



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MERU

SUCCESSION CAUSE NO. 26 OF 1989

**IN THE MATTER OF THE ESTATE OF EBENEZER
MUTHAMIA M'ITWAMWARIA (DECEASED)**

JEDIEL MBAE.....APPLICANT

VERSUS

**BENEDICTA NJIRU RIUNGU.....OBJECTOR/INTERESTED
PARTY**

RULING

1. For determination is the Objector's Preliminary Objection dated 24th August, 2023 raising 2 grounds that:

1. The suit property being Abogeta/L-Kiungone/105 herein does not form part of the estate of Ebenezer Muthamia M'itwamwaria (Deceased), the same having been distributed to Eliphaz Riungu and Jediel Mbae in equal shares and a title issued to that effect pursuant to the grant of letters of administration

issued herein. The Application before this Court seeks to have this Court direct the District Surveyor, Meru to subdivide the said property into two portions in the names of Eliphaz Riungu and Jediel Mbae, the same is bad in law for the reasons that the said property does not form part of the free property of the deceased available for distribution.

2. The application dated 26th July, 2022 filed by the Applicant is bad in law and an abuse of the court process and must be struck out with costs to the Objector/Interested Party.

2. The Applicant filed an answer to Preliminary Objection (*Sic*) dated 14/9/2023 on grounds that;

1. The grant issued by this court was not fully implemented as the registration of the same was not as per grant issued.

2. The two beneficiaries, Jediel Mbae and Eliphaz Riungu are two different entities and never ought to have been combined.

3. After the passing on of Eliphaz Riungu, his estate is hostile to the applicant, hence they can never hold a property jointly.
 4. This court has the jurisdiction to entertain this prayer since it is brought under the Law of Succession Act.
3. The Preliminary Objection was canvassed by way of written submissions, which were only filed by counsel for the Objector.
 4. The Objector through the firm of Albert Kamunde & Co. LLP Advocates filed submissions dated 10/6/2025. Counsel contended that Abogeta/L-Kiungone/105 does not form part of the estate of the deceased, having been transferred to Applicant and his brother Eliphaz Riungu vide the certificate of confirmation of grant issued on 5/7/1990, and cited **Re Estate of Miriam Gathoni Mwathi (Deceased) [2022] KEHC 26961 (KLR), Vekariya Investments Limited v Kenya Airports Authority & 2 Others [2014] KEHC 5533 (KLR), Waita & Another v Njiraini & Another (Land Case E007 of 2023) [2024] KEELC 5777 (KLR) (31 July 2024) (Ruling), Re Estate of GKK (Deceased) [2017]**

KEHC 5664 (KLR) and Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR. Counsel asserted that the application sought orders to essentially reopen the distribution process, a jurisdiction that this court no longer holds, having concluded its mandate with the confirmation of the grant. Counsel submitted that any disputes arising post confirmation must be resolved outside the ambit of the probate court. Counsel urged the court to dismiss the application because it was *functus officio*.

Determination

5. The sole issue for determination is whether the Preliminary Objection has been properly raised.
6. In his application dated 26/7/2022, the Applicant sought *inter alia* an order directing the District Surveyor Meru to subdivide L.R No. Abogeta/L-Kiungone/105 into two equal portions and the resultant titles to be registered in the name of Jediel Mbae and Eliphaz Riungu.
7. By way of background, the grant issued to Zilipha Ithiru Muthamia on 1/8/1989 was confirmed on 5/7/1990 where the court directed that L.R No. Abogeta/L-Kiungone/105 measuring 18.05 Acres be shared between Eliphaz Riungu

- 9.03 Acres and Jediel Mbae M'Muthamia - 9.02 Acres. The land was subsequently transferred to Eliphaz Riungu and Jediel Mbae and a joint title deed thereto issued to them on 16/7/1990.

8. In **Re Estate of Alice Mumbua Mutua (Deceased) [2017] KEHC 8289 (KLR)**, cited by the Objector, the court (W. Musyoka J) espoused that; ***“29. Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the meantime the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be functus officio so far as the property in***

question is concerned. The primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the court's work would be complete."

9. Similarly, in **Re Estate of M'Ikiunga M'Raria (Deceased) [2020] KEHC 4542 (KLR)** the court (A. Mabeya J) rendered thus; **"6. No doubt, the jurisdiction of the Family Court is well settled under the Act and the Rules made thereunder. As held by Musyoka J in Re Estate of Alice Mumbua Mutua (supra), that jurisdiction is limited to determining the assets of the deceased, the beneficiaries of the deceased and the distribution of the assets amongst the beneficiaries of the deceased and other persons beneficially interested. 7. That being the case, the Family Court's function only extends to facilitating the collection and preservation of the estate, identification of the beneficiaries and thereupon distributing the estate accordingly. Once the Family Court does so under the Act, it becomes functus officio. 8. This is so because, the provisions of other**

legislations kick in immediately after the confirmation of grant. For example, after the grant is confirmed and the certificate thereof issued, the process of transmission and issuance of the titles is governed by the Land Registration Act and the Land Act. The Law of Succession Act has nothing to do with the perfection of the interests that inure from the confirmed grant. That is the preserve of other legislations.

10. This court duly exercised its probate jurisdiction in distributing the estate of the deceased to the rightful beneficiaries, and is now *functus officio*. The property in question was lawfully transmitted from the deceased into the names of the Applicant and Eliphaz Riungu, and as such, this court is divested of the jurisdiction to deal with it.
11. The upshot from the foregoing is that the Preliminary Objection dated 24/8/2023 was properly raised and it is hereby allowed.

12. The inevitable conclusion is that the application dated 26/7/2022 is misconceived, and it is hereby struck out with costs to the Interested Party.

DATED AND DELIVERED AT MERU THIS 13TH OCTOBER, 2025

**S.M. GITHINJI
JUDGE**

APPEARANCES:-

Mr. Abdi holding brief for Mr. Kamunde for the objector.

Mr. Karanja for the 2nd Objector.

Applicant is in person (absent).