [2025] KEHC 8559 (KLR) (Family) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8559 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1254 OF 2017
HK CHEMITEI, J
JUNE 19, 2025

BETWEEN

SUNIT S VARMA APPLICANT

AND

ATHI STORES LIMITED 1ST RESPONDENT

KAMALJEET SINGH BHARI 2ND RESPONDENT

RULING

1. Before the court are two sets of applications. The first application dated 7th May 2024 seeks orders that:-
 - (a) A declaration do issue that order (b) of this courts ruling dated 22nd February 2024 was a blanket status quo injunction and did not give possession and or direct for eviction of any party in possession of LR No. 18696/55.
 - (b) That the court do set aside order (b) restraining the Applicant from dealing with LR No. 18696/55 pending the determination at the Environment and Land Court vide Machakos Misc. Civil Application Number 234 of 2013 or from any other competent court.
 - (c) A declaration do issue that this court has no jurisdiction to determine ownership of LR No. 18696/55 and parties herein should move the appropriate court.
2. The application is based on the Applicant's affidavit sworn on the same date.
3. The Respondents have objected to the same vide the grounds of opposition dated 20th June 2024.
4. On the other hand, the application dated 31st October 2024 essentially seeks to strike out the grounds of opposition filed by the Respondent dated 20th June 2024 on the grounds that the company (1st Respondent) had not authorised any person to defend or file any grounds on its behalf.



5. The Respondent filed a preliminary objection on a point of law dated 8th April 2025 in which they claim that the Applicant is not a party to this cause as provided under Order 1 rule 9 and 10 of the [Civil Procedure Rules](#) and further that under Section 82 of [Cap 160](#) he was not a legal representative of the deceased estate herein.
6. That the company was a legal entity and the Applicant in no way had been appointed to act for the same either by resolutions of a meeting or otherwise.
7. They therefore prayed for the applications to be disallowed.
8. Having looked at the said preliminary objection and which I did not find any sufficient evidence to contradict it from the Applicants side I find the same to be merited for the following reasons.
9. In the first place the provisions of Order 1 rule 9 of the [civil procedure rules](#) are explicit. The same states:

“No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”
10. In view of the fact that the Applicant has not placed himself on record properly it goes without say that he was not a party in the suit.
11. He may have interest in the company but I find that the he did not follow proper procedure so as to be enjoined in the suit as provided under Order 1 rule 10 of the [Civil Procedure Rules](#).
12. In any event the issue before this court has nothing to do with the provisions of the Company Act. This courts brief is to do with the deceased Will and the rightful beneficiaries who may include the Applicant.
13. My attention however has been drawn to the ruling I made dated 22nd February 2024. In as much as the Applicant is not a party in this cause for now the question of being affected by the order could feintly be considered without touching on the substratum of the ruling. I believe the provisions of Rule 73 of the Probate Rules permit this court to consider and ensure the ends of justice are met.
14. In the first instance this court cannot decide outside its jurisdiction especially where the Environment and Land Court is legally permitted to act. Whether there are other suits at the said court is for the parties to litigate therein.
15. On the same note suit number 234 of 2013 was discussed by the parties in the ruling of 22nd April 2024 and if the Applicant had issues with it he should have approached this court properly.
16. At the same time the issue of shareholding of the 1st Defendant is for the commercial courts or the other divisions of the High court to determine. So much so that what the Applicant has raised in his affidavit in support of the Applicant whether there was fraud perpetrated in the estate is not this courts brief.
17. Nonetheless the order of 22nd April 2024 for clarity purposes did not authorize any eviction of any party from the suit property or at all. It was simply maintaining the status of the land pending the outcome of this cause and in particular the issue of the Will.
18. This court is clear that any orders of eviction or otherwise is squarely left to the Environment and Land Court or any other tribunals clothed with the jurisdiction.
19. Other than this clarification I find that the preliminary objection is merited and the same is hereby allowed as the Applicant is not a party to this case.



20. Costs in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 19TH DAY OF JUNE 2025.

H K CHEMITEI.

JUDGE

