



Mwangale (Suing as the Legal Administrator and Personal Representative of the Estate of Joseph Murumba Mwangale - Deceased) v Mwangale & 4 others (Environment and Land Case E025 of 2025) [2025] KEELC 6185 (KLR) (24 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6185 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E025 OF 2025
CK NZILI, J
SEPTEMBER 24, 2025**

BETWEEN

JUDITH SICHANGI MWANGALE (SUING AS THE LEGAL ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF JOSEPH MURUMBA MWANGALE - DECEASED) PLAINTIFF

AND

WYCLIFFE BASA MWANGALE 1ST DEFENDANT

ROBERT WEKHOMBA MWANGALE (SUED AS THE LEGAL ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF RICHARD MAKHAPILA MWANGALE - DECEASED) 2ND DEFENDANT

ELIZABETH MUVOKA OCHOLA (SUED AS THE LEGAL ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF RICHARD MAKHAPILA MWANGALE - DECEASED) 3RD DEFENDANT

DISTRICT LAND REGISTRAR, KIMILILI 4TH DEFENDANT

THE HON. ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. The plaintiff came to court through a plaint dated 3/6/2025. She says that she is a widow of the late Joseph Murumba, a beneficiary of the estate of Philip Mwangale, whereas the 2nd and 3rd defendants are the administrators of the estate of Richard Makhapila Mwangale, pursuant to a grant issued in Nairobi HC Succession Cause No. E272 of 2023.
2. The plaintiff deposes that her late husband, together with others, had purchased 1000 acres through a land buying company at the Kikwamet area, hence he was entitled to 300 acres as subdivided on



- 6/6/2017 and a title deed issued jointly to him, the 1st defendant, and the 3rd defendant, who passed on 16/2/2024.
3. Further, the plaintiff avers that before the late husband passed, he also had 50 acres out of the estate of Joseph Murumba Mwangale, which he had bequeathed to the plaintiff, the 1st, and 2nd defendants. The plaintiff avers that a grant to the estate of Richard Mwangale was issued to the 2nd and 3rd defendants, but was later revoked.
 4. The plaintiff avers that on 15/5/2025, the relatives of the 2nd and 3rd defendants shared a consent with the plaintiff dated 14/10/2024 in Nairobi HC Succession Cause No. E272 of 2023, regarding the estate of the late Richard M. Mwangale, only to discover the Title No. Saboti/Sikhendu Block 2/ (Kikwamet)/4 was illegally, fraudulently, and unlawfully subdivided into 8 portions, namely 6, 29, 32, 30, 20, 37, and 35, all in the names of the 1st and 2nd defendants, to the exclusion of her late husband.
 5. The plaintiff deposes that despite repeated demands, the defendants have failed to allocate her estate 50 acres share; they have subdivided and unlawfully sold portions of the parcel to third parties who have built residences and occupy the suit property. She terms such acts as illegal, fraudulent, and out of collusion or connivance with the 4th defendant.
 6. The plaintiff prays for:-
 - a. Declaration that the estate is rightfully entitled to succession of the original L.R. No. Saboti/Sikhendu Block 2/ (Kikwamet)/4.
 - b. Invalidation, nullification, and cancellation of all the subdivisions, transfers, and registrations, and for the District Land Registrar, Kimilili, to restore the title register to the original status for the estate to take out letters of administration.
 - c. Eviction and demolition of structures of the original parcel against the 1st, 2nd, and 3rd defendants' agents, servants, representatives, or purchasers, as well as vacant possession.
 - d. Permanent injunction.
 - e. Invalidation of all dealings on the land.
 - (f) Costs.
 7. By a notice of motion dated 3/6/2025, the plaintiff seeks for temporary injunction to restrain the 1st, 2nd and 3rd defendants from evicting or removing her from the original parcel of land or its subdivisions, restraining orders against the 4th defendant, its agents, servants or nominees from dealing with, enabling transfers and charging of the original title, or its subdivisions, pending hearing and determination of this suit.
 8. The application is supported by an affidavit of Judith Sichangi sworn on 3/6/2025, attaching a copy of a Limited Grant Ad Litem, copy of title, death certificate of Richard M. Mwangale, Grant issued on 9/5/2023 to the 2nd defendant, application to revoke the Grant by the 3rd defendant, consent to distribution, copy of titles out of the subdivided title and copy of joint summons to confirmation of the grant dated 14/10/2024 marked as JS-1, 2, 3, 4, 5, 6, 7, JS-8(A), (B), (C) and (D) and JS-9, respectively.
 9. The applicant deposes that the initial Block was jointly in the names of 1st defendant and Richard M. Mwangale, yet it initially belonged to three sons following an oral will by the late Philip Mwangale Wekhomba under the Bukusu Customary Law.



