



REPUBLIC OF KENYA



In re Estate of James Mbuthia Mbocho (Deceased) (Succession Cause 613 of 2015) [2025] KEHC 9994 (KLR) (Family) (10 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9994 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 613 OF 2015
PM NYAUNDI, J
JULY 10, 2025
IN THE ESTATE OF JAMES MBUTHIA MBOCHO (DECEASED)**

RULING

Introduction

1. By Summons dated 26th October 2023, titled ‘Summons for Revocation or annulment of Mediation Settlement agreement or order of the Court’ the Applicant David Kuria Mbuthia seeks that-
 1. Spent
 2. Spent
 3. Spent
 4. That the honourable Court be pleased to make a declaration or order in that the parcel Kiambaa/ Thimbigua/ 6612 is a matrimonial home in which all beneficiaries should be registered to own the same commonly.
 5. That the Honorable Court be pleased to revoke/ annul/ cancel the mediation agreement dated 5/8/2022 adopted as an order of the court limited and in so far as the property Kiambaa/ Thimbigua/ 6612 is concerned.
 6. That this Court do cancel the title Kiambaa/ Thimbigua/6612 registered in the respondent’s name
 7. That the cost of this application be born (sic) by the respondent herein.
2. The Application is supported by the Applicant’s affidavit, he has also sworn further affidavits. The bone of contention is that the final transmission of the estate, specifically as related to Kiambaa/ Thimbigua/961 does not comply with the settlement agreement. Specifically, as it interferes with the original sub division and distribution plan as per the succession arrived at the Chief Magistrate’s Court in Kiambu Succession Cause 208 of 2011. He takes issue with the erroneous reference to Succession



Cause 208 of 2013 as the correct reference in the Summons for confirmation ought to have been Succession Cause 2011.

1. The Application is opposed and the respondent has sworn Preliminary objection and replying affidavits. The Preliminary objection dated 18th April 2024 is framed as follows-
 1. That the Applicants summons challenges the Notice to vacate and the Eviction Notice issued by the respondent pursuant to Section 152E and 152F of the Land Act No. 6 of 2012 and related to proprietary interests in LR No. Kiambaa/ Thimbigua/6612 which clearly fall within Section 13 (2) (d) and (e) of the Environment and Land Court Act No. 19 of 2011 and therefore the Honourable Court has no jurisdiction to entertain the application.
 2. In her replying affidavit the respondent further avers that she is the registered proprietor of the subject parcel of land, the same having been transmitted vide certificate of confirmation of grant that was issued pursuant to mediation agreement executed by the parties on 5th August 2022 and adopted by the Court as an order of the Court on 29th September 2022.
3. Pursuant to the Court's direction that both the Preliminary Objection and the summons would be canvassed by written submissions both parties have filed their submissions and cites the decision in Munyasya Mulili & 3 others v Sammy Muteti Mulili [2017] KEHC 6180 (KLR) and Estate of Alice Mumbua Mutua (deceased) [2017] eKLR in support of his prayer that the title be cancelled.
4. The respondent's submissions are dated 20th August 2024 and the following issues identified for determination-
 - a. Whether the Court has jurisdiction to deal with eviction issues from a registered parcel of land
 - b. Whether the Court has jurisdiction on land transferred by way of transmission.
 - c. Whether the Court can revoke, annul and cancel part of a mediation Agreement
 - d. Whether the Court can cancel the title to (sic) issued pursuant to a mediation agreement.
5. It is submitted that the Court with jurisdiction is the Environment and Land Court and reference made to the decision in Re Estate of Atibu Oronje Asioma (Deceased) (Succession Cause 312 of 2008) [2022] KEHC 11046 (KLR) (22 July 2022) (Ruling); Re Estate of Kiberenge Mukwa (Deceased) [2021] eKLR. It is submitted grant having been confirmed and the estate transmitted to beneficiaries the Court is functus officio.
6. It is submitted that Article 162 ousts the probate court from this dispute and vests it in the Environment and Land Court and reference is made to the decision in Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others [2017] eKLR. It is submitted that jurisdiction can only be conferred by statute or the Constitution and in this instance the Probate Court lacks the jurisdiction reference is made to the decision in Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others [2012] eKLR.
7. It is submitted further that the Court cannot annul a portion of the settlement agreement and reference made to the decision in Alios Finance Kenya Limited v Country Farms Limited (Civil Appeal E005 of 2020) [2022] KEHC 11012 (KLR) (27 July 2022) (Judgment), in any event it is submitted that the applicant cannot refer to the subject parcel of land as matrimonial property as he is not the spouse of the deceased.



Analysis And Determination

8. Having considered the pleadings, submissions filed herein and the relevant law, I surmise the following as the issues for determination-
 - a. Whether this Court has jurisdiction?
 - b. Whether the Court can vary the mediation agreement that is the basis of the certificate of confirmation of grant dated 29th November 2022.
 - c. Whether the Court can/ should cancel title for property parcel No. Kiambaa/ Thimbigua/ 6612?
 - d. Who should pay costs?
9. On whether or not the Court has jurisdiction, the applicant is challenging the respondents title to Kiambaa/ Thimbigua/ 6612. The parties are agreed that the transmission was pursuant to the Certificate of Confirmation of Grant that was issued on 29th November 2022. The Applicant's issue is that the transmission is not in line with the Certificate of Confirmation of Grant. That is to say, the final actions do not match what was agreed on in the settlement agreement. The Applicant is therefore seeking to enforce the settlement agreement and the certificate of confirmation of grant. I agree with the Respondent, as relates the limits of the probate court. The issue is whether the issue as framed by the applicant falls within the mandate of the probate Court as well articulated in *re Estate of the Late Simion Kibiego Jumo alias Simeon Kibiegon Juma (Deceased)* [2024] KEHC 5922 (KLR), the mandate of the probate court is limited and does not extend to determining issues of ownership as in the instant case.
10. The Court annexed Mediation process, is governed by the *Civil procedure (Court- Annexed Mediation) Rules, 2022*, relevant to the current application, rule 39 which provides Setting aside an order or decree arising out of settlement agreement
 1. No application for setting aside of an order or decree arising from a mediation settlement agreement shall be filed except with leave of Court.
11. The requirement for leave is couched in mandatory terms. I have looked at the settlement agreement it is signed by the beneficiaries, including the applicant herein. The Court proceeded to adopt the consent administratively, having confirmed that it was duly executed.
12. It is beyond the mandate of this Court to cancel the title of the subject parcel of land. The circumstances in the current case must be distinguished from those in the *Munyasya Mulili & 3 others case (Supra)* as in that matter the Administrator had purported to transfer the land to himself prior to the issuance of the confirmation of grant.
13. On account of the foregoing, the only possible outcome is that the application dated 26th October is dismissed in its entirety.
14. There shall be no order as to costs.
15. Leave to appeal is granted. Party exercising their right of appeal to file appeal within 30 days

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 10th DAY OF JULY, 2025.

P. M. NYAUNDI



HIGH COURT JUDGE

In the presence of:

No Appearance by Parties

Fardosa Court Assistant

