



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maina & 2 others v Registrar, Laikipia West (Succession Cause  
E002 of 2024) [2025] KEHC 12797 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12797 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
SUCCESSION CAUSE E002 OF 2024**

**AK NDUNG’U, J**

**SEPTEMBER 19, 2025**

**IN THE MATTER OF THE ESTATE OF MUTUOTA PHILIP  
KIMANI ALIAS PHILIP MUTUOTE KIMANI (DECEASED)  
IN THE MATTER OF AN APPLICATION FOR AN ORDER  
OF INHIBITION OVER PROPERTIES OF THE DECEASED**

**BETWEEN**

**JEDIDAH MUKAMI MAINA ..... 1<sup>ST</sup> PETITIONER  
CHARLES JAMES MUTUOTA ..... 2<sup>ND</sup> PETITIONER  
DANIEL KIMANI MWANGI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**REGISTRAR, LAIKIPIA WEST ..... RESPONDENT**

**RULING**

**Background**

1. Vide the Amended Summons dated 2<sup>nd</sup> December 2024, the Applicants sought the following reliefs:
  - i. Spent
  - ii. Spent
  - iii. That pending the hearing and determination of this Succession Cause, this honourable court be pleased to issue an order directed at the Land Registrar, Laikipia West compelling him to register an order of inhibition against all the sub-divisions of Title No. Marmanet Melwa Block 1/504(Muhotetu) being sub-parcels No. 7801 to 7882.
  - iv. That an order do issue directed at the Land Registrar, Laikipia West compelling him/her to cancel entries No. 4.5 and 6 on the register of titles relating to Title No. Marmanet Melwa



Block 1/504(Muhotetu) as well as the resulting entries and title deeds for sub-parcels No. 7801 to 7882 for being false, fraudulent, forgery and irregular.

- v. That the costs of this Application be borne by the Respondent.
2. The application elicited no response from the Respondents and directions were taken that the summons be disposed of by way and of written submissions.
  3. I have considered the amended summons, the supporting affidavit and submissions filed. At the heart of the summons is the alleged intermeddling of the estate of Mutuota Philip Kimani alias Philip Mutuote Kimani whereby Title No. Marmanet Melwa Block 1/504 (Muhotetu) has been sub divided with resultant parcels being Nos. 7801 and 7882 and title deeds issued. The said sub division and issuance of title deeds is said to be fraudulent having been done after the death of the deceased.
  4. Two issues stick out like a sore thumb in this matter. Firstly, the Summons is taken out without enjoining the party or parties in whose favour the entries were made and title deeds issued. Any resultant orders would thus adversely affect a party or parties who have not heard the opportunity to be heard.
  5. Secondly, the impugned entries have already been made and title deeds issued. If the applicants wish to challenge the same and revert the property as an asset of the deceased, the correct procedure is for an administrator of the estate, either through a limited grant ad litem or through a full grant to enforce the rights in the court with the proper jurisdiction and if successful have the entries and the titles cancelled reverting the property to the estate whereupon the jurisdiction of this court will be triggered.
  6. I note that the applicants have vehemently contested the alleged entries and issuance of title. I have no jurisdiction to make a finding one way or the other, with regard to whether the alleged entries and issued titles were valid. That is a matter which revolves around title to land. Under Articles 162(2) and 165(5) of *the Constitution*, I have no jurisdiction over that question. The parties are better of placing the issue before another forum for determination of the question.
  7. Musyoka J In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR) expressed himself as follows;

“The primary source of the jurisdiction of the courts is *the Constitution*. With respect to matters touching on title to and, and occupation of land, the relevant provisions are in Article 162(2) and 165(5). Article 162 of *the Constitution* essentially establishes the superior courts in Kenya. It identifies them as the Supreme Court, the Court of Appeal and the High Court and the courts established under Article 162(2). Article 162(2) envisages the establishment of courts to be of equal status with the High Court, to exercise jurisdiction over, among others, occupation of and title to land. The relevant provisions says:

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –

- (a) .....
- (b) the environment and the use and occupation of, and title to, land.”

Article 165 of *the Constitution* sets out the jurisdiction of the High Court. Article 165(5) is emphatic that that jurisdiction does not



cover the matters that have been isolated for the courts envisaged in Article 162(2). Article 165(5) states as follows:

“The High Court shall not have jurisdiction in respect of matters-

- (a) .....
- (b) falling within the jurisdiction of the courts contemplated in Article 162(2).”

8. Jurisdiction is conferred on a court by *the constitution* or statute or both. Jurisdiction is at the core of exercise of power by a court. Where there is no jurisdiction the court cannot exercise power without violating the principles of rule of law and legality. It was in that context that the Court of Appeal, in Owners of the Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Ltd [1989] eKLR, stated:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

9. In the premises, the application before me fails for misjoinder of parties and for want of jurisdiction. The same is dismissed with no orders as to costs.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**A.K. NDUNG’U**

**JUDGE**