10. The applicant deposes that there was no succession conducted in the distribution of the estate of the late Philip Mwangale Wekhomba, by the 1st defendant and the late Richard M. Mwangale, hence they excluded the late Joseph Murumba Mwangale's dependants, contrary to Section 39(1), (e) and 66 of the Law of Succession Act. Further, the applicant avers that the two intermeddled with the estate and unlawfully transferred to themselves the estate without seeking her consent under Section 81(2) of the Land Control Board Act, Cap 302 Laws of Kenya, paying stamp duty under the Stamp Duty Act, Cap 408. The applicant deposes that by circumventing established succession and conveyance procedures, the transitions are illegal.
11. When the matter came up for an interpartes hearing on 8/7/2025, there was no appearance for the 1st and 3rd defendants. Mr. Ouko appeared for the 2nd defendant, while Miss Chilaka appeared for the 4th and 5th defendants. Mr. Ouko told the court that he was filing a preliminary objection on jurisdiction.
12. The 2nd defendant relies on written submissions dated 13/7/2025, that the suit raises issues that exclusively belong to the jurisdiction of the Family Division of the High Court under Article 165(3) (a) of the Constitution, since the plaintiff alleges that the deceased estate was excluded from inheritance and that the 2nd and 3rd defendants fraudulently transferred properties forming part of the estate of her father-in-law, yet there was an alleged valid oral will, which acts amount to intermeddling with the estate, hence the need for invalidation, redistribution.
13. The 2nd defendant submits that such matters do not fall under the jurisdiction of the Environment and Land Court, but the Probate Court, hence making the suit fatally defective in law for want of jurisdiction. Reliance is placed on Motor Vessel Lillian 'S' -vs- Caltex Oil (K) Ltd [1989] KLR 1, Samuel Kamau Macharia -vs- Kenya Commercial Bank & Others Civil Appl. No. 2 of 2001, Republic -vs- Chengo & 2 Others [2017] KESC 15 [KLR], Co-operative Bank of (K) Ltd -vs- Patrick Kangethe Njuguna & Others [2017] KECA 79 [KLR] and Joseph Koori Ngugi & Another -vs- Stephen Ndichu P. Mukima [2017] eKLR.
14. The 2nd defendant submits that the dominant issue in the suit does not relate to a dispute centering on ownership, occupation, and use of land, but whether the plaintiff is a beneficiary or dependent of the estate, who should have reasonably been provided for under the Law of Succession Act on account of an asserted existing oral will.
15. The 2nd defendant guided by Priscilla Ndubi & Another -vs- Gerishon Gatabu Mbui, Meru Succession Cause No. 720 of 2013, Kageche -vs- Kamande & Others (proposed IP) Succession Cause No. 11 of 2020 [2024] KEHC 5637 [KLR], Re Estate of GKK (Deceased) [2017] eKLR, Re Estate of Mbai Wainaina (Deceased) [2015] eKLR, Re Estate of Solomon Mwangi Waweru (Deceased) [2018] eKLR, and Moraa Gisemba -vs- David Nyakai Ongori [2015] eKLR, submits that the suit falls under the Probate Court and not this court for determination of the issues under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules.
16. The 2nd defendant submitted that the concept of jurisdiction as held in Kenya Power and Lighting Company Limited -vs- Benzene Holdings Ltd T/A Wyco Paints [2016] eKLR, refers to residual, or intrinsic authority which the court may resort to put right what could otherwise be an injustice, and as that which enabled the court to fulfil itself properly and effectively as a court of law.
17. The plaintiff relies on written submissions dated 10/7/2025 and submits that what is before the court as pleaded is whether the right procedure was followed by the 4th defendant while registering the suit properties in the names of the 1st, 2nd, and 3rd defendants, and if the said acts were fraudulent, illegal, or unprocedural to pass title to the 1st, 2nd and 3rd defendants.



