



Mahamed (Suing as the Legal Representative of the Estate of the Late Mariam Chenwanch Mohamed) v Mohamed & 3 others (Environment & Land Case E016 of 2025) [2025] KEELC 4820 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4820 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E016 OF 2025**

CK NZILI, J

JUNE 25, 2025

BETWEEN

NURU JEMUTAI MAHAMED (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE MARIAM CHENWANCH MOHAMED) PLAINTIFF

AND

RAJAB MOHAMED 1ST DEFENDANT

SALMA MOHAMED 2ND DEFENDANT

FATUMA MOHAMED 3RD DEFENDANT

MAMVUA MOHAMED 4TH DEFENDANT

RULING

1. The court is asked by an application dated 19/3/2025, to issue a temporary injunction restraining the respondents from leasing, further ploughing and planting, selling, subdividing, charging, alienating, fencing off, constructing new structures, or dealing with any manner of Title Nos. Waitaluk/Kapkoi Sisal Block 1/Kibormos/483, 484, being further subdivision from Waitaluk/Kapkoi Sisal Block 1/Kibormos/183, 184 and 186, all being a resultant portion of the original parcel No. Waitaluk/Kapkoi Sisal Block 1/Kibormos/19, pending hearing and determination of this suit. The reasons are set out on the face of the application and in a supporting affidavit of Nuru Jemutai Mahamed, sworn on 19/3/2025.
2. The applicant deposes that the respondents are her biological brothers and sisters and children of her late mother Mariam Chemwach Mohamed, the original owner of the lands, who passed on 12/7/1999. She attaches the chief's letter; death certificate; green card as annexures NJM-1, 2 and 4. She avers that she is the legal representative of the estate as per the Grant attached as NJM-3. The applicant avers that



- it has come to her attention that there were illegal subdivisions of the initial land going by the green card, where the respondents transferred the resultant portions to themselves, before applying for letters of grant as per the title deeds attached as NJM-5(a), (b), (c) and (d).
3. According to the applicant, the resultant subdivision Nos. 183 and 483 was further subdivided into 2 portions by the 1st respondent, with the latter going to his company, called Sunice Enterprise Ltd, where he is a director as per attached search certificate, certificate of incorporation and a share certificate marked as NJM-6(a), (b) (c) and (d).
 4. The applicant avers that she came to learn of the entries and changes after visiting the lands registry, to register a caution for the respondents had attempted to forcefully evict or displace her by leasing the estate to strangers, who echoed the respondents' actions of disinheriting her.
 5. Again, the applicant avers that she has nowhere to plough or plant her crops for subsistence due to those illegal actions, which were also done behind her back, without following the due process of the law regarding a deceased's estate, who had died on 22/7/1998, yet title deeds were issued in 2006.
 6. The applicant deposes that at one time the respondents obtained credit facilities over an illegally obtained title deed, going by a copy of the register attached as annexure NJM-7(a) and (b), without her knowledge. Further, that the strangers on the land whom she suspects to be the lessees have deployed and have strict instructions from the respondents who have subdued her efforts to stop them from accessing, benefiting or utilising the family land. Annexed are photos marked as annexure NJM-9.
 7. The application is opposed on the grounds of opposition, a preliminary objection and a replying affidavit sworn by Rajab Mohamed on 4/4/2025. The respondents take the view that the court lacks jurisdiction to entertain a dispute concerning the distribution of a deceased estate, the suit is res judicata, statute barred, and that the applicant lacks locus standi to bring the suit.
 8. The 1st respondent deposes that the original land was subjected to succession proceedings where issues of distributions of the estate were conclusively determined in the said cause in a participatory manner of all the beneficiaries, including the applicant, following all legal procedures as per the annexed gazette notice, publication of the notice by the registrar, grant of letters of administration P&A 41 and certificate of confirmation of grant marked as annexure RM-1(a) and (b).
 9. The 1st respondent deposes that the applicant was fully aware and participated in the succession proceedings, and at no time did she object to the process or raise any claims regarding the subdivisions or the distribution of the estate.
 10. Further, the 1st respondent deposes that after the confirmation of grant, the estate was subdivided and allocated to the rightful beneficiaries and all dealings concerning the suit land have been lawful and transparent, with the applicant fully aware of her share originally held in trust by Saidi Kipkalum Mohamed and later transferred to Mamvua Mohamed, following whose demise it is now held in trust for the applicant with the consent of the sisters as per a copy of transfer and green card marked RM-2.
 11. The 1st respondent terms the purported grant issued to the applicant as null and void, and obtained through concealment of material facts and amounts to an abuse of the court process.
 12. Equally, the 1st respondent deposes that the applicant voluntarily left her share of land to go and reside with her husband, who had no interest in the estate and disassociated herself from family affairs for an extended period, hence it was false for her to allege secrecy, fraud, displacement, lawlessness or suffering, yet she has an alternative land left for her residence by her late husband, which she cultivates with an unrestricted access to her land from the estate of their late mother.



