



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC NO. E115 OF 2023**

**GLADWELL WAIRIMU NGIGI.....1<sup>ST</sup>**  
**PLAINTIFF**  
**TERESA WANJIRU MBARIA.....2<sup>ND</sup>**  
**PLAINTIFF**  
**SALOME NDUTA MBARIA.....3<sup>RD</sup>**  
**PLAINTIFF**  
**MONICA NYAMBURA MBARIA.....4<sup>TH</sup>**  
**PLAINTIFF**  
**GRACE WAMBUI MBARIA.....5<sup>TH</sup>**  
**PLAINTIFF**

**VERSUS**

**JAMES MUCHINA MBARIA.....1<sup>ST</sup>**  
**DEFENDANT**  
**JACKSON MUCHINA MBARIA.....2<sup>ND</sup>**  
**DEFENDANT**  
**ANTHONY GITAU MBARIA.....3<sup>RD</sup>**  
**DEFENDANT**

**RULING**

1. By a Notice of Motion dated 7<sup>th</sup> May 2025, brought under Order 51 of the Civil Procedure Rules, Sections 1A, 1B and 3A

of the Civil Procedure Act, the Plaintiffs/Applicants seek the following orders: \_

**1. Spent.**

**2, THAT the Honourable Court be pleased to direct that all proceeds from all that property known as property No. 36/VII/1023 Original No. 36/VII/232 be deposited in a joint interest earning account in the name of both advocates herein.**

**3. THAT the costs of this application be in the cause.**

**4. THAT the Honourable court be pleased to make such further orders as it may deem just and expedient in the circumstances of this case.**

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Teresa Wanjiru Mbaria sworn on even date.

### **THE APPLICANTS' CASE**

3. The deponent averred that through the guardianship proceedings in High Court Miscellaneous Application No. 20 of 2020, Joseph Mbaria Muchina was declared incapacitated

under the Mental Health Act. She stated that the Guardianship of his estate was thereby conferred upon Gladwell Wairimu Ngigi, Theresa Wanjiku Mbaria, Jackson Muchina Mbaria, and Anthony Gitau Mbaria.

4. She further averred that part of the order in Misc Application No. 20 of 2020 specified that all rental income from Joseph Mbaria Muchina's property should be deposited into the Guardian's account held at ABSA Bank.
5. She deposed that the Respondent fraudulently transferred the suit property into their names with the aim of dispossessing the estate.
6. She further stated that the late Joseph Mbaria Muchina executed a will in 2015, bequeathing the suit property to Anthony Gitau Mbaria, Grace Wambui Mbaria, Jackson Muchina Mbaria, Monica Nyambura Mbaria, and Teresia Wnjiru Mbaria. She also stated that in 2015, the late Joseph Mbaria Muchina had established Mbaria Muchina Investment and Mbaria Muchina Holdings with the sole intention that each would represent the interests of the two families, which are

similar to the intended distribution of the properties captured in the will.

7. The deponent argued that it would be in the interest of the estate and all the beneficiaries for the rental proceeds to be deposited into a joint interest-earning account in the names of the advocates on record until the suit is heard and determined.
8. In response, the Defendants filed a Notice of Preliminary Objection dated 13<sup>th</sup> June 2025, raising the following grounds:-

***a. This Honourable court has no jurisdiction to entertain the application herein, which is based on HC Misc No 20 of 2020, in the matter of the estate of Joseph Mbaria Muchina, a guardianship matter under the Mental Health Act.***

***b. This Honourable court has no jurisdiction to hear and determine issues related to the will of the late Joseph Mbaria Muchina dated 13/03/2015 and the administration of the estate thereof, as this is the preserve of the High Court (Family***

***Division) as provided under section 47 of the Law of Succession Act, Cap 160 Laws of Kenya.***

***c. The application is an abuse of the court process.***

9. The preliminary objection was canvassed by way of written submissions.

### **THE DEFENDANTS SUBMISSIONS**

10. The Defendants filed their submissions dated 30<sup>th</sup> June 2025.

11. On behalf of the Defendant, Counsel argued that grounds 6, 7, and 8 of the application relate to the guardianship of Joseph Mbaria Muchina's estate. Counsel submitted that guardians were appointed in HC Misc No. 20 of 2020 and ordered to deposit the rental income into a joint account. Counsel further submitted that paragraphs 2, 3, and 4 referenced the guardianship proceedings for JMM's estate.