18. The plaintiff submits that once those issues are answered, then the court will call the parties to move to the succession court and have the distribution in favour of the plaintiff. The plaintiff submits that the dispute falls within the jurisdiction of this court under Article 162(2) of *the Constitution* and Section 12 of the *Environment and Land Court Act*.
19. Equally, the plaintiff submits that the court based on Co-operative Bank Ltd -vs- Patrick Kangethe Njuguna (supra), and Joseph Koori Ngugi & Another -vs- Stephen Ndichu P. Mukima (supra), to look at the predominant test or establishment that dominant issue and in this case the issue is whether there was fraud to bypass the plaintiff's father in law, in directly transferring the suit parcel of land in exclusion of a beneficiary, which power the Probate Court does not have.
20. Accordingly, the plaintiff submits that the case law of Priscilla Ndubi & Another -vs- Gerishon Mbui (supra) and Kageche -vs- Kamande (supra) is relevant, that ownership issues must be resolved before distribution, hence the suit is properly before this court.
21. The plaintiff submits that the question before this court is how the defendants came to own a property that belonged to the father-in-law, without a confirmed grant, and if the process was marred with irregularities, which issue, according to Re Estate of GKK (Deceased) (supra), falls under this court.
22. The plaintiff submits that cancellation of title under Section 26 of the *Land Registration Act* as held in Re Estate of Rebecca Cheboi Tiriki (Deceased) [2024] KEHC 1249 [KLR] (6th February 2024) (Ruling), falls within the Environment and Land Court, otherwise the suit herein does not seek redistribution of the estate, but is seeking to find whether the subdivision and transfers were regular, formal, lawful and procedural.
23. In Milly Glass Works Ltd vs Kenya Railways Corporation & Another Petition No. E041 of 2024 [2025] KESC 26 [KLR] (16th May 2025) (Judgment), the court cited Motor Vessel Lillian 'S' -vs- Caltex Oil (K) Ltd (supra), that jurisdiction issue must be raised at the earliest opportunity, for jurisdiction is everything, without which a court down its tools.
24. The test for determining whether a court is properly seized of jurisdiction demands a meticulous examination of the trajectory of the dispute as pleaded, as held in Rutongot Farm Ltd -vs- Kenya Forest Service & Others [2018] KESC 27 [KLR].
25. In Diasproperty Ltd & Another vs Githae & Others Petition E079 OF 2024 [2025] KESC 19 [KLR] (11th April 2025) (Judgment), the Supreme Court held that to ascertain jurisdiction, the court inter alia, makes a factual inquiry of the nature of the pleadings, and remedies sought.
26. The jurisdiction of the Family Division of the High Court is defined by both *the Constitution* and Sections 2 and 47 of the *Law of Succession Act*. It relates to interstate and testamentary succession to the estates of deceased persons and the administration of the estates of those persons. In the Re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR, the court held that the primary duty of the probate court is to distribute the estate of a deceased person to the rightful beneficiaries, after identifying the estate. Regarding disputes on ownership of property raised in a succession cause, the court held that such disputes must be resolved before distribution as per Rule 47(3) of the Probate and Administration Rules.
27. In Re Estate of Alice Mumbua Mutua (Deceased) 2017] eKLR, the court said that Articles 162 and 165 of *the Constitution* set out the jurisdiction of the High Court and the Environment and Land Court. The court held that the Probate and Administration Rules are designed in such a way that they confer jurisdiction of the Probate Court, with respect to determining the assets of the deceased, the



survivors of the deceased, the persons with beneficial interest, and finally the distribution of the estate amongst the survivors and persons with beneficial interest.

