

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. E015 OF 2025

**SALOME MUGURE KAMAU
APPELLANT**

=VERSUS=

**WILLY MURIU MBUGUA (Sued as the Administrator of the estate
of the late Mbugua Kariuki (deceased) 1ST
DEFENDANT**

**HANNAH WANJIRU MBUGUA 2ND
DEFENDANT**

**DENNIS OCHIENG ONYANGO 3RD
DEFENDANT**

**SIMON KURIA NYARAMBO (Sued as the registered trustees of
Foreck Self Help Group) 4TH
DEFENDANT**

ISAAC THIONGO KIRIKA 5TH DEFENDANT

**ANNE NYAMBURA WAINAINA 6TH
DEFENDANT**

STEPHEN WARUI MBUGUA 7TH DEFENDANT

**ZIPPORAH KWAMBOKA WAMBUA 8TH
DEFENDANT**

**SAMUEL MUNGUTI WAMBUI 9TH
DEFENDANT**

**NELSON GACHAHI AND AGNES WAHU GACHAU 10TH
DEFENDANT**

DAVID HIUHU MARIGA 11TH DEFENDANT

**EZRA WANJOYA MBUTHIA 12TH
DEFENDANT**

SALOME WAITHERERO WAMBUI	13TH
DEFENDANT	
SAMUEL MURAGURI IRUNGU	14TH DEFENDANT
NANCY WAMBUI GITERU	15TH DEFENDANT
MICHAEL KURIA NGURU	16TH DEFENDANT
JOHN MACHARIA GICHORE	17TH DEFENDANT
FAITH WANJIKU KAMAU	18TH DEFENDANT
JOSEPH BRIAN KIRIKA THIONG'O	19TH DEFENDANT
ALICE NJANGO KAHUNGURA	20TH DEFENDANT
CHRISTINE NJERI GITAU	21ST DEFENDANT
GRACE WAMBUKU NJAU	22ND DEFENDANT
CHIEF LAND REGISTRAR THIKA	23RD DEFENDANT

RULING

1. This ruling is in respect of two Preliminary Objections. One by the 3rd and 13th Defendants dated 7th April 2025, and the other by 4th, 6th, 7th, 8th, 9th, 11th, 12th, 14th, 15th, 16th and 17th and 18th Defendants dated 19th May 2025.
2. The Plaintiff instituted this suit through a Complaint dated 11th October 2024. Together with the Complaint, she filed a Notice of Motion application of even date seeking injunctive reliefs against the 1st and 2nd Defendant preventing them from dealing with Land Parcel No. Kiambu/Gatuanyaga/411 (hereinafter referred to as the suit property). In response to the suit and the application, the Defendants filed the two Preliminary Objections.

3. Through the Preliminary Objection dated 7th April 2025, the 3rd and 13th Defendants raise the following grounds:

- i). That the suit is incompetent, and a nullity ab initio because it has been filed against a dead person, the 2nd Defendant.*
- ii). The suit is incompetent for offending the provisions of Section 3, 79, 82 of the Law of Succession Act Cap 160 by enjoining the 1st Defendant.*
- iii). The court lacks jurisdiction to grant reliefs sought in line with provisions of Section 17 of the Matrimonial Property Act Cap 152.*

4. Through the Preliminary Objection dated 19th May 2025, the 4th, 6th, 7th, 8th, 9th, 11th, 12th, 14th, 15th., 16th and 17th Defendants raise the following grounds:

- i). The registered owners of Land Title Kiambu/Gatuanyaga/411 are both deceased and as such the probate court is the only court with the mandate to determine what forms the free estate of the deceased.*
- ii). The suit is incompetent as the Plaintiff cannot sustain a suit against the Estate of Mbugua Kariuki without the 2nd Defendant, as the title known as KIAMBU/GATUANYAGA/411 was registered jointly in their names as co-owners.*
- iii). A suit against a deceased person in their own name is a nullity ab initio.*

5. The court directed that the Preliminary Objection be canvassed by way of written submissions, and all the parties complied.