13. The 1st respondent denies the alleged forceful eviction of the applicant from her share of the estate; otherwise, she could not have buried her grandchild and daughter on the same land a while ago. The 1st respondent deposed that the applicant has abandoned her land farrow, allowing weeds to take over. The 1st respondent adds that the applicant consented to the succession proceedings in 2005 and thereafter her attempts to introduce a new death certificate are fraudulent, misleading and an abuse of the court process. The 1st respondent deposes that the applicant has come to court with unclean hands, coming inordinately late with the sole aim of frustrating the respondents from enjoying their legally acquired property; otherwise, the application and the suit are devoid of merit.
14. The respondents rely on two written submissions for the preliminary objection and the application, all dated 17/4/2025. Reliance on the preliminary objection is placed on Owners of Motor Vessel Lillian “S” -vs- Caltex Oil (K) Ltd [1989] KLR 1, Divecon Ltd -vs- Samani [1995-98] 1EA 48, Bosire Ongero -vs- Royal Media Services [2015] eKLR, Gathoni -vs- Kenya Co-operative Creameries Ltd [1982] KLR 104, E.T -vs- Attorney General & Others [2012] eKLR, Uhuru Highway Development Ltd -vs- Central Bank of Kenya & 2 others [1995] KECA 140 (KLR), Muchanga Investments Ltd -vs- Safaris Unlimited (African) Ltd & Others [2009] and Satya Bhama Gandhi -vs- Director of Public Prosecution & Others [2018] eKLR.
15. As to the prayer for temporary injunction, the respondents reiterate that the suit is time-barred, an abuse of the court process, that the applicant is guilty of laches and lastly; that the application does not meet the threshold to grant interlocutory injunction. Reliance is placed on Giella -vs- Cassman Brown & Co. Ltd [1973] EA 358, Nguruman Ltd -vs- Jan Bonde Nielsen & Others [2014] eKLR and Mrao Ltd -vs- First American Bank of Kenya Ltd & Others [2003] eKLR. The respondents have attacked the suit and the application on account of capacity to sue, jurisdiction, res judicata, statute barred and an abuse of the court process.
16. A preliminary objection is defined as a pure point of law which has been pleaded or which arises by clear implication out of the pleadings and which, if argued, may dispose of a suit. In Mukisa Biscuits Manufacturing Ltd -vs- West End Distributions [1969] EA 696, the court observed that a preliminary objection is based on an assumption that all the facts pleaded by the other side are correct, and it raised where no fact is required to be ascertained or if what is sought is not an exercise of a court’s discretion. In Hassan Joho & Another -vs- Suleiman Shabal & Others [2014] eKLR, and Hassan Nyanje Charo -vs- Khatib Mwashetani & Others [2014] eKLR, that a preliminary objection should not be raised if there are contested facts and it includes such as points of law, including jurisdiction, capacity to sue, res judicata and limitation of time.
17. Jurisdiction is everything, and without it, a court cannot make even one step forward, as held in Motor Vessel Lillian S’ Ltd (supra). The respondents take the view that the suit herein is seeking to re-open issues falling under succession disputes already settled by the Family Division of the High Court, with full participation of the applicant to conclusion and that the limited grant used to file the suit is a nullity, because of the confirmation of grant gives her no capacity to file the suit otherwise, and if she had any issue, she should have moved to the court competent to hear and determine the issues.
18. The applicant has not filed a supplementary affidavit to deny the contents of the replying affidavit and to challenge the annexures thereto, particularly, the letters of grant and confirmation of grant dated 12/5/2004 and 3/2/2005 by the High Court at Kitale, in Succession Cause No. 73 of 2003. Section 76 of the [Law of Succession Act](#) relates to revocation or annulment of a grant after or before confirmation on account of defect in substance, fraud, concealment of material facts, untrue allegations, lack of diligence in the administration of the estate, accounting for the administration of the estate, and or an inoperative grant due to subsequent circumstances.



