

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ELC CASE NO. E024 OF 2025

ALI KOLELA
MONTET.....PLAINTIFF

-VERSUS-

SHABAN HASSAN LEPOSO
LUCY NYAMWIZA MUTAGURWA } as the -
ADMINISTRATORS OF THE ESTATE OF HASSAN -
IDDI MALAMBU (deceased) AND
SHABAN EDI LEPOSO (all sued as administrators of the
ESTATE OF IDD MAIMBU HASSAN.....1ST
DEFENDANT
SHABAN EDI LEPOSO.....2ND
DEFENDANT
LAND REGISTRAR, KAJIADO.....3RD
DEFENDANT
THE HON. ATTORNEY GENERAL.....4TH
DEFENDANT

RULING

(In respect of the Notice of Motion application dated 10th March 2025 seeking various injunctive reliefs as well as the Preliminary Objection dated 4th June 2025 by the Hon. Attorney General on behalf of the 3rd and 4th Defendants contesting the court's jurisdiction to entertain the suit)

Introduction

1. Before this Court for determination is the Notice of Motion application dated 10th March 2025, filed by the Plaintiff/Applicant, Dr. Ali Kolela Montet. The Applicant seeks, inter alia, injunctive and inhibition orders to restrain the Defendants/Respondents from interfering with his occupation, possession, and ownership of land parcel number **Ngong/Ngong/44327** pending the hearing and determination of the suit.
2. In opposition, the 2nd Respondent, **Shaban Edi Leposo**, filed a detailed Replying Affidavit dated 2nd April 2025 tracing the history of the suit parcel to the estate of the late Paramount Chief Iddi Hassan Malambu. He averred that the Plaintiff/Applicant was formerly a co-administrator of the estate but was removed for mismanagement and fraudulent dealings pursuant to a ruling delivered on 19th March 2018 in **Succession Cause No. 64 of 2016 (formerly 987 of 2008) - in the Matter of the Estate of Iddi Malambu Hassan**. He further deposed that the said ruling revoked titles emanating from **Ngong/Ngong/27038**, including the suit property, which subsequently reverted to the estate and was later lawfully transmitted to him as a beneficiary under a confirmed grant issued on 1st November 2018 in the

same succession cause. On that basis, he contends that the present application is a gross abuse of the court process, tainted by material non-disclosure and an attempt to re-litigate matters already conclusively settled.

3. The Respondent further narrated the history of multiplicity of suits and applications that have revolved around the estate and the suit property, including adverse possession claims, consolidated suits before this court, and succession challenges, all of which he contends were conclusively determined against the Applicant. He therefore urged this Court to dismiss the present application for want of merit.
4. In rejoinder, the Applicant filed a Further Affidavit sworn on 15th April 2025 disputing the Respondent's capacity to swear the Replying Affidavit without the authority of his co-administrators. He also contends that the ruling of Justice Nyakundi in **Succession Cause No. 64 of 2016** did not cancel his title, **Ngong/Ngong/44327**, nor direct its surrender, and insists that the transfer into the Respondent's name was fraudulent, irregular, and effected without surrender of the original title and without statutory consents. He further maintains that the Respondent

deliberately misrepresented the effect of the 2018 ruling by failing to disclose that the Court expressly preserved the right of affected parties to lodge claims with the new administrators.

5. The 3rd and 4th Defendants on their part through the office of the Hon. Attorney General came in with the juggernaut raising a **Preliminary Objection** challenging this Court's jurisdiction. It is their case that the dispute over **Ngong/Ngong/44327** stems directly from the administration of the estate of the late Paramount Chief Iddi Hassan Malambu, and is therefore within the exclusive jurisdiction of the **Succession Court**. They argue that the Environment and Land Court lacks jurisdiction to interrogate the propriety of titles revoked or transmitted pursuant to succession proceedings, particularly where the High Court sitting in its Family Division has already rendered determinations on the estate in **Succession Cause No. 64 of 2016**. They further contend that the present suit and application offend the doctrine of **res judicata**, are sub judice in light of pending succession matters, and amount to forum shopping and abuse of the court process.

Directions

6. The court directed that the application be heard alongside the preliminary objection and be canvassed by way of oral submissions which have been considered in the writing of this ruling.

