



**Kingasia v King'asia & 4 others (Environment and Land Case  
E019 of 2025) [2025] KEELC 6558 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6558 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E019 OF 2025**

**CK NZILI, J**

**OCTOBER 1, 2025**

**BETWEEN**

**JULIANA NAFULA KINGASIA ..... PLAINTIFF**

**AND**

**ALBINA NAMUBUYA KING'ASIA ..... 1<sup>ST</sup> DEFENDANT**

**CHARLES KING'ASIA ..... 2<sup>ND</sup> DEFENDANT**

**MECTILDA KINGASIA (SUING AS ADMINISTRATORS OF THE ESTATE OF  
THOMAS MATAFARI KING'ASIA (DECEASED)) ..... 3<sup>RD</sup> DEFENDANT**

**NITINKUMAR DEVSHIHARIA ..... 4<sup>TH</sup> DEFENDANT**

**HARIYA BHARATKUMAR DEVSHI ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff is the daughter of the late Thomas Matafari Kingasia, who at his death on 25/6/2023, was the registered owner of L.R. No. 2116/254 (IR No. 27014) measuring 0.04270 Ha, a leasehold of 99 years, with effect from 3/9/1973. It is averred that the mother, brother, and a sister, who are the defendants herein, took out temporary letters of administration on 4/7/2023, without notice or the involvement of the plaintiff.
2. Before the confirmation of the grant, the plaintiff avers that on 17/10/2023, the defendants entered into a sale agreement with the 4<sup>th</sup> and 5<sup>th</sup> defendants to dispose of the suit land contrary to Sections 45 and 82(b)(ii) of the [Law of Succession Act](#), and without her consent or knowledge.
3. The plaintiff avers that efforts to amicably settle the dispute after the Family Division of the High Court gave them a chance through an online meeting on 3/4/2024 were in vain. The plaintiff terms the sale agreement an illegality, the purchase price as throwaway, in view of the market value of the land, and blames the 4<sup>th</sup> and 5<sup>th</sup> defendants for failure to exercise due diligence or for not seeking legal advice or



implications of dealing with a deceased's property. The plaintiff prays that the court declare the sale agreement dated 17/10/2023 as illegal, null, and void ab initio, and for its cancellation.

4. At the trial, the plaintiff testified as PW1. She adopted a witness statement dated 7/4/2025 as her evidence-in-chief. PW1 relies on a death certificate dated 30/11/2022, a temporary grant issued on 4/7/2023, a sale agreement dated 17/10/2023, an affidavit in objection to the grant dated 16/11/2023, and a copy of the official search as P. Exhibits No. 1 -5, respectively.
5. PW1 told the court that other than attending the funeral of her late father from her residence in London, United Kingdom, she was not involved or notified of the efforts to seek and obtain letters of administration of the estate or in the sale of the suit property by the defendants, let alone the intention to sell the suit property.
6. PW1 termed the conduct of the defendants as amounting to intermeddling with the deceased's property, contrary to Section 45 as read together with Section 82(b) (ii) of the Law of Succession Act; otherwise, the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants had no authority to sell the land before the grant was confirmed.
7. The defendants opposed the suit through a joint statement of defence dated 16/5/2025. It was averred that before the entry into the sale agreement, the whole family and the beneficiaries of the estate had a family discussion regarding the 1<sup>st</sup> defendant's failing health and frequent medication, who unanimously agreed to dispose of the property to cater for her medical needs. The defendants averred that when the 4<sup>th</sup> and 5<sup>th</sup> defendants expressed interest in purchasing the land, the plaintiff was notified, and family members agreed on the purchase price before the sale agreement was prepared and executed.
8. The defendants denied that the plaintiff was aware of the sale or that it was an illegality, as alleged. The defendants averred that it is not true that they became hostile during the alleged virtual meeting; otherwise, they have always been agreeable to an amicable settlement of this matter.
9. At the defence hearing, Mectilda Kingasia testified on behalf of the defendants pursuant to an authority to sue dated 16/5/2025. She relied on a witness statement dated 16/5/2025 as her evidence-in-chief. DW1 told the court that before the sale agreement was entered into, the whole family and or beneficiaries of the estate of Thomas Kingasia Matafari held discussions over the health status of the 1<sup>st</sup> defendant, and in unison agreed to dispose of the suit land.
10. DW1 said that when the 4<sup>th</sup> and 5<sup>th</sup> defendants expressed interest in the land, PW1 was informed, and the purchase price was agreed upon before the sale agreement was prepared and executed. DW1 submitted that the plaintiff was aware of the transaction; otherwise, she could not turn around to say that the same was illegal. DW1 denied the alleged hostility during a virtual meeting; otherwise, the defendants are amenable to an amicable out-of-court settlement of this matter.
11. On 22/9/2025, parties were directed to file written submissions by 26/9/2025.
12. The plaintiff filed written submissions dated 26/9/2025. As one of the children of the deceased, she submits that the 1<sup>st</sup> – 3<sup>rd</sup> defendants petitioned for a grant of the letters of administration, where a temporary grant was issued on 4/7/2023. She further submitted that before the grant was confirmed, the 1<sup>st</sup> – 3<sup>rd</sup> defendants entered into a sale agreement with the 4<sup>th</sup> and 5<sup>th</sup> defendants for the sale of L.R. No. 2116/254 for Kshs. 17,000,000/=, yet the estimated value is Kshs. 35,000,000/=.
13. The plaintiff submitted that the said sale is an illegality, in view of Section 82(b)(ii) of the Law of Succession Act. Again, the plaintiff submits that the defendants did not object to the productions of P. Exhibit. Nos. 1-5.