12. Counsel argued that this court lacks jurisdiction to issue orders relating to the management of the estate or guardianship of a person with a mental disorder. To support this claim, reliance was placed on the case of **Monica Karegi Mugambi & another vs AMM, Diocese of Meru Trustees (Registered) (2020) KEELC and Isaack Kipkemoi Chesire**

**(Environment & Land Court Case 520 of 2012) (2016)  
KEELC 861(KLR).**

13. Counsel argued that issues concerning Joseph Mbaria Muchina's guardianship should be handled by the High Court, particularly HC Misc No. 20 of 2020.
14. It was submitted that the application involves a will bequeathing the suit property to specific beneficiaries, including the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. It was further submitted that the introduction of the will and issues related to the management of Joseph Mbaria Muchina's estate should be handled by the family court.
15. Counsel argued that the collection of proceeds from any asset of the late Joseph Mbaria Muchina falls under the jurisdiction of the Succession Court. It was claimed that this would be equivalent to issuing a limited grant to collect the estate of a deceased person, a power that does not belong to this court.
16. Counsel further argued that Rule 4(3) of the Probate and Administration Rules outlines the procedure for preserving assets when there is a dispute over the identity and share of the beneficiaries of an estate. It was also contended that this

court lacks jurisdiction to determine the heirs of the suit property.

17. In conclusion, Counsel urged the court to strike out the entire suit with costs.

### **THE PLAINTIFFS SUBMISSIONS**

18. The Plaintiff filed their submissions dated 7<sup>th</sup> May 2025.

19. On their behalf, Counsel outlined the following issues for the court's determination:-

*a) Whether this Honourable court has jurisdiction to hear and determine the application dated 7<sup>th</sup> May 2025.*

*b) Who should bear the costs.*

20. On the first issue, Counsel submitted that this court has jurisdiction to hear and determine the application. To support this point, reliance was placed on the case of **Samuel Kamau Macharia & another v Kenya Commercial Bank & 2 others (2012) eKLR**

21. It was submitted that the primary issue in this suit involves the fraudulent transfer of the suit property. It was submitted that the orders issued in HC Mis App No 20 of 2020 relating to

the guardianship of the late Joseph Mbaria are relevant to the present suit.

22. Counsel submitted that following Joseph Mbaria Muchina's death, the Applicants notified this court of the will executed by the deceased, which references the suit property and is therefore a crucial document in these proceedings. Counsel submitted that the suit herein seeks to establish who is the owner of the suit property.

23. It was argued that the suit property was fraudulently transferred and, therefore, the rental income should be deposited into the family account.

24. It was argued that the orders sought do not require the court to examine the deceased's estate, but are intended to maintain a balance between the parties until this suit is heard and determined.

25. Counsel urged the court to dismiss the preliminary objection with costs.

## **ANALYSIS AND DETERMINATION**

---

26. The law on preliminary objections is well settled. A preliminary objection must be on a pure point of law.

27. In **Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors Ltd (1969) EA 696**, Law JA stated;

***“So far as I’m 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.”***

In **Oraro Vs Mbaja, 2005 eKLR, Ojwang J** (as he then was) described it as follows:

***“I think the principle is abundantly clear. A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and, in any event,***

***to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”***

28. In **Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] eKLR**, the Supreme Court observed as follows:-

***“... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection against profligate deployment of time and other resources. And secondly, it serves the public cause of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a***

***case otherwise destined to be resolved judicially, and on the merits.”***

29. For a preliminary objection to be valid, it must be on a point of law. It should not be proved through facts or evidence, nor deal with disputed facts.
30. The Defendant's Preliminary Objection is based on the grounds that this Court lacks jurisdiction to hear and determine this application. The issue of jurisdiction is a pure point of law that can determine the matter without considering the merits of the case. This Court is satisfied that the Preliminary Objection is based on a point of law.
31. The Applicants are seeking to have the proceeds from the suit property deposited into a joint interest-earning account in the name of both advocates. They argued that the estate of Joseph Mbaria Muchina was entrusted to the Guardians after he became mentally incapacitated. In HC Misc, 20 of 2020, the court ordered that the rental income from the properties belonging to Joseph Mbaria Muchina be deposited in the guardians' name. It is not in dispute that the property belongs to Joseph Mbaria Muchina, deceased, and therefore forms part

of his estate. That order has not been set aside. It is trite that issues related to the distribution or management of property belonging to a deceased person fall within the jurisdiction of the succession court.

32. I find that this court has no jurisdiction to hear and determine the application

33. The upshot of the foregoing is that the preliminary objection is upheld. This court lacks jurisdiction to entertain the application, and the same is hereby struck out with costs.

**RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 31<sup>ST</sup> DAY OF OCTOBER, 2025.**

.....  
**HON. T. MURIGI**  
**JUDGE**

**IN THE PRESENCE OF: -**

Kemboi holding brief for Ms Waceke for the Applicant

Thuku for the Respondents