3rd and 13th Defendants' Submissions

6. Counsel for the 3rd and 13th Defendants identified the following three issues for determination: (i) Whether the suit is incompetent for being filed against a dead person; (ii) Whether the Honourable Court has Jurisdiction for declaring suit property to be matrimonial property; and (iii) Whether the enjoinder of the 2nd Defendant is proper in Law.
7. On the first issue, counsel for the 3rd and 13th Defendants argued that the suit before the Court was incompetent for having been filed against a deceased person. He submitted that part of the ownership rights in the disputed property were registered in the name of the 2nd Defendant, Hannah Wanjiru Mbugua, who had died on 17th October 2024, as evidenced by the death certificate annexed to their Notice of Preliminary Objection. They noted that the current suit was filed in 2025, long after her demise. Counsel informed the Court that the Plaintiff's advocate had orally admitted being aware of the death and had sought to withdraw the suit against the 2nd Defendant, although the Court had not yet issued final orders on that withdrawal.
8. It was counsel's considered view that the Plaintiff's subsequent attempt to withdraw the suit after the filing of the Preliminary

Objection was merely an afterthought, intended to salvage what they described as a “dead suit upon arrival.” Counsel maintained that the suit was beyond redemption in law.

9. In support of his position, he cited several authorities from both the Court of Appeal and the High Court, beginning with **Geeta Bharat Shah & 4 Others vs Omar Said Mwatayari & Another, Civil Appeal No. 46 of 2008 (2009) eKLR**, where it was held that a judgment entered against a person who was already dead could not stand, and that a suit filed against a deceased person was a nullity *ab initio*. The Court of Appeal in that case stated that since the defendant was already deceased when the suit was filed, the proceedings were null and void and could not be revived through substitution or amendment.
10. Counsel also relied on the High Court decision of **Viktar Maina Ngunjiri & 4 Others vs Attorney General & 6 Others [2018] eKLR**, where Justice Mbogholi Msagha (as he then was) observed while citing the Indian case of **C. Muttu v Bharath Match Works AIR 1964 Kant 293** that a suit filed against a dead person was a nullity from its inception, and that any orders or amendments made in such a suit were equally null and void, regardless of whether the plaintiff had acted in ignorance of the death.
11. Reference was also made to the Kenyan decision in **Japhet Nzila Muangi vs Hamisi Juma Malee [2022] eKLR**, where Justice

Munyao Sila held that a suit filed against a deceased defendant was null and void *ab initio* and struck it out accordingly. Counsel further relied on **Manyange v Mokoro [2024] eKLR**, where Justice Dennis Kizito Ng'wono Magare reaffirmed that a suit instituted against a non-existent person was a nullity incapable of amendment or substitution. Counsel therefore urged the Court to find that the present suit, having been filed against a deceased person, was a nullity *ab initio* and should be struck out with costs.

12. Turning to the question of jurisdiction, counsel contended that the Plaintiff's prayers sought a declaration that the property known as Kiambu/Gatuanyaga/411 constituted matrimonial property between herself and the deceased Mbugua Kariuki. They argued that this prayer went to the heart of the dispute and would determine the outcome of the entire case if granted.
13. Counsel submitted that jurisdiction of the Environment and Land Court is derived from Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act, which conferred jurisdiction over disputes relating to land use, occupation, title, boundaries, valuation, and similar matters but not matrimonial causes. He added that in contrast, Section 17 of the Matrimonial Property Act, Cap 152, prescribed that disputes relating to matrimonial property should be determined by the High Court in accordance with the procedures applicable to matrimonial causes.