28. The court emphasized that the primary role of the probate court is to facilitate the collection, preservation, and identification of both the estate and beneficiaries and the identification and distribution of the estate. The court further held that any disputes arising in the process of succession among personal representatives of the deceased, the survivors, beneficiaries, and dependents are resolved by the probate court. As regards disputes between or against or by third parties to the estate, who are neither survivors nor beneficiaries, the court held that such disputes fall outside the framework under the *Law of Succession Act*.
29. In *Beatrice Wambui Kiarie & Others -vs- Beatrice Wambui Kiarie & Others* [2018] eKLR, the court said that although under Article 162(2)(b) of *the Constitution* and Sections 4 and 26 of the *Environment and Land Court Act*, the court had original and unlimited jurisdiction to deal with disputes relating to environment, use and occupation of, and title in land. Looking at the plaint filed and annexures, the issue raised was a on succession, which ought to have been filed in the Probate Court.
30. The issue was that the land originally belonged to the deceased and was unlawfully subdivided and transferred to co-defendants, irrespective of the deceased's will. In *Re Estate of Atibu Uronje Asiyoma (Deceased)* [2022] KEHC 11046 [KLR] (22nd July 2022) (Ruling), the court observed that the spirit of Rule 47(3) of the Probate & Administration Rules is that probate proceedings are not the appropriate forum to determine disputes between the estate and third parties.
31. In *Priscilla Ndubi & Another -vs- Gerishon Gitobu* (supra) and *Re Estate of Julius Ndubi Javan* (supra), the court said that where there is a dispute during succession proceedings, the property in dispute is set aside to await determination under Order 37 of the Civil Procedure Rules and Rule 47(3) Probate and Administration Rules.
32. In *Re Estate of Mbai Wainaina (Deceased)* [2015] eKLR, the court observed that on summons to revoke a grant based on an alleged trust, the resolution of such an issue and its declaration was not a matter of the probate court. Post-transmission disputes where a title has been issued do not bring the matter within the purview of a Probate Court under Section 76 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules.
33. Once the High Court issues a Certificate of Confirmation of Grant, the exercise that follows is transmission. Post judgment transmission is governed by Section 67(2) of the *Land Registration Act*. The court overseeing the implementation of the Certificate of Confirmation of Grant, by way of subdivision, transfer, and registration, is the Environment and Land Court. The only role of the High Court, perhaps after confirmation of the grant in amendment, review, rectification, or revocation of the grant, is to give effect to any changes that may arise in a deceased estate. Application post-issuance of grant and letters of administration are not time-barred as held in *Mombasa Bricks & Tiles Ltd & Others -vs- Arwind Shah & Others* [2018] eKLR.
34. In *Re Estate of William Chongin Chumba (Deceased) Succession Cause No, 222 of 1992* [2022] KEHC 12630 [KLR] (29th July 2022) (Ruling), the court said that parties should do the right thing and each right thing should be done at its own right time, step by step, and that court processes are not in vain. The court said that a probate court process is literally over upon confirmation of the grant, when the process moves to the lands office. The court held that the sale, subdivision, or transfer and registration happening after confirmation of the grant had nothing to do with the probate or succession process.



35. On revocation of the grant, the power to do so is donated to the High Court under Section 76 of the *Law of Succession Act*. Any interested party may invoke the same on the basis that:-
- (a) The grant is defective in substance.
 - (b) There was fraud or misrepresentation or concealment of material facts.
 - (c) There is a failure to act post-confirmation of the grant.
 - (d) The grant has become inoperative. See in the matter of the Estate of I.A.K. (Deceased) [2014] eKLR and Albert Imbuga Kisigwa -vs- Recho Kawai Kisigwa, Succession Cause No. 158 of 2000.
36. Evidence of the wrongdoing has to be tendered for the court to find, in the interest of justice, that the interests of all the beneficiaries are at risk. See in Re Estate of Prisca Ong'ago Nande (Deceased) [2020] eKLR. Other grounds may also include where these survivors are not disclosed or where the applicant lied that he was the only survivor, or where there was a grant or misrepresentation or concealment of material facts, or if there was issuance of grant instead of grant of probate and lastly, where the administrator becomes physically or mentally infirm, bankrupt or unqualified to hold any office of trust.
37. Having set the contours between the jurisdiction of this court and the Family Division of the High Court, is the dispute before me competent for my determination? To answer this question, the court has to look at the pleadings. Other than a preliminary objection, none of the defendants has filed a statement of defence to deny or otherwise challenge the plaintiff.
38. A preliminary objection must be a pure point of law based on settled facts. It is argued on the assumption that all facts pleaded by the opposite side are correct. It cannot be raised if any facts have to be ascertained or if what is sought is an exercise of discretion. See Mukisa Biscuits Manufacturing Co. Ltd -vs- West End Distributors Ltd [1969] EA 696. Preliminary objection as held in Independent Electoral and Boundaries Commission -vs- Cheperenger & 2 others [2018] KESC 46 (KLR), serves as both a shield for the originator against profligate deployment of time and resources, and the public cause of sparing judicial time for only deserving causes.
39. It is improper to resort to a preliminary objection as a sword for winning a cause, otherwise destined to be resolved judiciously and on the merits.
40. The originator of the preliminary objection has not denied the capacity of the plaintiff as per the limited grant issued on 20/5/2025 to represent the estate of the late Joseph Murumba Mwangale, a son of the late Philip Mwangale Wekhomba..
41. The 2nd defendant has not denied that the deceased Joseph Mwangale Wekhomba was a beneficiary of the estate, which was distributed without subjecting the same to succession processes before issuance of title for the initial land on 6/6/2017 to the names of Wycliffe Basa Mwangale and Richard Makhapila Mwangale. The 2nd defendant has not denied the alleged 8 subdivisions and transfers to the exclusion of the plaintiff as entitled to a share of 50 acres. The defendants have not denied that the subject property is post confirmation stage; some parcels have been sold, to and or occupied by third parties.
42. The plaintiff's claim is over registration, subdivision of the original title, and subsequent transfers and registration of the resultant subdivisions without considering the rights of the estate of the late Joseph Murumba Mwangale.



