



In re Estate of Jonathan Kipruto Chemnjor (Deceased) (Succession Cause 2 of 2017) [2025] KEHC 13614 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13614 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
SUCCESSION CAUSE 2 OF 2017
RB NGETICH, J
OCTOBER 2, 2025**

IN THE MATTER OF THE ESTATE OF JONATHAN KIPRUTO CHEMNJOR(DECEASED)

BETWEEN

RUTH JERONO KIPRUTO APPLICANT

AND

TOM CHEMNJOR 1ST RESPONDENT

NANCY CHEMNJOR 2ND RESPONDENT

RULING

1. The Applicant filed the instant Application dated 18th October, 2024 seeking the following orders:-
 - i. Spent.
 - ii. That this Honorable court does issue an order for the officer Commanding Eldama Ravine Police station to provide security during the survey and establishment of beacons/ boundaries and fencing for properties known as Baringo/PekerrA 101/1121 and Baringo/ PekerrA/101/1125 pursuant to the directives issued by the Land Registrar - Eldama Ravine Land Registry.
 - iii. That this Honorable court issues an order for the enforcement of the directives by the Land Registrar-Eldama Ravine Land Registry for the survey and establishment of beacons/boundary for properties known as Baringo/PekerrA 101/1121 and Baringo/PekerrA 101/1125 by the county surveyor.
 - iv. That this Honourable court issues an Eviction Order against the 3rd Respondent from property known as Baringo/PekerrA 101/1121.
 - v. That costs be provided for.



2. The Respondents filed a Preliminary Objection and Grounds of Opposition dated 24th January, 2025 and a Replying Affidavit sworn by the 1st Respondent dated 3rd March, 2025. The Applicant then filed a Supplementary Affidavit in response to the Replying Affidavit by the Respondents dated 14th April, 2025.
3. The Respondent in their preliminary objection opposes the application dated 18th October, 2024 and raises the following grounds:-
 - a. This Honourable Court has no jurisdiction to entertain the instant Application relating to the boundary disputes pursuant to Section 18 and 19 of the Land Registration Act No. 3 of 2012, Laws of Kenya.
4. The background of the case is that the Applicant herein is the lawful and sole beneficiary of the Estate of Jonathan Kipruto Chemnjor (Deceased), having been so declared by this Honourable Court in its Judgment and Orders issued on 11th November, 2021.
5. That Pursuant to the said Judgment, the Applicant was lawfully registered as the proprietor of land parcels known as Baringo/PekerrA 101/1121 and Baringo/PekerrA 101/1125.
6. The court directed that the preliminary objection be determined first by way of written submissions. Both parties filed their respective submissions. The Respondents submits that the Applicant herein seeks eviction orders against the 2nd Respondent and a determination of a boundary dispute. They hold the view that this Honourable Court lacks jurisdiction to entertain cases over properties that are regulated by the Land Registration Act No. 3 of 2012, Laws of Kenya and Land Act No. 3 of 2012, Laws of Kenya. They place reliance in the case of, Peter Mukhunya Maloba v Dennis Kusinyo (2020) eKLR, on the issue of jurisdiction of the court.
7. They submit that Jurisdiction is at the core of exercise of power by a Court and where there is no jurisdiction, the Court cannot exercise power without violating the principles of rule of law and legality. That it was in that context that the Court of Appeal in Owners of Motor Vessel "Lilian 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.”
8. It is their humble submission that jurisdiction is conferred by law, in particularly the Constitution and statute. They submit that this Honourable Court lacks jurisdiction to entertain the Applicants Application and that the same became functus officio when it made a determination on matters succession in the matter.
9. That the properties in issue no longer belong to the estate of Jonathan Kipruto Chemnjor (deceased) but a private properties registered in favour of the Applicant and regulated by the provisions of the Land Registration Act No. 3 of 2012, Laws of Kenya and Land Act No. 3 of 2012, Laws of Kenya. That the issues in controversy in this matter relates to boundary dispute, occupation, use and or possession of the suit properties which ought to be raised and determined in the Environment and Land Court.
10. That the properties in issue LR NO. Baringo/ PekerrA-101/1125 and LR NO. Baringo/ PekerrA-101/1121 were transferred by way of transmission in favour of the Applicant on the 22nd May, 2024 and Title Deed dated 22nd May, 2024 issued to her. They submit that the critical question here



is whether this Court has jurisdiction to entertain matters relating to boundary, occupation, use and possession of a property that has been transferred to a person entitled as a beneficiary.

11. They submit that the preamble of the [Law of Succession Act](#), Cap 160 Laws of Kenya and Section 2(1) of the [Law of Succession Act](#), Cap 160 Laws of Kenya provides;

“Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after, the commencement of this Act and to the Administration of estates of those persons”

12. It is the Respondents submission therefore that this Court is concerned with all cases of intestate or testamentary succession and administration of estates of deceased persons and in this case, this Court rendered its final decision on administration and distribution of the properties of the estate and consequently issued a Certificate of Confirmation of grant dated 11th November, 2021 and directed the Deputy Registrar or Executive Officer to execute transfer in an order dated 22nd November, 2022.