14. Counsel thus argued that the ELC was not equipped to handle matters touching on matrimonial rights, and that the Plaintiff's case, in so far as it sought a declaration of matrimonial property, offended the express provisions of Section 17 of the Matrimonial Property Act.
15. Counsel emphasized that Article 165(3) of the Constitution granted the High Court original and unlimited jurisdiction in civil and matrimonial matters, whereas the ELC, though a superior court, could not arrogate to itself jurisdiction not conferred by law. Counsel referred to **Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others [2012] eKLR**, where the Supreme Court stated that a court's jurisdiction flows from the Constitution or statute and cannot be expanded by judicial craft.
16. Counsel further relied on **EMW v RMK [2022] eKLR**, a decision of Justice Kimei, where a similar objection had been upheld on the ground that disputes over matrimonial property in undissolved marriages were best left to the Family Division of the High Court. In that case, the Court held that the Environment and Land Court lacked jurisdiction to determine questions involving marital status and division of matrimonial assets.
17. Based on those authorities, counsel urged the Court to find that it lacked jurisdiction to handle the Plaintiff's claim, which revolved around division of alleged matrimonial property.

18. On the issue of the enjoinder of the 2nd Defendant and representation of the deceased's estate, counsel submitted that at the time of filing the Preliminary Objection, neither the Plaintiff nor the 1st Defendant had provided proof that Willy Mbugua, the 1st Defendant, was a lawful legal representative of the Estate of Mbugua Kariuki as required under Sections 3, 79, and 82 of the Law of Succession Act (Cap 160).
19. Counsel stated that the Plaintiff had subsequently produced a supplementary list of documents dated 28th April 2025, which included a limited grant *ad litem* issued to the 1st Defendant. He viewed this as an afterthought meant to cure a procedural defect. He pointed out that the 1st Defendant had neither filed a defence nor entered a proper appearance, save for a single online mention on 29th April 2025. Counsel, however, conceded that since the Grant had been presented to the Court, they would limit their objection to that extent.
20. Counsel further stated that it was not within the Court's purview to interrogate how the limited grant had been obtained. Nevertheless, he expressed concern that if the suit were to proceed, other beneficiaries of the same estate would likely seek revocation of the grant issued in Thika Succession Misc. Cause No. E083 of 2024, on the ground that it had been obtained through concealment of material facts. He alleged that the deceased had been married to Hannah Wanjiru Mbugua (the 2nd Defendant) and had other children

who were not disclosed in the chief's letter dated 13th July 2023, which had been used to obtain the grant.

21. Counsel questioned why the limited grant had not been produced at the time the suit was filed, suggesting that the Plaintiff may have been aware of the questionable circumstances under which it was obtained.
22. In conclusion, counsel for the 3rd and 13th Defendants urged the Court to uphold their preliminary objection and to strike out the entire suit with costs, on grounds that it was incompetent for having been filed against a deceased person, was improperly before the Environment and Land Court due to lack of jurisdiction over matrimonial matters, and had irregularly enjoined parties without proper legal representation of the deceased's estate.

**4th, 6th, 7th, 8th, 9th, 11th, 12th, 14th, 15th, 16th and 17th
Defendants**

23. Counsel submitted under the following three sub-headings: (i) The registered owners of land title Kiambu/Gatuanyaga/411 are both deceased, and as such, the probate court is the only court with the mandate to determine what forms the free estate of the deceased persons; (ii) The suit is incompetent as the Plaintiff cannot sustain a suit against Mbugua Kariuki without the 2nd Defendant as the title known as Kiambu/Gatuanyaga/411 was registered jointly in the

names as co-owners; and (iii) A suit against a deceased person is a nullity *ab initio*.