14. On whether the suit land forms part of the estate of the deceased, the validity of the sale, the plaintiff submits that personal representatives must act in the best interest of the estate of a deceased, subject to limitations by the law. The plaintiff relies on Estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR, Farah -vs- Mbaya [2025] KEHC 3817(KLR), and Section 82 of the [Law of Succession Act](#).
15. The plaintiff submitted that the sale of the suit land is null and void, since the 1<sup>st</sup> - 3<sup>rd</sup> defendants had no title to pass to the buyers. The 4<sup>th</sup> and 5<sup>th</sup> defendants did not exercise due diligence and did not testify in the proceedings. Further, the plaintiff submitted that the amount received was shared among the 1<sup>st</sup> - 3<sup>rd</sup> defendants, excluding the plaintiff, and that no evidence was tendered on the medical expenses as alleged.
16. The single issue for my determination is whether the sale agreement dated 17/10/2023 meets the ingredients of a valid land sale agreement in line with Section 3(3) of the [Law of Contract Act](#), Section 38 of the [Land Act](#), and the [Law of Succession Act](#).
17. The essential components of a valid and legal sale agreement on land in Kenya include:
  - a. Details and description of the parties.
  - b. Description of the land.
  - c. Consideration.
  - d. Duties and responsibilities of the parties.
  - e. Dispute Resolution Mechanism.
  - f. Completion details.
  - g. Execution.
18. Section 3(3) of the Law of Contract Act provides that a sale agreement to be valid must be in writing, witnessed or attested, specify the land, indicate the consideration, and identify the parties. A contract on the sale of land, missing the foregoing key ingredients, is void.
19. In M'Mukindia -vs- Bundi (Environment and Land Appeal E027 of 2023) [2024] KEELC 6896 (KLR) (16 October 2024) (Judgment), the court held that parties have the freedom to contract and that courts of law do not rewrite contracts except to enforce them, so long as they are not vitiated by illegality, lack of capacity, or if it is illegal, unconscionable, and was entered into through undue influence. A court of law is bound in interpreting a contract by the doctrine of the four corners of a document. See Fidelity Commercial Bank Ltd -vs- Kenya Grange Vehicles Industries Ltd [2017] eKLR.
20. In Omweri -vs- Kiptuget, Civil Appeal 5 of 2018 [2022] KECA 413 [KLR] (4<sup>th</sup> March 2022) (Judgment), the court said that the objective of construing the terms of a contract is to ascertain its meaning objectively.
21. What the plaintiff has raised is not only the capacity of the defendants to contract on the property of a deceased person before the confirmation of a grant, but also the legality of the sale agreement between the defendants. The purchasers failed to attend court to ventilate their defence. A nullity is a nullity, as held in Macfoy -vs- United African Co. Ltd [1961] 3 All ER 1169.
22. Section 45 of the [Law of Succession Act](#) provides that no person shall take possession of, dispose of, or otherwise intermeddle with any free property of a deceased person, unless authorised by law. In the Re Estate M'Eirikia Nkatha (deceased) [2021] eKLR, the court said that any party seeking to transfer a