13. That in the circumstances, the Succession Court addressed all the matters within its legal bounds and therefore became functus officio.

14. That Section 61 (1) (a) of the [Land Registration Act](#) No. 3 of 2012, Laws of Kenya and Section 50 (2) (a) of the [Land Act](#) No. 3 of 2012, Laws of Kenya both provides that; "Upon confirmation of a grant, and or production of the grant, the Registrar may, without requiring the personal representative to be registered, register by transmission; any transfer by the personal representative".

15. That furthermore, Section 62 (1) of the [Land Registration Act](#) No. 3 of 2012, Laws of Kenya and Section 51 (1) of the [Land Act](#) No. 3 of 2012, Laws of Kenya both provides that;

“Subject to any restriction on a person's power of disposing of any land, lease, charge contained in an appointment, the personal representative or the person beneficially entitled on death of the deceased proprietor, as the case may be, shall hold the land, lease or charge subject to any liabilities, rights, or interests that are unregistered but enforceable and subject to which the deceased proprietor held the land, lease, charge, but for the purpose of any dealing the person shall be deemed to have been registered as proprietor of the land , lease or charge with all the rights conferred by this Act on. a proprietor who has acquired land, lease or charge, as the case may be for valuable consideration”

16. They submit that the property herein being LR NO. Baringo/ PekerrA-101/1125 and LR NO. Baringo/ PekerrA-101/1121 were transferred to the Applicant by way of transmission and currently regulated by the provisions of the [Land Registration Act](#) No. 3 of 2012, Laws of Kenya and [Land Act](#) No. 3 of 2012, Laws of Kenya. That the property therefore ceased to belong to the estate of the deceased and became a private property and came within the jurisdiction of Environment and Land Court. In protecting her proprietorship rights, the Applicant seeks for boundary establishment and eviction orders from this Honourable Court.

17. That the issues now before this Honourable Court relates to boundary dispute between LR NO. Baringo/ PekerrA-101/1125, 1121, 1126 & 1916 which matter is currently pending determination before the Land Registrar-Eldama Ravine Land Registry pursuant to the provisions of Section 18 and 19 of the [Land Act](#) No. 3 of 2012, Laws of Kenya.



18. That Section 18 (2) & (3) and 19 of the Land Act No. 3 of 2012, Laws of Kenya provides as follows; "2). The Court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this Section,"
- " 3). Except where it, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary"
19. That Provided that where all the boundaries are defined under Section 19(3), the determination of the position of any uncertain boundaries shall be done as stipulated in the Survey Act, Cap 299.
20. That Section 19 of the Land Act No. 3 of 2012, Laws of Kenya further provides as follows;
- " 1), If the Registrar considers it desirable to indicate on a filed plan approved by the Office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries".
21. That in the instant case, the Applicant in compliance with Sections 18 and 19 of the Land Act No. 3 of 2012, Laws of Kenya has already lodged an application for boundary determination by the Land Registrar-Eldama Ravine Land Registry. That the Land Registrar and Surveyor have visited the property twice and peacefully engaged with the concerned parties who made a request for time to attempt an out of Court settlement. That the Land Registrar therefore is yet to make a determination as required by the law. That the report dated 24th October, 2024 prepared by the Hellen Mutai, Sub County Land Registrar, Koibatek/Mogotio is not the report contemplated under Section 18 and 19 of Land Act No. 3 of 2012, Laws of Kenya but simply a preliminary report.
22. That in the circumstances, the application herein is premature, ambitious, unmerited and or otherwise constitutes abuse of Court process and should be dismissed pronto. The phrase 'The court' used in Section 18(2) of the Land Act No. 3 of 2012, Laws of Kenya means the Environment and Land Court as defined under Section 2 of the Land Registration Act No. 3 of 2012, Laws of Kenya and Section 2 of the Land Act No. 3 of 2012, Laws of Kenya. That the word 'Court' is defined as; " means the Environment and Land Court established under the Environment and Land Court Act, 2011 No. 19 of 2011.
23. It is their submission therefore that upon determination of boundaries under Section 18 and 19 Land Act No. 3 of 2012, Laws of Kenya, the Application is required by law to move the Environment and Land Court and NOT this Honourable Court.
24. That the issues in controversy in this matter relates to boundary dispute, occupation, use and or possession of the suit properties and ought to be placed before the Environment and Land Court. That the High Court has no jurisdiction over matters that the Environment and Land Court has jurisdiction over, by virtue of Articles 162(2) as read together with Article 165(5) of the Constitution.
25. That Section 13 (2) of the Environment and Land Court Act No. 19 of 2011 provides that;
- "In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes-relating to environmental planning and protection,



climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources."