24. On the first issue, counsel argued that the registered proprietors of the original parcel of land known as Kiambu/Gatuanyaga/411 were both deceased, and therefore only the probate court had jurisdiction to determine what constituted the free estate of the deceased persons. Counsel explained that one of the registered owners, the late Kariuki Mbugua, was a polygamous man who had been married to the Plaintiff as the first wife and to the 2nd Defendant as the second wife, both of whom had children with him. It was their submission that, upon the death of a person, his property automatically became the subject of a succession cause to be administered under the Law of Succession Act (Cap. 160).
25. Counsel referred to Section 3 of the Law of Succession Act, which defines free property, and submitted that the late Kariuki Mbugua had acquired the property in 1985 before marrying either of his wives. It was submitted that in 2019, the deceased registered the land jointly in his name and that of his second wife (the 2nd Defendant), and during their lifetimes, they disposed of a portion of it through commercial sales to third parties, leaving the remainder as their matrimonial home. Counsel submitted that the Defendants had lawfully purchased their respective parcels between 2009 and 2021, and thus any claim by the Plaintiff could only relate to the

free estate of the deceased and not to titles already transferred to third parties.

26. Counsel further contended that the Plaintiff's claim was premised on alleged contribution toward what she termed matrimonial property, yet the property had been purchased by the deceased prior to their marriage. He emphasized that under Section 9 of the Matrimonial Property Act, property acquired before marriage remained the separate property of the acquiring spouse, unless the other spouse could prove specific contribution toward its improvement. Such issues, they said, were properly ventilated before the probate court during the distribution of the estate, not before the Environment and Land Court.
27. Counsel thus argued that the Plaintiff ought to have approached the probate court to establish what constituted the deceased's free estate instead of dragging innocent third-party purchasers into what was essentially a family succession dispute. Counsel added that the Defendants had acquired valid titles and were being unfairly subjected to litigation despite having lawfully purchased land from the deceased and his wife.
28. On the issue of co-ownership, counsel argued that the Plaintiff could not sustain a suit against one estate while seeking to withdraw it against the other co-owner. Counsel submitted that the deceased and the 2nd Defendant were joint proprietors of the suit

property, and upon the death of Kariuki Mbugua, his interest automatically vested in the 2nd Defendant by virtue of the right of survivorship under Sections 91(4) and 91(8) of the Land Registration Act, 2012. Counsel cited **Jethwa vs Jethwa (ELC 16 of 2023) [2023] KEELC 21042**, where the court held that joint tenancy carried with it the doctrine of survivorship and that the share of a deceased joint tenant did not pass under succession but vested in the surviving co-owner.

29. Counsel contended that since the suit property had been subdivided and transferred from the original joint title to various purchasers (the Defendants), any determination affecting those titles had to involve both Estates of the original joint owners. Counsel relied on **Kivuitu vs Kivuitu [1991] eKLR**, where the court held that property registered jointly between spouses was presumed to be owned in equal undivided shares, and upon the death of one spouse, the other took full ownership.
30. It was further submitted that the Plaintiff had never been registered as a co-owner and could not, therefore, lay claim to the property that was purchased prior to her marriage and partially sold to third parties by the registered owners. Counsel acknowledged that the presumption of joint ownership could be rebutted, but maintained that in the absence of contrary evidence, the property was jointly owned by the two deceased persons. They relied on **Mbuthia vs**

Njuguna [2024]eKLR, where the court elaborated on the principles distinguishing joint tenancy from a tenancy in common.

31. Counsel thus maintained that the Plaintiff could not sustain a case against only one of the co-owners or their estates, as co-ownership involved unity of possession, interest, title, and time meaning the two were legally considered one for ownership purposes. Counsel suggested that the Plaintiff should withdraw the suit in its entirety until a proper legal representative for the 2nd Defendant's estate was appointed.
32. On the issue of suing a deceased person, counsel insisted that the entire suit was a nullity *ab initio*, since the Plaintiff had instituted proceedings against the 2nd Defendant in her own name despite her being deceased at the time. They relied on **Limuru Hills Limited (In Receivership) v Muriithi [2024]eKLR**, where the court held that a suit filed against a dead person was void from inception and could not be cured by substitution or amendment.
33. Counsel submitted that since the 2nd Defendant and Kariuki Mbugua had been joint owners of the suit property, the Plaintiff's withdrawal of the suit against one co-owner could not salvage the case. Whether the property was held in joint tenancy or tenancy in common, their respective shares remained undivided, and a suit could not be sustained against one in isolation.

