



Humphrey & 2 others v Nzioka (Being Sued as the Legal Administrator of the Estate of Willy Kahore Wanjiku alias Nicholas Nzioka Ndambuki - Deceased); Konza Mali Limited & 119 others (Interested Parties) (Environment & Land Miscellaneous Case 108 of 2019) [2025] KEELC 4384 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4384 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE 108 OF 2019**

AA OMOLLO, J

JUNE 12, 2025

BETWEEN

MARGARET WAMAITHA HUMPHREY 1ST PLAINTIFF

JOHN LLOYD KAMAU HUMPHREY 2ND PLAINTIFF

JOSEPH HENRY WAINAINA HUMPHREY 3RD PLAINTIFF

AND

DENNIS KAHORE NZIOKA (BEING SUED AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF WILLY KAHORE WANJIKU ALIAS NICHOLAS NZIOKA NDAMBUKI - DECEASED) DEFENDANT

AND

KONZA MALI LIMITED & 119 OTHERS & 119 OTHERS & 119 OTHERS & 119 OTHERS INTERESTED PARTY

RULING

1. The present notice of motion dated 6th February, 2025 is filed by P. Kibet learned Counsel for the 2nd and 3rd Plaintiffs. It is premised under order 1 rule 10 (2) and rule 14 of the civil Procedure Rules as well as Section 3A of the Act. The orders sought are:
 1. Spent
 2. That the Honourable Court be pleased to issue a temporary injunction restraining the 1st and 3rd Plaintiff from any further participation in this suit pending hearing and determination of this Application.



3. That the Honourable Court be pleased to strike out the names of the 1st and 3rd Plaintiffs from this suit.
 4. That the Amended Case Statement attached hereto be deemed as duly filed.
 5. That Costs of this Application be provided for.
2. The application is premised on the following grounds listed on the face of the application:
- i. That the Limited Grant that gives the Plaintiffs a platform in this suit was obtained fraudulently.
 - ii. That John Lloyd Kamau Humphrey (the Applicant herein) had already obtained a full Grant by the time of Petition for the Limited Grant was filed.
 - iii. That 2nd and 3rd Plaintiffs were not party to the petition for the Limited Grant and as such, they never signed any Petition or any related document at all.
 - iv. That the validity of the instrument authorizing the 1st Plaintiff to appear, plead or act for the 2nd and 3rd Plaintiffs is questionable by reason that the 2nd & 3rd Plaintiffs never signed the said Authority.
 - v. That the existence of the full Grant renders the Limited Grand Ad-Litem useless.
 - vi. That only one person (John Lloyd Kamau Humphrey) is the appointed Administrator hence the only personal representative duly authorized to sue or be sued on behalf of the estate as provided under Section 79 & 82 of the Law of Succession.
 - vii. That given circumstances under which the 1st & 3rd Plaintiffs became parties to this suit, it is imperative that their names be struck out of this suit.
3. It was further supported by the affidavit of John Llyod Kamau Humphrey sworn on 6th February, 2025. The said affidavit annexed a copy of the grant confirmed on 1st July, 2022 issued in Nairobi Succession Cause No. 1999 of 2018.
 4. The Application is opposed by the replying affidavit of Margaret Wamaitha Humphrey sworn on 12th March, 2025. The 1st Plaintiff annexed a copy of a limited grant issued to her on 5th March, 2020 in Nairobi High Court Succession Cause No. 1754 of 2009. She avers that the limited grant was specific to the prosecution of this case which case has not been determined.
 5. I have perused the record of this case and noted that it was commenced in the High Court at NRB as Succession Cause No. 1754 of 2009; in the estate of Margaret Humphrey Wamaitha. Upon her death on 14th March, 2009, two administrators, were appointed on 3rd December, 2009 (her son and her sister). A separate cause HC Cause No. 574 of 2013 was also filled allegedly with Will annexed. The two causes were consolidated on 13th December, 2016. However, on 20th November, 2017, the will was withdrawn and the administration directed to proceed as an interested estate.
 6. It is not clear if the grant to the son (Robert) and sister (Serah) in Cause 1754 of 2009 was confirmed as the record indicates the matter was transferred to ELC on 25th June, 2019 and registered as Misc. Cause No. 108 of 2019. The application for limited grant produced by the 1st Plaintiff is stated to have been issued in the same Cause No. 1754 of 2009. The certificate for confirmation of grant in favour of the present Applicants is made in a separate Cause No. 199 of 2018. Thus there is lack of clarity of the roles of the three administrators in this case.



7. The Applicants want the name of the 1st Plaintiff struck out on the basis that they are now the valid and legal administrators of the estate of Margaret Humprey Wamaitha following the confirmation of the grant. They accuse the 1st Plaintiff of obtaining the Limited grant through fraud. However, they have not presented to this court any finding by the Probate and Administration division of the High Court declaring the Limited grant issued on 5th March, 2020 as fraudulent. Fraud is a question of fact which must be proved on a scale higher than that of a balance of probabilities.
8. Further, the jurisdiction of this court is clearly stated under article 162 (2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act* as limited to hearing and determining land and environment disputes. I have no powers to investigate and ascertain that upon confirmation of grant of the deceased estate, the limited grant ad litem issued to the 1st Plaintiff became null and void. On the face of the ad litem, the 1st Plaintiff got authority to prosecute this suit on behalf of the deceased and which authority can only be taken away by the same court that granted/issued it.
9. The upshot is that the application dated 6th February, 2025 is premature and lacks evidence upon which this court can grant the orders sought. It is therefore dismissed with costs to the 1st Plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JUNE, 2025.

A. OMOLLO

JUDGE