19. In *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, the court held that a court may revoke a grant as long as the grounds listed above are disclosed. Section 60 and or Part V1 of the [Land Registration Act](#) and Sections 41 and 50 of the [Land Act](#) deal with transmissions and trusts while subdividing, partitioning, surveying boundaries, transfers and registration of transmission of land are regulated and governed by the [Land Act](#) and the [Land Registration Act](#). Any disputes relating to such matters fall under the Environment and Land Court, as per Sections 2 and 101 of the [Land Registration Act](#) and Sections 2 and 150 of the [Land Act](#).
20. Any dispute, therefore, post confirmation of grant touching on transmission of property as per the certificate of confirmation of grant and about survey, partition, transfer and registration are within the jurisdiction of this court and not the Family Division of the High Court. Transmission of the assets of the named beneficiaries as per the confirmation of a grant is a concept in property in land law. In *Re Estate of Daniel Khasievera Anusu (Deceased)* [2022] eKLR, Musyoka J held that such a concept falls in land or property law, which is not regulated by succession law, hence the silence in the Law of Succession and the Probate and Administration Rules, on it. The court held that the Family Division of the High Court should not tax its mind or touch anything to do with the transmission of property after confirmation of the grant, for it falls under the jurisdiction of Sections 60 to 62 of the [Land Registration Act](#) and Sections 49 to 51 of the [Land Act](#).
21. On the other hand, the rectification or alteration of a grant falls under Section 74 of the [Law of Succession Act](#) and Rule 43(1) of the Probate and Administration Rules. In *Re Estate of Charles Kibe Karanja (deceased)* [2015] eKLR, the court observed that if a party wishes to have the assets of a deceased redistributed or if there is discovery of new assets, the proper approach is for an application for review of the orders made at the confirmation of the grant, under Rule 63 of the Probate and Administration Rules. See also *In Re Estate of Nganga Kamau (Deceased)* [2024] eKLR. Therefore, this court has jurisdiction.
22. The parameters to consider on the concept of res judicata were set out in *Independent Electoral and Boundaries Commission -vs- Maina Kiai & Others* [2017] eKLR. There must be a determination of the issues to finality by a court of competent jurisdiction between the same parties on the same subject matter or issues. The capacity of the applicant is challenged since there cannot be two administrators in one estate of a deceased person, whether full or limited. In this case, the respondents say that their grant was issued first in time, and the latter was issued through concealment of material facts, for the applicant was party to the earlier grant.
23. The power to revoke a grant is donated by Section 76 of the [Law of Succession Act](#) to the succession court and not this court. If the respondents doubt the capacity of the applicant, they should have moved to the Chief Magistrates Court, Kitale, in *Ad Litem Cause No. E038 of 2025*, where the grant *Ad Litem* was issued on 14/3/2025. In the absence of such a revocation, this court lacks jurisdiction to determine whether or not the applicant has the capacity to file and prosecute the suit.
24. Having looked at the governing law on the various aspects raised as preliminary and substantive issues by the respondents, the suit before the court touches on and relates to an alleged eviction and or displacement of the plaintiff from the family land by leasing the same to strangers and or third parties, yet she has equal shares and rights as those of the defendants over the estate. The plaintiff pleaded fraud, illegalities and unprocedural subdivision and transfer among the defendants without going through succession proceedings and or in an attempt to disinherit her. The plaintiff terms the registration of the defendants' titles as unprocedural, fraudulent and illegal. She seeks the nullification, cancellation of the subdivisions, transfers and registration and for the suit land to revert to its original status. She also seeks to stop any eviction, and or dealings over the suit properties.



25. The defendants have not filed any statement of defence to refute the averments in the statement of claim. The plaintiff in the pleadings seeks to reverse entries to the mother title of the suit land post confirmation of the grant through transmission. To that extent, such disputes in my view fall under the jurisdiction of this court and not the Family Division of the High Court.
26. As to the issues of res judicata, limitation of time and abuse of the court process, my findings under the circumstances are that these are not a pure points of law. There are no past proceedings and decrees before the court to show that the issues pleaded herein were heard and determined on the merits to finality by a court of competent jurisdiction, between the same parties over the same subject matter. Equally, the plaintiff has pleaded that she established or discovered that the changes had occurred to the title register recently. The plea of limitation of time is therefore improperly invoked because of Section 26 of the *Limitation of Actions Act*.
27. Regarding the right of the applicant allegedly infringed by the respondents, I think a prima facie case, irreparable loss or damage and the balance of convenience have not been surmounted. A lot has happened to the estate, which was with the knowledge of the applicant, though she did not disclose it in her supporting affidavit. Equally, the weighty issues raised against her character, credibility and genuineness in the replying affidavits have not been controverted through a supplementary affidavit.
28. I decline to grant the reliefs sought in the application. It is dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 25TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Songole for respondents present

Mebii for Ndinyo for applicant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

