



**Njagi v Njeru & 2 others (Environment and Land Appeal E017 of 2024)  
[2025] KEELC 7742 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7742 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E017 OF 2024  
AK BOR, J  
OCTOBER 22, 2025  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ELC APPEAL NO E017 OF 2024**

**BETWEEN**

**JEREVASIO NYAGA NJAGI ..... APPELLANT**

**AND**

**PATRICK NGARI NJERU ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR SIAKAGO ..... 2<sup>ND</sup> RESPONDENT**

**PAUL NJAGI NJERU ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. This appeal rose from ruling delivered on 4 4 2024 in Siakago PM MCELC No 66 of 2018 vide which the Learned Magistrate struck out the Appellant's suit on the basis that the dispute was governed by the *akn ke act 1972 14 Law of Succession Act* and that case should be heard by the probate court. The Learned Magistrate found that the Environment and land court (ELC) lacked the jurisdiction to hear and determine the suit. The ruling was made in the application dated 15 9 2023 which sought to have the suit struck out on the basis that the ELC lacked jurisdiction to entertain the suit by virtue of Section 71 (2) of the *akn ke act 1972 14 Law of Succession Act*, Rule 41 (2) (3) (4) of the probate and Administration Rules 1980 and Order 37 Rule 1 of the civil procedure rules.
2. In the Memorandum of Appeal dated 2 5 2024 the Appellant raised the following grounds of appeal; that the Learned Magistrate failed to consider that the primary duty of the Probate Court is to distribute the estate of the deceased and court does not have jurisdiction to determine ownership of assets alleged to form estate property. Further, that the trial court failed to consider that at the time when Siakago PM MCELC No 66 of 2018 was filed, Embu Kithunthiri 1477 (the suit land) was registered and still is registered in the 1<sup>st</sup> Respondent's name and not in the name of the Appellant's



late father Njagi Njeru alias Mbuchi Baragu. The court was also faulted for failing to consider that the Appellant's claim touched on the issue of fraudulent dealings with suit land hence it was the ELC that has jurisdiction to hear and determine the claim. The Appellant sought to have the ruling dated 4 4 2024 set aside and for the suit to be reinstated for hearing on merit.

3. The appeal was canvassed through written submissions. The Appellant submitted that he filed the suit in his capacity as the administrator of the Estate of his late father, Njagi Njeru and his contention in the pleadings is that the suit land, which belonged to his late father, had been fraudulently dealt with by the Respondents who impersonated his late father. He submitted that in the plaint he sought cancellation of the 1<sup>st</sup> Respondent's title.
4. The Appellant submitted that the Learned Magistrate contradicted herself in the ruling when she found that the suit was over land and property of a deceased person and that it should be governed by the *akn ke act 1972 14 Law of Succession Act* and the case ought to be heard by the probate court. The Appellant pointed out that the Learned Magistrate made a finding in the ruling that the suit land was registered in the 1<sup>st</sup> Respondent's name who is alive and well. He reiterated that the jurisdiction of the probate court is limited to the distribution of the estate of a deceased person.
5. The Appellant relied on Section 26 of the ELC Act and cited *Re Estate of Atibu Oronje Asioma (Deceased) (2022) eKLR* on the point that the design of the *akn ke act 1972 14 Law of Succession Act* is that the mandate of the probate court is limited to distribution of assets and where a dispute arises over the ownership of any asset, that issue should be placed before another forum for determination but not in the succession cause. The Appellant explained that he initially filed his claim before the ELC at Embu and the court transferred the suit to the Siakago Magistrate's Court for hearing and determination by consent of the parties.
6. The Appellant maintained that the Siakago Magistrates Court had jurisdiction to hear and determine his claim. The Appellant cited *W& Another V N (2024) eKLR* where the court analysed Section 26 (3) (4) of the ELC Act pursuant to which some magistrates have been designated to have jurisdiction in civil matters involving the occupation of and title to land.
7. The 1<sup>st</sup> Respondent submitted that the issue for determination was whether the Learned Magistrate sitting as the ELC erred by finding that she lacked jurisdiction to entertain the suit and striking it out. He proffered that it was not in dispute that the plaint was filed after the grant of letters of administration had been confirmed on 11 7 2014. The 1<sup>st</sup> Respondent relied on the Practice Directions on proceedings in the ELC, and on proceedings relating to the environment and use and occupation of, and title to land, and proceedings in other courts which delineate the jurisdiction of ELC and of probate court. He went on to add that the directions stipulate that all cases touching on inheritance, succession and distribution of land under the *akn ke act 1972 14 Law of Succession Act* shall continue to be filed and heard by the High Court or the Magistrate of competent jurisdiction.
8. The 1<sup>st</sup> Respondent maintained that his preliminary objection dated 15 9 2023 was that the Learned Magistrate sitting as the ELC lacked jurisdiction to hear and determine the suit by virtue of Section 71 (2) of the *akn ke act 1972 14 Law of Succession Act*, Rule 41 of the Probate and Administration Rules as well as Order 37 Rule 1 of the Civil Procedure Rules.
9. The 1<sup>st</sup> Respondent submitted that it was not disputed that the Appellant became aware that the 1<sup>st</sup> Respondent was registered as proprietor of the suit land on 10 6 2014. It was contended that he failed to proceed in accordance with Section 71 (2) of the *akn ke act 1972 14 Law of Succession Act*, Rule 41 of the Probate and Administration Rules and failed to notify the probate court through an application to postpone confirmation of the grant pending issue of further citations or otherwise and



