



**In re Estate of Moses Wasike Amutala (Deceased) (Probate & Administration
E003 of 2024) [2025] KEHC 10313 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10313 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
PROBATE & ADMINISTRATION E003 OF 2024**

REA OUGO, J

JULY 11, 2025

**IN THE MATTER OF THE ESTATE OF MOSES WASIKE
AMUTALA (DECEASED)**

BETWEEN

**SIRANDAFU FRAMERS CO-OPERATIVE SOCIETY . 1ST INTERESTED PARTY
JOHNSON MANYONGE WANJALA 2ND INTERESTED PARTY
EDINA NANJALA BARASA 3RD INTERESTED PARTY
BERNARD WANYONYI KHATETE 4TH INTERESTED PARTY
JOSEPH SIRENGO NANGESO 5TH INTERESTED PARTY
MARTIN PHILIP OPICHA NAPWORO 6TH INTERESTED PARTY**

AND

FESTUS NAKHISA MAYEKU PETITIONER

RULING

1. Before this Court for determination is the Notice of Preliminary Objection dated 03/04/2025 filed by the Petitioner/Respondent on the following grounds;
 - a. The Notice of Motion application herein revolves around purchase, sale and occupation of land by the interested parties/objectors which sale are disputed by the petitioner/respondent which dispute fall within the jurisdiction of the Environment and Land Court by virtue of Article 162(2)(b) of the Constitution and Section 13 of the [Environment and Land Court Act](#) No. 19 of 2011.
 - b. This honourable court has no jurisdiction to hear and determine Notice of Motion dated 10/02/2025.



2. The parties filed submissions on the preliminary objection.
3. The Petitioners filed submissions dated 08/05/2025, in which they begin by citing the applicable law, i.e., Article 162(2)(b) of the [Constitution](#) and Section 13 of the [Environment and Land Court Act](#), No. 19 of 2011, and referenced case laws including the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696 and [Owners of Motor Vessel 'Lillian S' v Caltex Oil \(Kenya\) Limited](#) [1989] KLR 1. It was argued that there is a need for a decision by a competent court on land ownership matters after hearing the parties in a full trial. That this Court cannot declare the Applicants as beneficiaries through the purported sale before hearing the parties fully and allowing them to present their evidence regarding the disputed ownership.
4. It is further argued that the claim of ownership by the Interested parties/Objectors is not one contemplated under the [Law of Succession Act](#) but falls within the mandate of the ELC. Reliance was placed on the case of [Dias Property Limited & 5 others v Gitbae & 10 others](#) [2024] KECA 318 (KLR), [In re Estate of Prisca Ong'ayo Nande \(Deceased\)](#) [2020] eKLR, and [In re Estate of Alice Mumbua Mutua \(Deceased\)](#) [2017] KEHC 8289 (KLR).
5. The interested parties/objectors filed their submissions dated 02/05/2025, arguing that the main issue is whether a purchaser, from the deceased during his lifetime, qualifies as a liability of the estate and whether such a claim can be properly addressed within succession proceedings under the [Law of Succession Act](#). They contended that when a party presents evidence that prima facie proves they purchased from the deceased's estate, the issues for determination fall within the jurisdiction of this Probate Court. They relied on the case of [Re Estate of Nzembi Musila \(Deceased\)](#) [2021] eKLR and [Alexander Mbaka v Royford Muriuki Rauni 67 Others](#) [2016] eKLR. They further submitted agreements that clearly show they purchased from the deceased and have occupied various portions of land from the time of purchase until now. Therefore, through the sale agreements, they assert they have a legitimate claim to the estate of the deceased. They quoted the case of [Re Estate of M'Marete M'Arimi \(Deceased\)](#) [2017] eKLR, where they submitted that the Court therein examined the various agreements presented and held that parties who had contracted with the deceased were liabilities to the estate and were entitled to benefit. Lastly, it was submitted that whether or not the Interested Parties are liabilities requires factual evidence, which issue cannot be dealt with through a Preliminary Objection. This position was emphasised in [Oraro v Mbaja](#) [2005] eKLR.

Analysis And Determination.

6. Before I consider the notice of preliminary objection on merit, it suffices to set out the background.
6. The Petitioner herein filed a petition for letters of administration intestate dated 23/02/2024, in his capacity as the son of the deceased. In the said petition, he listed seventeen (17) individuals as beneficiaries of the estate and identified land parcel number Bokoli/Bokoli/328 (hereinafter referred to as "the suit land") as the sole asset of the estate. Subsequently, on 19/04/2024, this Court issued a grant of letters of administration intestate appointing the Petitioner as the administrator of the estate. Thereafter, the Administrator filed an application for confirmation of the said grant by way of a summons dated 04/12/2024. Prior to the hearing of the said application, the Interested Parties/Objectors filed chamber summons dated 10/02/2025, seeking to be recognised as liabilities against the estate on the basis that they had purchased various portions of the suit land from the deceased through sale agreements executed between the years 1993 and 2001. They further sought a declaration that the respective portions be deemed due to them upon confirmation of the grant.