26. They submit that the plain effect of all the provisions of law cited hereinabove is that the High Court has no jurisdiction to address itself to matters that fall under the jurisdiction of the Environment and Land Court and on the basis of the foregoing reasons, it is the Respondents submission that the Chamber Summons Application dated 18th November, 2024 is incompetent, misplaced, ambitious, lacks merit and pray that the same be dismissed with costs.

Applicant's Submissions In Response To Preliminary Objection

27. In opposing Preliminary Objection the applicant submits that the Application has been filed within the succession cause from which it emanated, following the Court's order dated 24th April, 2024 for transmission of the subject properties to the Applicant as the sole beneficiary of the Estate of Jonathan Kipruto Chemnjor (Deceased).
28. That the Respondents have fundamentally mischaracterized the nature of the present Application. That the present Application does not seek to have the Court determine a boundary dispute but rather seeks orders for: Enforcement of existing Land Registrar directives for survey and establishment of beacons/boundaries, Police security during the survey process and Eviction of a trespasser from the Applicant's lawfully acquired property.
29. That Sections 18 Section 18(2) of the [Land Registration Act](#) provides: "The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section."
30. That Section 19 establishes the procedure for boundary determination by the Land Registrar.
31. They submit that the Applicant has fully complied with the statutory requirements by; Lodging the boundary dispute claim with the Eldama Ravine Land Registry, Obtaining directives from the Land Registrar for survey and establishment of beacons/boundaries and Proper service of the Land Registrar's directives upon the Respondents through the area chief.
32. They submit that it is not in dispute that the mandate to determine a boundary dispute is a preserve of the land registrar. That a clear distinction must be appreciated between determining boundary disputes which is a reserve of the Land Registrar under Section 19 of the [Land Registration Act](#) and enforcing Land Registrar's determinations and directives, within the Court's jurisdiction.
33. The Land Registrar's Report annexed in the Supplementary Affidavit clearly demonstrates that the Respondents have completely denied entry to the subject properties. That the administrative process has been frustrated by the Respondents' conduct and the Land Registrar requires judicial intervention to implement their lawful directives.
34. That the Courts have inherent jurisdiction to enforce administrative decisions and protect property rights. That while boundary disputes must be referred to the Land Registrar, courts retain jurisdiction over enforcement matters and related relief particularly where one party frustrates the administrative process, it is incumbent on court to act upon the Land Registrar's report in determining the dispute.
35. That Article 40 of [the Constitution](#) of Kenya 2010 guarantees the right to property and the Court has jurisdiction to protect this constitutional right, including ordering eviction of trespassers and ensuring access to lawfully owned property.



36. That the Preliminary Objection incorrectly assumes this Application seeks boundary determination. That the relief actually sought is Administrative enforcement - compelling compliance with existing Land Registrar directives, Police protection - ensuring safety during lawful survey activities and trespass remedy of evicting an unlawful occupant from registered property.
37. That none of these reliefs constitute boundary dispute determination within the meaning of Sections 18 and 19. They submit that where administrative processes are frustrated by recalcitrant parties, the Court must intervene to ensure the rule of law prevails.
38. They submit that the Applicant has exhausted all administrative remedies available under the [Land Registration Act](#). That the Respondents' continued obstruction necessitates judicial intervention.
39. That the instant Application arises directly from and is incidental to the succession cause herein wherein this Honorable Court ordered transmission of the subject properties to the Applicant on 24th April, 2024. That the Court seized of the succession matter retains jurisdiction over all matters arising therefrom, including: Protection of transmitted assets, enforcement of succession orders and ancillary relief - granting orders necessary to give effect to the succession determination.
40. That the Respondent is restrained from challenging the Court's jurisdiction over matters directly flowing from its own succession orders and having participated in the succession proceedings and having been served with the transmission order, the Respondents cannot now claim the Court lacks jurisdiction over the enforcement of that very order.
41. They submit that this Court has inherent and continuing jurisdiction over all matters connected with the succession cause until final distribution and enjoyment of the estate assets. That the Application seeks to enable the Applicant to access and survey the transmitted properties, establish boundaries as directed by the Land Registrar and obtain vacant possession of property unlawfully occupied.
42. That Article 48 of [the Constitution](#) guarantees access to justice and accepting the Respondents' interpretation would deny the Applicant effective remedy where administrative processes are deliberately frustrated.
43. That the Court's jurisdiction over this Application is further anchored in the principle that a court seized of succession proceedings retains jurisdiction over all consequential matters until the estate is fully administered and the beneficiaries can enjoy their inheritance without impediment. That the Respondents' obstruction of the boundary survey and unlawful occupation of the transmitted properties directly frustrates the Court's succession orders and necessitates judicial intervention.
44. They submit that the Preliminary Objection is misconceived in law and fact. That the Application seeks enforcement of administrative directives, not boundary determination. That the Court has clear jurisdiction over such enforcement matters, particularly where constitutional property rights are at stake and administrative processes have been frustrated.
45. That the distinction between determining boundary disputes (reserved to the Land Registrar) and enforcing such determinations (within the Court's jurisdiction) is fundamental to the proper administration of justice in land matters.