to set aside the particular share or the property comprising it to abide the determination of the question and proceedings.

10. It was also urged that the Appellant failed to proceed in accordance with Order 37 Rule 1 of the Civil Procedure Rules that required him to file an Originating Summons before the ELC to determine ownership of the suit land prior to the confirmation of a grant. The 1<sup>st</sup> Respondent relied on *In re Estate of Julius Ndubi Javan (deceased) (2018) eKLR* where the court stated that the primary duty of the probate court was to distribute the estate of the deceased to the rightful beneficiaries, and that where issues of ownership of the property of the estate were raised in a succession cause they must be resolved before that property is distributed. That that was the very reason why Rule 41 (3) of the Probate and the Administration Rules was enacted so that valid claims are determined before confirmation.
11. The 1<sup>st</sup> Respondent also relied on the *Re Estate of Stone Kathuri Muinde (Deceased) (2016) KEHC 3725 (KLR)* where the court held that if a decree was obtained in a suit in favour of the claimant then the decree should be presented to the probate court in the succession cause so that that court could give effect to it. The 1<sup>st</sup> Respondent submitted that as a result of Appellant's failure to follow the procedure prescribed by Section 71 (2) of the *akn ke act 1972 14 Law of Succession Act*, Rule 41 of the Probate and Administration Rules and Order 37 Rule 1 of the Civil Procedure Rules, the grant was confirmed on 11 7 2014. He urged that the Appellant suit was estopped by those provisions of the law and that the doctrines of laches, acquiescence and waiver applied. He cited decisions on waiver, estoppel and acquiescence.
12. The 1<sup>st</sup> Respondent reiterated that the Learned Magistrate sitting as an ELC lacked jurisdiction to hear and determine the suit. On this point he relied on *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (1989) eKLR* and *Macharia & Another v Kenya Commercial Bank Limited & 2 others (2012) KESC 8 (KLR) (23 October 2012) (ruling)*. The 1<sup>st</sup> Respondent sought the costs of the appeal.
13. In his submissions, the 2<sup>nd</sup> Respondent gave the background to the dispute and summarised the prayers sought before the trial court. According to the 2<sup>nd</sup> Respondent the Learned Magistrate properly exercised her mandate based on Section 71 (2) of the *akn ke act 1972 14 Law of Succession Act* and Rule 41 of the Probate and Administration Rules. The 2<sup>nd</sup> Respondent submitted that the probate court had jurisdiction to handle more matters than the distribution of estates of deceased persons. He contended that matters to deal with a deceased person's estate are strictly dealt with by the probate court because it had inherent jurisdiction to deal with them.
14. The 2<sup>nd</sup> Respondent relied on *Owners of the Motor Vessel "Lillian S" V Caltex Oil (Kenya) Ltd (1989) eKLR* and *Re Estate of Julius Ndubi Javan (deceased) (2018) eKLR*. The 2<sup>nd</sup> Respondents also cited decisions on what constitutes a preliminary objection and urged that the 1<sup>st</sup> Respondent raised issues of law in his preliminary objection and that the objection was properly determined by the trial court. The 2<sup>nd</sup> Respondent urged the court to dismiss the appeal and award him costs.
15. The issue for determination is whether the appeal is merited and whether the ruling of the trial court that it lacked jurisdiction to hear the dispute since it was sitting as the ELC is erroneous. The question of jurisdiction of the court to hear the dispute was taken as a preliminary point before the Learned Magistrate, the 1<sup>st</sup> Respondent's contention being that that dispute ought to have been determined by the probate court and not the ELC by virtue of Section 71 (2) of the *akn ke act 1972 14 Law of Succession Act*, Rule 41 of the Probate and Administration Rules as well as Order 37 Rule 1 of the Civil Procedure Rules.
16. To appreciate the nature of the claim that was before the trial court, it is helpful to look at the pleadings filed. The Appellant pleaded in the Amended Plaintiff dated 7 3 2019 that when he was about to