43. Going by the cited case law, this court has no jurisdiction to deal with whether or not the late Joseph Murumba Mwangale was a beneficiary of the estate, if the original property before registration in 2017 was free property of the late Philip Mwangale Wekhomba, if there was an oral will for the share of 50 acres, if the share of 50 acres as of 14/9/1994, had become free property of the late Joseph Murumba Mwangale, whether the late Joseph Murumba Mwangale had a share of 300 acres which had reposed to him as of his death to become part of his free estate.
44. Matters regarding succession proceedings and whether the 1st, 2nd and 3rd defendants should have included the late Joseph Murumba Mwangale or his estate represented by the plaintiff herein in the succession proceedings, pending or otherwise, and whether the said grant should be revoked, rectified and or annulled to include the names of the plaintiff as holder of letters of administration are outside the purview of this court.
45. The court, as submitted, must indeed look at the predominant issue on borderline causes. A cause of action is defined as what gives a plaintiff a reason to complain against a defendant. Parties are bound by their pleadings. A party cannot confer jurisdiction on a court. Equally, a court cannot arrogate jurisdiction that is not conferred upon it.
46. There is no evidence that there are pending or concluded succession proceedings with respect to the estate of the late Philip Mwangale Wekhomba or that of Joseph Murumba Mwangale, where perhaps the plaintiff should have directed her claim touching on the subject parcels of land.
47. Written submissions cannot replace pleadings or amount to evidence as held in D.T. Moi -vs- Stephen Muriithi [2014] eKLR. Submissions simply concretize and focus on each side's case with a view to winning the court's decision. See Erastus Wade Opande -vs- Kenya Revenue Authority & Another, Kisumu HCCA No. 46 of 2007.
48. The main aspects of the 2nd defendant's defence at this stage remain unknown. A party is bound by its pleadings. In my considered view, the plaintiff's claim is beyond succession proceedings that may have been filed or which existed with respect to the subject parcels of land. Transmission, subdivision, transfer, and registration of titles under Section 61 of the *Land Registration Act* fall within the oversight of this court and not the Family Division of the High Court. Therefore, the cited law on what is the predominant or dominant issue is inapplicable.
49. Equally, the plaint as filed seeks to question post-transmission, subdivision, transfer, registration, and issuance of title, omitting a bona fide initial owner of the land whose share of 50 acres or 300 acres was known by the co-owners. Whether or not the plaintiff ought to have raised such a claim through or by way of a succession cause or objected during such proceedings has not been pleaded by the defendants and cannot be a pure point of law. Evidence to sustain such a defence will have to be tendered at the hearing.
50. The upshot is that the preliminary objection raised is incompetent, lacks merits and is otherwise unsustainable.
51. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 24TH DAY OF SEPTEMBER 2025.

In the presence of:

Court Assistant – Dennis

Ouko for the 2nd defendant present



Owiti for the plaintiff present

1st defendant represented by Barongo present

Odeyo for the 5th defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

