



REPUBLIC OF KENYA



**In re Estate of Kaingati Kigaya (Deceased) (Succession Cause 108 of 2016)
[2025] KEHC 13078 (KLR) (22 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13078 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
SUCCESSION CAUSE 108 OF 2016
TW OUYA, J
SEPTEMBER 22, 2025**

IN THE MATTER OF THE ESTATE OF KAINGATI KIGAYA (DECEASED)

BETWEEN

**NANCY WANGARI MBAKI 1ST PETITIONER
JOYCE NYAMBURA MBAKI 2ND PETITIONER
MERCY WAIRIMU MBAKI 3RD PETITIONER
KEZIA WAIYEGO MBAKI 4TH PETITIONER**

AND

**GRACE NDUTA KAINGATI 1ST RESPONDENT
MUCHIRI KAINGATI 2ND RESPONDENT**

JUDGMENT

1. The Applicants have moved this honourable court vide a Notice of Motion Application dated 23rd April 2024 seeking that the Land Registrar to dispense with the production of the title deed issued over the suit property forming the estate known as LR.Loc/9/ Kanyenyaini. The Applicant also prayed that the orders be served upon the Officer Commanding Station, Kanyenyaini Police Station and the Chief Kanyenyaini Police Station to ensure compliance.
2. The application was supported by grounds on the face of the Application as well as the affidavit of Nancy Wangari Mbaki in support of the Application where it is deponed that this honourable court on 10th January 2024 revoked the transfer of the title of the suit property from the 1st Respondent to the deceased. On the same date, the court appointed the 1st Applicant and the 1st Respondent (now deceased) as joint administrators of the estate of the deceased.



3. It is further deponed that the succession cause was determined on 8th November 2022 with the court ordering that LR. Loc/9/ Kanyenyaini be divided into two equal shares for each party. Each party was at liberty to effect the said orders. Therefore, the 1st Respondent visited the Murang'a Land's office on 10th January 2024 in order to apply for subdivision of L.R. LOC/9/ Kanyenyaini in two equal shares. While at the land's office, she was advised to produce the original title deed to the estate property in order to effect the cancellation of the title deed and subsequent subdivision of the property into two equal shares. Further, she was advised to ensure the safety of the land officers who shall be tasked with the subdivision of the estate. Nevertheless, it is impossible for the Applicants to produce the original title documents over the estate as the same were in the custody of the 1st Respondent who is now deceased.
4. The Respondents did not file any response to the Application despite being served.
5. The matter proceeded to hearing whereby the Applicant made oral submissions.
6. It was submitted that the Applicant was unable to secure compliance of the Respondents to have the estate subdivided into equal shares as ordered by the court. Therefore, the Applicants wanted that the production of the original title to the estate be dispensed with as the 1st Respondent, who had been appointed as a joint administrator to the estate, was deceased. The Applicant also requested for police protection while undertaking the subdivision of the property.
7. Upon considering the Application, the supporting affidavit, the annexures as well as the oral submissions by the Applicant. The main issue that commends itself for determination is whether the Application is merited.
8. Section 73 of Probate and Administration Rules provides that:

“73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
9. In the case of Salome Wambui Njau (suing as the Administratrix of the Estate of Peter Kiguru Njuguna (Deceased) v Caroline Wangui Kiguru, Nairobi ELC suit NO (2013) eKLR, the court was of the view that in matters of succession disputes touching on land, the 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.
10. Following the observation under section 73 of Probate and Administration Rules, and the holding in the above case, can this court issue the orders herein given that the process of succession is complete and the only process remaining is that of transmission? The 1st applicant has stated that upon visiting Murang'a Land Registry to initiate the transfer process, he was told that he should replace the old title deed before he can execute the confirmed grant but according to him, he has tried to trace the title deed to no avail since the 1st Respondent who had the Title deed is since deceased.
11. Section 31 of the *Land Registration Act*, 2012 ('the Act') Act provides that unless the Land Registrar dispenses with the production of a certificate of title or a certificate of lease, the same must be produced during the registration of any dealing with the land or lease to which it relates.
12. Similarly, the procedure for replacement of lost or destroyed certificates of title and registers of land is enunciated in Section 33 of the *Land Act*. It provides that, in case of loss or destruction of a certificate of title or certificate of lease, an application for replacement is to be made to the Land Registrar by the proprietor of the land or lease accompanied by evidence of such loss or destruction. If the Land



- Registrar is satisfied with the evidence of such loss or destruction, he shall issue a replacement thereof after expiry of 60 days of publication of the application in the Gazette and in any two local newspapers of nationwide circulation.
13. Evidently, there is no provision in either the [Land Registration Act](#) or the [Land Act](#) that allow this court to intervene in the exercise by the Land Registrar of his powers under those two Acts.
 14. The powers of this court with regard to the exercise of the role of the Land Registrar is as per Section 86(1) of the [Land Registration Act](#) which donates to this court the power to review a decision of the Land Registrar on the powers conferred on him under the Act on an application made by an aggrieved party.
 15. Section 31(1) of the Act allows the Land Registrar to dispense with the production of a certificate of title to land or lease during the registration of any dealing with the land or lease. The application for such dispensation should be made to the Land Registrar who shall determine whether to allow it or not. The court can intervene in the matter under Section 86(1) of the Act in case a party is aggrieved by the decision of the Land Registrar on the issue as already explained above.
 16. In the instant case, it is evident that the Applicants have not followed the procedure outlined above as there is no evidence before me that an application for dispensation with the production of the certificate of title of the land herein had been made to the Land Registrar.
 17. As I have observed above, Section 33 of the Act provides for the procedure for applying for replacement of a lost or destroyed certificate of title or lease. The Act has not given the court any power to direct the Land Registrar to dispense with procedure set out in the said section which is to be followed before a lost or destroyed title can be replaced. In my view, the said procedure is intended to protect the land registration system and sanctity of title. It is intended to prevent fraud and other illegal dealings with land.
 18. The above notwithstanding, does this court have jurisdiction to grant the orders sought herein?
 19. It is important to note that, with the enactment of the [Environment and Land Court Act](#) of 2012, the jurisdiction to determine disputes relating to ownership and use of land is bestowed on the Environment and Land Court. It is my considered view, as such, that the issue arising out of the instant application is not within the jurisdiction of this Honourable Court.
 20. In the case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, the Supreme Court held as hereunder;

“A Court’s jurisdiction flows from either [the Constitution](#) or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by [the Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”
 21. [The Constitution](#) intended that the High Court is barred from having jurisdiction over matters reserved for courts of equal status under Article 162 of [the Constitution](#) and Section 13 of the [Environment and Land Court Act](#).
 22. The upshot is that the instant application lacks merit and is hereby struck with costs.



DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 22ND SEPTEMBER, 2025.

HON. T. W. OUYA.

JUDGE

