



**In re Estate of Limbine Mukiri (Deceased) (Succession Cause
506 of 2010) [2023] KEHC 2062 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2062 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 506 OF 2010
TW CHERERE, J
MARCH 16, 2023**

BETWEEN

MWAMATI MUTUMA APPLICANT

AND

MARK GITONGA MATI RESPONDENT

RULING

Background

1. The deceased's estate is comprised of the following assets:
 - i. LR No Antubetwe/Njoune/858
 - ii. LR No Antubetwe/Njoune/1451
 - iii. LR No Antubetwe/Njoune/1502
2. By a ruling dated November 08, 2018, the court directed that the estate be distributed as follows:
 - i. LR No Antubetwe/Njoune/858½ share to Mwamati Mutuma½ share Rael Itura M'Nkanatha (widow to M'Nkanatha Limbine) to hold in trust for Zakayo Kaberia, Peter Michubu, Zabina Kenjira and Judy Kainga
 - ii. LR No Antubetwe/Njoune/1451To be shared equally between Kaibi M'Limbine, Mbiti M'Limbine and Daniel Kainga
 - iii. LR. NO. ANTUBETWE/NJOUNE/1502To be shared equally between Kaibi M'Limbine, Mbiti M'Limbine and Daniel Kainga, Mwamati Mutuma and Rael Itura M'Nkanatha (widow to M'Nkanatha Limbine) to hold in trust for Zakayo Kaberia, Peter Michubu, Zabina Kenjira and Judy Kainga



3. By application dated November 16, 2022 supported by Applicant's affidavit sworn on November 15, 2022, Applicant seeks orders to evict the Respondent from LR No Antubwe/Njouné/858 on the ground of non-payment of the full purchase price. Respondent was served but he neither attended court nor filed any response.
4. In this instant application, the Applicants' claim is for occupation of land arising out of an alleged sale agreement between him and the Respondent. The Law of Succession Act and the Probate and Administration Rules do not deal with such disputes. Such disputes fall under the jurisdiction of the Environment and Land Court which is a creation by the Constitution of Kenya under the provision of Article 162 (b).
5. By placing a dispute relating to occupation of land before the probate court, Applicant is asking the court to engage in matters that are beyond its jurisdiction. I echo Nyarangi JA in the case of The Owners of the Motor Vessel Lilian 'S' v. Caltex Kenya Limited (1989) KLR 1 that

“..... 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”.
6. In the end, the application dated November 16, 2022 is struck out on the ground that this court has no jurisdiction to hear and determine it.

DATED AT MERU THIS 16TH DAY OF MARCH 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

For Applicant - Ms. Gikundi for Charles Kariuki & Kiome Associates Advocates

For Respondent - N/A