34. Counsel concluded that any claim by the Plaintiff could only be directed against the free Estate of the deceased, not against properties already transferred to third parties. Consequently, counsel urged the Court to find that the entire suit was incompetent, a nullity *ab initio*, and should be dismissed together with the Plaintiff's Notice of Motion, with costs to the Defendants.

Plaintiff's Submissions

35. Counsel for the Plaintiff began by addressing the first preliminary objection, which was anchored on the contention that the suit was incompetent and a *nullity ab initio* since it had been filed against a deceased person, namely the 2nd Defendant.

36. Counsel argued that the preliminary objection raised by the 3rd and 13th Defendants did not meet the legal threshold, as it was not founded on a pure point of law. They contended that issues such as whether the 1st Defendant was legally competent to represent the estate did not assume the correctness of the facts pleaded by the Plaintiff. Instead, those issues involved contested factual matters, including allegations made between paragraphs 26 and 32 of the Defendants' submissions, which, according to counsel, amounted to counsel for the Defendants giving evidence from the bar. Such matters, they argued, could only be addressed through affidavit evidence in a substantive application.

37. To reinforce their position, counsel referred to the case of **Masoud & Another vs Masoud & 2 Others [2024] eKLR**, where the court held that a preliminary objection improperly raised served only to delay proceedings and increase costs, and was therefore dismissed with costs.
38. Counsel acknowledged that the suit had been filed against a deceased person, the 2nd Defendant, but emphasized that the suit involved a total of twenty-three (23) Defendants. They submitted that any nullity arising from the inclusion of the 2nd Defendant could only apply to her and not to the entire suit. They argued that the advocates for the 3rd and 13th Defendants had not cited any law or precedent to support their position that such a nullity should affect the whole suit involving multiple other Defendants.
39. It was further submitted that the 3rd and 13th Defendants could not raise a preliminary objection while simultaneously blaming the Plaintiff for failing to withdraw the suit against the 2nd Defendant, since their objection itself prevented the Plaintiff from making any such application. Counsel therefore contended that the claim by the said Defendants that the intention to withdraw the suit against the deceased Defendant was an afterthought was misconceived.
40. Counsel also addressed the allegation that documents filed by the Plaintiff after the intention to withdraw were an afterthought. He maintained that the documents spoke for themselves, and that

neither the Plaintiff nor the Court was required to interrogate the manner in which the 1st Defendant had obtained the grant, so long as it had been properly issued by a competent court.

41. In response to the allegations in paragraphs 30 and 31 of the Defendants' submissions, counsel asserted that the 3rd and 13th Defendants were introducing factual issues and inviting the Court to speculate on them, which was inappropriate in the context of a preliminary objection. They therefore urged the Court to dismiss both the objection and the submissions that were based on matters of fact rather than law.
42. On the issue of jurisdiction, counsel submitted that the question was moot, noting that there already existed a decision from the Environment and Land Court at Kiambu which had determined that the proper forum for disputes between the parties was indeed the Environment and Land Court. Counsel further stated that the advocate for the 3rd and 13th Defendants had represented a party in that earlier matter. Any challenge on jurisdiction, in his view, would therefore require an inquiry into matters of fact, contrary to the nature of a preliminary objection.
43. Counsel also argued that the contention that the matter ought to have been filed in the Matrimonial Division of the High Court was misplaced, given that there were twenty-one (21) Defendants who had acquired portions of the suit property through commercial

transactions. The validity of those transfers, he maintained, was the central issue that necessitated the suit being before the Environment and Land Court.