7. Prior to the hearing of the abovementioned protest, the Petitioner filed the current preliminary objection challenging this court’s jurisdiction to determine the issues raised in the chamber summons referred to above.
8. Having considered the pleadings and submissions herein, the court finds that the main issues for determination are;
 - i. Whether the Preliminary objection is merited?
 - ii. Who bears the costs?
9. The essence of a Preliminary Objection was outlined by the Court of Appeal in the case of *Mukisa Biscuits Manufacturing Co. Ltd. v West End Distributors* (1969) EA 696 at 700 where Law, JA stated that:

“...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.”
10. From the foregoing, it is clear that a Preliminary Objection should raise purely legal points, based on the assumption that all facts pleaded by the other side are correct. The Petitioner has challenged this court’s jurisdiction to determine the protest filed by the objectors. It is well established that jurisdiction is everything, and once a court finds it lacks jurisdiction, it should cease proceedings. (see *Owners of the Motor Vessel “Lillian “S” v Caltex Oil (Kenya) Limited* [1989] KLR I).
11. It is not in dispute that the Environment and Land Court is vested by Article 162 of the *Constitution* and Section 13 of the *Environment and Land Court Act* with the jurisdiction to determine disputes concerning the use, occupation, and ownership of land, while the duty of the Probate Court is to oversee the transfer of the deceased’s estate to his beneficiaries. Its jurisdiction extends over the net estate of the deceased, being that which he was free to deal with during his lifetime, and its purpose is to ascertain the assets, liabilities if any, the beneficiaries, and the mode of distribution of the estate.
12. In *Mbula Muoki Ndolo & Another v Kenya Power and Lighting Company Limited* [2017] eKLR, Nyamweya J, while referring to the case of *Salome Wambui Njau (suing as Administratrix of the Estate of Peter Kiguru Njuguna (Deceased)) v Caroline Wangui Kiguru*, ELC (2013) eKLR, stated as follows:

“I held that in matters of succession disputes touching on land, Environment and Land Court Pursuant to Article 162(2) of the *Constitution* and the High Court as the Succession Court under Section 47 of the *Law of Succession Act* would appear to have a concurrent jurisdiction. It would thus depend on the circumstances of each case which court is best suited to hear and determine the dispute.”
13. This Court observes, at the outset, that it lacks the jurisdiction to resolve disputes regarding the validity, enforcement, or interpretation of agreements for the sale of land within a succession cause. Its jurisdiction in probate matters is confined to administering and distributing the estate of a deceased person in accordance with the law. Issues concerning ownership of land, including claims arising from alleged sale agreements made by the deceased during their lifetime, fall squarely within the scope of the Environment and Land Court, as established under Article 162(2)(b) of the *Constitution* and the *Environment and Land Court Act*. Therefore, it would be ultra vires for this Court to decide matters



that involve determining proprietary rights or interests in land, and it would be legally incorrect to attempt to grant or deny such rights within this forum. Parties claiming such rights are free to seek appropriate remedies before the court that has the proper jurisdiction.

14. The Court in *Adome v Ogutu* (Succession Appeal 24 of 2021) [2024] KEHC 7682 (KLR) (28 June 2024) (Judgment) observed that:

“The High Court has no jurisdiction to address issues around ownership of property, by dint of Articles 162(2) and 165(5) of the *Constitution*. That would include where issues of ownership arise in probate and administration proceedings. It would mean that where an issue around ownership arises in probate proceedings conducted before the High Court, the probate proceedings before that court would not be the appropriate forum to resolve the issues, and the same ought to be placed before the court with jurisdiction.”

15. See also *In re Estate of Kimani Kinuthia* [2008] eKLR (Ibrahim, J), *Jidraph Kamero Njuguna & 3 others v Hilda Njeri Kamero* [2012] eKLR (L. Njagi, J), *In re Estate of Julius Wachira (Deceased)* [2013] eKLR (Musyoka, J), *In re Estate of Stone Kathuli Muinde (Deceased)* [2016] (Musyoka, J), *In re Estate of the Late Jonathan Kinyua Waititu (Deceased)* [2017] eKLR (Ndung'u, J) and *In re Estate of Mwangi Gikonyo* [2017] eKLR (Waweru, J).

16. The Interested Parties/Objectors correctly submitted that it is only where a claim against the estate has crystallised that the same may be litigated before the Family Court within a succession cause. A claim is said to have "crystallised" when it is definite, legally enforceable, and not contingent upon the resolution of disputed facts or rights. In succession matters, this would refer to claims that have been previously adjudicated and settled by a court of competent jurisdiction, or which are otherwise admitted and undisputed. Thus, where an alleged purchaser of land from a deceased person seeks to assert rights under an agreement for sale, such a claim does not fall within the probate court's jurisdiction unless and until it has been conclusively determined elsewhere, typically before the Environment and Land Court. It follows, therefore, that the succession court cannot determine issues of land ownership or enforce unadjudicated contractual claims arising from purported land sales.

17. In conclusion, I find that the notice of preliminary objection merited and proceed to uphold the same. No order as to costs.

DATED AND SIGNED AND DELIVERED AT BUNGOMA THIS 11TH DAY OF JULY 2025.

R.E OUGO

JUDGE

In the presence of:

Mr. Muhuyu For the Petitioner

Respondent -Absent ; Wilkister - C/A