- deceased property before confirmation of a grant has to make an application for partial confirmation of the grant to allow them to sell a portion thereof.
23. In *Virginia Mwari Thurania -vs- Purity Nkirote Thurania* [2017] eKLR, the court nullified the sale agreement under Section 82(b)(ii) of the *Law of Succession Act*, for the seller had not become a legal representative with authority to deal with the estate, since dealing with the land amounted to intermeddling with the property, hence was an illegality or a nullity. In *Re Estate of Benson Maingi Mulwa (deceased)* [2021] eKLR, the court held that intermeddling can be committed even by administrators and therefore, a beneficiary has a right to move the court to preserve the estate.
  24. The plaintiff pleads that the defendants dwelt with the suit property otherwise than in accordance with the law; hence, their acts amount to intermeddling. In *Re Estate of M’Ngarithi M’Miriti* [2017] eKLR, the court defined intermeddling to include disposing of, exchanging, paying out, distributing, leasing out, and taking action which may dissipate, diminish, or put at risk the free property of a deceased.
  25. In *D. Njogu & C. Advocates -vs- National Bank of (K) Ltd* [2016] eKLR, the court observed that any contract that contravenes a statute is illegal ab initio and unenforceable.
  26. In *Mbui -vs- Maranya* [1993] eKLR, the court said that to do anything prohibited by law is to persist in an illegality and amounts to committing a crime.
  27. The court said that when anything is prohibited, everything relating to it is prohibited. In *Mohamed -vs- Attorney General* [1990] KLR 146, it was held that no court should enforce an illegal contract or allow itself to be used as an instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if such an illegality is brought to the attention of the court and that a person invoking the aid of the court is himself implicated in the illegality. In *Root Capital Inc. -vs- Tekangu Farmers Co-operative Society Ltd & Another* [2016] eKLR, the court cited Lord Mansfield, that no court will lend its aid to a man who found his cause of action upon an immoral or illegal act.
  28. In the statement of defence before the court and the evidence tendered by the defendants, there is no mention whether, as of 17/10/2023, the defendants had a confirmation of the grant of letters of administration or had the capacity to dispose of the land with the concurrence of all the beneficiaries thereof, including the plaintiff who in law had to have her share to the property defined by the Family Division of the High Court in the succession cause.
  29. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants, as described in the sale agreement, have, in law, a fiduciary duty to comply with the law and render a true account of their judicial duties as trustees to the estate of the deceased.
  30. On page 2 of the sale agreement, the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants admitted that their capacity arose out of Kitale Succession Cause No. 15 of 2023. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants represented themselves as capable of delivering completion documents. The defendants have not produced anything to show that they sought partial confirmation of the grant on account of the imminent but urgent medical needs of the widow or the deceased.
  31. Transgression of a positive law on account of the medical needs of the mother is what the defendants are invoking for the court to find that they had a right to dispose of part of the estate of the deceased. To interpret the law otherwise would amount to aiding the defendants to benefit from their wrongdoing. Courts are there to prevent the perpetration of crimes and to uphold the rights of parties.
  32. The defendants have admitted wrongdoing. Nothing could have been easier than to move to the Family Division of the High Court to seek leave to have partial confirmation of the grant, before embarking



on committing an illegality. Section 45 of the Law of Succession provides that it is a criminal offence to intermeddle with the estate of a deceased person.

33. The upshot is that the plaintiff has proved her case to the required standard that the sale agreement falls short of the requirements under Section 38 of the *Land Act* as read together with Section 3 of the *Law of Contract Act*. It is allowed with costs.
34. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 1<sup>ST</sup> DAY OF OCTOBER 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant - Dennis

Lichuma for Arunga for defendant present

Nafula for plaintiff present