distribute the assets of the late Njagi Njeru alias Mbuchi Baragu after confirmation of the grant, he discovered that the 1<sup>st</sup> Respondent had acquired title over the suit land yet it formed part of the estate of the late Njagi Njeru alias Mbuchi Baragu. He pleaded particulars of fraud against the Respondents including impersonation of the late Njagi Njeru alias Mbuchi Baragu and fraud in the acquisition of title over the suit land by the 1<sup>st</sup> Respondent.

17. The 1<sup>st</sup> Respondent's defence according to his defence dated 4 2 2015 is that Njagi Njeru and Mbuchi Baragu are two different people and that Mbuchi Baragu did not own the suit land and was never registered as its owner. Further, that Mbuchi Baragu did not occupy or dispute ownership of the suit land during his lifetime. He was emphatic that he lawfully acquired the suit land and that his title is indefeasible. He maintained that the land was not available for distribution by the Plaintiff.
18. The dispute is not over the distribution of the assets of a deceased person, rather the claim is that through fraud, the 1<sup>st</sup> Respondent caused the suit land to be registered in his name yet the land belonged to the Appellant's father. That is a question of ownership of the suit land, which falls outside the jurisdiction of the probate court and is the preserve of the ELC under *akn ke act 2010 constitution the Constitution* and the ELC Act. The orders sought in the suit of eviction, cancellation of title and for the title over the suit land to revert to the estate of the late Njagi Njeru alias Mbuchi Baragu cannot be granted by the probate court. The Learned Magistrate erred in finding that the ELC lacked jurisdiction to determine the dispute.
19. The court allows the appeal. The ruling of the Learned Magistrate delivered on 4 4 2024 in Siakago PM MCELC Case No. 66 of 2018 is set aside.
20. Siakago PM MCELC Case No. 66 of 2018 is reinstated for hearing on merit by a Magistrate in Siakago Law Courts with jurisdiction other than Honourable Njoki Kahara, Principal Magistrate.
21. The Appellant is awarded the costs of the appeal to be borne by the 1<sup>st</sup> Respondent.

**DELIVERED VIRTUALLY AT EMBU THIS 22<sup>ND</sup> DAY OF OCTOBER 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Ms. Rose Njeru for the Appellant

Mr. Mwaniki Gachuba for the 1<sup>st</sup> Respondent

Mr. I. Kiplimo holding brief for Mr. J. Mwatsuma for the 2<sup>nd</sup> Respondent

Diana Kemboi- Court Assistant