Analysis and Determination

7. Having considered the pleadings and oral submissions of the parties, this court finds that; before delving into the merits of the Notice of Motion dated 10th March 2025, it is imperative to first deal with the Preliminary Objection dated 4th June 2025 by the 3rd and 4th Defendants, as a Preliminary Objection, by its very nature, has the potential to dispose of a suit in limine.

8. The locus classicus on Preliminary Objections is the celebrated decision of the Court of Appeal of East Africa in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696**, where the court stated that:

“So far as I am aware, 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 the contract giving rise to the suit to refer the dispute to arbitration.”

9. In the present case, the Preliminary Objection raises the issue of **jurisdiction**. Jurisdiction is not a procedural matter; it is a central issue in every matter before the court. As was held in the renowned case of **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1**, (Nyarangi, J):

“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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

10. It is not disputed that the Plaintiff’s title to land parcel **Ngong/Ngong/44327** emanated from a grant of confirmation issued on 10th November 2009 in Succession Cause No. 987 of 2008. It is further not disputed that in a ruling delivered on **19th March 2018, Nyakundi J** annulled that grant and ordered the

cancellation of all resultant titles and subdivisions flowing from the mother title Ngong/Ngong/27038, reverting the same to the estate of the late Iddi Malambu Hassan. That decision remains and has not been set aside or appealed against.

11. Subsequently, a fresh grant was issued on 1st November 2018, vesting the suit property to Shaban Edi Leposo. The Plaintiff has since made several attempts to challenge that outcome, including applications before **Chacha Mwita J** and an Originating Summons before **Gicheru J** (my predecessor in this court), all of which were dismissed.
12. The gravamen of the Plaintiff's case herein is that he remains the registered proprietor and that the Defendants have trespassed into what he terms as 'his land'. However, for this Court to accept that argument, it would have to interrogate the validity of the revocation of his title by the succession court, and the subsequent redistribution of the estate. That exercise would, in substance, amount to sitting on appeal over the rulings/decisions of **Nyakundi J** and **Chacha Mwita J** in the succession cause.

13. The jurisdiction of this Court is set out under **Article 162(2) (b) of the Constitution of Kenya, 2010**, which provides:

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(b) the environment and the use and occupation of, and title to, land.”

14. Pursuant thereto, **section 13 of the Environment and Land Court Act, No. 19 of 2011**, provides:

“The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other written law relating to environment and land.”

15. Conversely, the jurisdiction relating to confirmation and revocation of grants is vested in the High Court by **section 47 of the Law of Succession Act, Cap 160**, which provides:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this

Act and to pronounce such decrees and make such orders therein as may be expedient.”

16. The Supreme Court in **Republic v Karisa Chengo & 2 Others [2017] eKLR**, ‘mapped the boundaries’ between the specialized courts and the High Court in the following terms:

“In interpreting the jurisdiction of the specialized courts, the Constitution should be read holistically so that while the High Court exercises unlimited original jurisdiction in criminal and civil matters, the specialized courts exercise special jurisdiction in the matters reserved for them under Article 162(2). The specialized courts are of equal status with the High Court, but they cannot exercise jurisdiction reserved for the High Court.”

17. Applying the above dictum by the learned Judges of the Superior Court, this Court is persuaded that the present dispute, though disguised as a claim of trespass, is inextricably intertwined with the revocation of the Plaintiff’s title in the succession cause cited above. The substratum of the Plaintiff’s claim lies in the administration of the estate of the late Iddi

Malambu Hassan. This Court cannot assume jurisdiction to revisit, review or revise orders of the succession court.

18. For the reasons set out above, I find that this Court is divested of jurisdiction to entertain the suit herein. The Preliminary Objection dated 4th June 2025 is merited. Accordingly, I make the following orders:

- a) *The Preliminary Objection dated 4th June 2025 is hereby upheld.*
- b) *This Court is without jurisdiction to entertain and determine this matter, the same falling within the exclusive domain of the Succession Court under the Law of Succession Act.*
- c) *Consequently, the Plaintiff's Notice of Motion dated 10th March 2025 together with the entire suit is struck out with costs to the Defendants.*

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 3rd Day of October 2025.

**M.D. MWANGI
JUDGE**

In the virtual presence of:

Mr. Towett h/b for Ms. Asli Osman for the 1st and 2nd
Defendants/Respondents

N/A by the Plaintiff and the 3rd and 4th Defendants

Court Assistant: Mpoye

M.D. MWANGI
JUDGE