44. Addressing the Preliminary Objection raised by other Defendants, counsel argued that the claim that the registered proprietors of the original title, Kiambu/Gatuanyaga/411, were deceased and that only the probate court had jurisdiction was misconceived. They stated that when the suit was filed, there was already a duly appointed personal representative of the estate of Mbugua Kariuki, who was sued on behalf of the estate. While it was conceded that the 2nd Defendant had been deceased at the time of filing, the Plaintiff had already expressed an intention to withdraw the suit against her before the objections were raised. Counsel maintained that since the suit involved twenty-three Defendants, the death of one could not invalidate the entire proceedings.

45. He reiterated that the preliminary objections relied on assertions of fact which required evidence and interrogation, making them improper in law. On the claim that the Plaintiff could not sustain the suit against Mbugua Kariuki without the 2nd Defendant since the property was registered jointly, counsel submitted that the question of joint ownership was itself an issue in dispute, dependent on whether the registration was lawful and procedural. They emphasized that such issues could only be determined through a full trial, not a preliminary objection.

46. Counsel further argued that even if the suit against one joint owner was a nullity, it would not invalidate the entire case. They added that the Plaintiff retained the right to move the Court at any stage, before or after pre-trial, to join the proper party to represent the 2nd Defendant's estate.

47. In conclusion, counsel urged the Court to find that the preliminary objections were misconceived, founded on factual disputes rather than points of law, and therefore to dismiss them with costs to the Plaintiff.

Analysis and Determination

48. Having considered at the two Preliminary Objections and the Submissions by all the parties, the following issues emerge for determination:

- i). *On whether the suit filed against the 2nd Defendant is competent*
- ii). *Whether the court has jurisdiction to adjudicate over the suit.*
- iii). *On whether the suit is incompetent*

49. In the case of ***Mukisa Biscuits Manufacturing Ltd vs West End Distributors (1969) EA 696*** is clear on the Court of Appeal observed that:

“... a preliminary objection consists of a point of law which has been pleaded, or which arises by clear

implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration.”

50. In the same case Sir Charles Newbold, P. stated:

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

51. Guided by the above principles, the Court first considers whether the issues raised by the Defendants amount to pure points of law capable of disposing of the suit at this stage. It is evident that some of the grounds relied upon, particularly those questioning the validity of the limited grant issued to the 1st Defendant, the alleged intention to withdraw the suit against the 2nd Defendant, and the nature of the property as matrimonial or otherwise, require the Court to interrogate facts, examine documents, and make factual determinations. These matters cannot properly be ventilated

through a preliminary objection, as they go beyond points of law and require evidential proof.

52. The Court therefore finds that while the issue of whether the suit has been filed against a deceased person is indeed a point of law, the remaining grounds namely, the challenge to the 1st Defendant's legal capacity and the nature of the property as matrimonial involve contested factual issues not amenable to determination through a preliminary objection.

On whether the suit filed against the 2nd Defendant is competent

53. It is not in dispute that the 2nd Defendant, Hannah Wanjiru Mbugua, was deceased at the time of filing this suit. The Plaintiff has in fact conceded as much and has expressed an intention to withdraw the suit against her. It is trite law that proceedings instituted against a deceased person are a nullity *ab initio* and cannot be cured by substitution or amendment.
54. In **Manyange vs Mokoro [2024] eKLR**, the Court held that a suit initiated against a deceased person was a nullity *ab initio*. In **Geeta Bharat Shah & 4 Others v Omar Said Mwatayari & Another [2009] eKLR**, the court reiterated that once a defendant is deceased at the time of filing suit, the entire proceedings are a nullity.

55. Applying those principles, this Court finds that to the extent that the 2nd Defendant was deceased at the time of institution of the proceedings, the suit against her cannot stand and is therefore a nullity *ab initio*. However, this defect does not necessarily invalidate the entire suit, which involves multiple other Defendants, some of whom are living persons and third-party purchasers.
56. However, a suit filed against a deceased person is void only in respect of that party and does not render proceedings against the remaining defendants a nullity, unless the deceased person was the sole defendant or a necessary party without whom the suit cannot be sustained.
57. Consequently, this Court holds that the suit as filed against the 2nd Defendant is incompetent and void *ab initio*, but that the defect is severable, and the remainder of the proceedings against the other Defendants remain properly before the Court.