Analysis And Determination

46. I have considered the Preliminary Objection raised, the rival submissions by the parties, and the applicable law. The issue for determination is whether this Court has jurisdiction to entertain the application dated 18th October 2024, which seeks enforcement of the Land Registrar's directives, provision of police security during survey, and eviction of an alleged trespasser.



47. The Respondents' case is that this Court is functus officio, having concluded the succession process, and that the issues raised relate to boundary disputes, occupation, and use of land—matters falling within the jurisdiction of the Environment and Land Court pursuant to Articles 162(2)(b) and 165(5) of *the Constitution* and section 13 of the *Environment and Land Court Act*. They rely on sections 18 and 19 of the *Land Registration Act* which vest boundary determination in the Land Registrar, subject to appeal to the ELC.
48. On the other hand, the Applicant contends that the application does not seek determination of a boundary dispute, but rather enforcement of directives already issued by the Land Registrar, as well as protection of her proprietary rights in property transmitted to her pursuant to the succession orders of this Court. The Applicant urges that this Court retains jurisdiction to enforce its orders and ensure beneficiaries enjoy the fruits of succession, including vacant possession.

Jurisdiction of this Court post-confirmation of grant

49. It is settled that once a grant is confirmed and distribution effected, the role of the succession court substantially ends. Its mandate is confined to matters of administration of estates and distribution of inheritance: see *Trouistik Union International & another v Jane Mbeyu & another* [1993] eKLR. A succession court cannot ordinarily delve into issues of ownership, use, occupation, or boundaries of land that has already vested in a beneficiary; such disputes fall within the province of the Environment and Land Court.
50. However, courts have also acknowledged that a succession court retains limited residual jurisdiction to issue consequential and ancillary orders necessary to give effect to its confirmed grant. In the case of *Re Estate of G.K. (Deceased)* [2019] eKLR the court held that where obstruction or interference frustrates the full enjoyment of transmitted property, the court may make protective orders incidental to its succession orders.

Nature of the reliefs sought

51. The application seeks three broad reliefs:
- a. Enforcement of Land Registrar directives for survey and establishment of boundaries.
 - b. Provision of police security during survey.
 - c. Eviction of the 3rd Respondent from one of the parcels being Baringo/PekerrA 101/1121.
52. The first relief concerns implementation of administrative directives by the Land Registrar. Section 18(2) of the *Land Registration Act* is categorical that the Court shall not entertain any action or proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section. The jurisdiction to ascertain and fix boundaries rests primarily with the Land Registrar, and any enforcement or challenge of the Registrar's determination lies with the Environment and Land Court under section 13 of the ELC Act.
53. The second relief, seeking provision of police security, stands on a different footing. That prayer does not invite the Court to determine boundaries or ownership, but merely to facilitate the lawful implementation of succession and administrative processes by ensuring maintenance of peace and order. The succession court retains residual and ancillary jurisdiction to make such protective or facilitative orders necessary to give effect to its confirmed grant: see *Re Estate of G.K. (Deceased)* [2019] eKLR; *In re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR.



54. The third relief, seeking eviction of the 3rd Respondent, is by its very nature a proprietary remedy tied to possession and occupation of land. Such remedies fall squarely within the jurisdiction of the Environment and Land Court and not the probate court.

Whether the succession court retains jurisdiction

55. While this Court issued orders of transmission vesting the suit properties in the Applicant, the matters now raised go beyond succession and touch on boundaries, use, and occupation. These are substantive land issues falling within the jurisdiction of the Environment and Land Court. To entertain them here would amount to enlarging the scope of the probate jurisdiction contrary to *the Constitution* and statute.

56. I am therefore persuaded that the succession process in this cause was concluded, the Applicant registered as proprietor, and the Court became functus officio. Any further disputes regarding boundaries, eviction, or enforcement of Land Registrar directives must be pursued before the Environment and Land Court.

57. In the result, I find that this Court lacks jurisdiction to entertain the application dated 18th October 2024.

58. Final Orders:-

- a. The Preliminary Objection dated 24th January 2024 is upheld. Application dated 18th October 2024 is hereby struck out.
- b. costs to the Respondents.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 2ND DAY OF OCTOBER, 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Songoyo for Respondent.

Ms. Chepkemai holding brief for Ms. Nyongesa for Applicant.

CA, Elvis.