Whether the court has jurisdiction to adjudicate over the matter.

58. The Defendants contend that this Court lacks jurisdiction on account that the Plaintiff seeks declarations relating to matrimonial property under Section 17 of the Matrimonial Property Act, Cap 152. The Plaintiff, however, maintains that the suit concerns land ownership and the legality of transfers to third parties, thus falling within the jurisdiction of the Environment and Land Court.

59. Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act confer jurisdiction upon this Court to hear and determine disputes relating to title, use, occupation, and ownership of land. However, the Court does not have jurisdiction to determine questions purely relating to matrimonial causes, which fall within the purview of the High Court under Section 17 of the Matrimonial Property Act.
60. This Court notes, however, that the present suit does not solely involve a matrimonial dispute between spouses. The pleadings reveal that twenty-three Defendants are named, many of whom are purchasers and transferees of portions of the suit property. The central issue is therefore whether the transfers and subdivisions are valid, a matter squarely within the jurisdiction of the Environment and Land Court.
61. The Court draws guidance from the case of **B W M v J M C [2018] eKLR** where the court held that:
- “Much as the Plaintiff purports to seek a declaration in her final prayers that the suit land be declared a matrimonial property, the substratum of the dispute at hand is ownership of the suit land. Having found that the suit land has a certificate of title registered in the name of the Defendant which the Plaintiff seeks to impair by claiming ownership of the suit land on account of the alleged developments, that places the case squarely in the jurisdiction of the ELC Act and consequently the ELC Court.”*

62. In the present suit, the Plaintiff challenges the transfer of the suit property to the 3rd to 22nd Defendants on the grounds that the suit property is matrimonial property. In view of the foregoing, the Court is satisfied that it has jurisdiction to determine the present dispute, given its predominant character as a land ownership and transfer matter. In any case whether the suit property is matrimonial property or not is an issue of fact which cannot be determined through a Preliminary Objection.

On whether the suit is incompetent

63. The Defendants also argue that since both original registered proprietors of Kiambu/Gatuanyaga/411 are deceased, only the probate court can determine what constitutes their free estate. The Court notes that while issues of succession are indeed governed by the Law of Succession Act, the Plaintiff has sued the 1st Defendant as the duly appointed personal representative of the estate of the late Mbugua Kariuki, as evidenced by the limited grant ad litem on record.

64. It is therefore evident that there exists a proper legal representative to represent that estate. The question of the validity or sufficiency of the said grant, or of the beneficiaries excluded therefrom, are matters for the succession court, but they do not affect the competency of the current proceedings against the estate.

65. The contention that the property was jointly owned by the deceased and the 2nd Defendant, and that the right of survivorship has operated, is itself a matter of fact that requires evidence and determination at trial. It cannot properly form the basis of a preliminary objection.

66. In light of the above analysis, the Court arrives at the following findings:

a) The suit as filed against the 2nd Defendant, Hannah Wanjiru Mbugua, is incompetent and is hereby struck out as a nullity ab initio.

b) The two Preliminary Objections, insofar as they challenge the Court's jurisdiction and the competence of the suit against the remaining Defendants, are without merit and are hereby dismissed.

c) The suit shall therefore proceed against the remaining Defendants.

d) Each party shall bear their own costs of the Preliminary Objections.

Dated, signed and delivered virtually at Thika this 14th day of October 2025.

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J.M ONYANGO

JUDGE

In the presence of:

1. Mr Machina for the Plaintiff
2. Mr Injairu for the 3rd & 13th Defendants
3. Ms Nyaseme for the 4th - 9th, 11th, 12th, 14th

Court Assistant: Hinga

ORIGINAL