



**In re Estate David Kipkemoi Korir (Deceased) (Succession Cause
50 of 2017) [2025] KEHC 16317 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16317 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 50 OF 2017
JK NG'ARNG'AR, J
NOVEMBER 12, 2025
IN THE MATTER OF THE ESTATE OF DAVID KIPKEMOI KORIR (DECEASED)**

BETWEEN

JOSEAH KIPKOECH SAMOEI PETITIONER

AND

DAVID KIPLANGAT RONO OBJECTOR

RULING

1. In this matter, the Petitioner in his capacity as the deceased's son was issued with a Grant on 15th November 2017. The Objector through an Application dated 30th May 2024 wanted the Grant revoked.

The Objection

2. Through his Supporting Affidavit dated 30th May 2024, the Objector stated that him and the deceased were good friends and as an appreciation for the good work that he had done for him, the deceased gifted him the land known as Sirikwa Settlement Scheme Plot No. 559 (suit land). That on 8th June 2010, they executed a deed of donation and he there after took possession and set up his home. The Objector further stated that he had settled on the suit land with his family.
3. It was the Objector's case that after executing the deed of donation, the deceased instructed him to process the title deed for the suit land in his name but unfortunately, the deceased died before he got the title deed. That the deceased's children filed the present succession proceedings and did not include him as a beneficiary despite then knowing that the deceased had gifted him Nakuru/Molo/Sirikwa/559.
4. The Objector stated that the Petitioner obtained the Grant through deceit and non-disclosure of material facts and that unless the Grant is revoked, he will lose his family land and family home.



Response

5. The Petitioner filed a Replying Affidavit and a Preliminary Objection both dated 8th July 2025. The Preliminary Objection dated 8th July 2025 is the subject of this Ruling. The Petitioner wanted the Application dated 30th May 2024 to be struck out on the following grounds: -
 - I. THAT this court lacks jurisdiction to determine the Application which raises a dispute over land ownership and transfer- matters falling exclusively within the jurisdiction of the Environment and Land Court under Article 162 (2) (b) and Article 165 (5) of the Constitution as read with section 26 (3) and (4) of the Environment and Land Court Act.
 - II. THAT the claim is statute-barred under section 7 of the Limitation of Actions Act as it is premised on the Land Agreement dated 8th June 2010. The Application filed on 30th May 2024, more than 13 years later, is brought outside the 12-year limitation period.

The Petitioner's/Applicant's submissions

6. Through his written submissions dated 17th July 2025, the Petitioner submitted that the Objector's Application dated 30th May 2024 was a land dispute disguised as a succession application and this court lacked jurisdiction to determine the said Application. He relied on Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd [1989] KECA (KLR) (30), Article 162 (2) (b), 165 (5) (b) of the Constitution of Kenya and section 13 of the Environment and Land Act.
7. It was the Petitioner's submission that the Objector claimed an interest in the suit parcel based on a purported donation formalized through a Land Agreement dated 8th June 2010. That the issues raised in the Application relate to enforceability of the Land Agreement and title of the land, issues which fell within the jurisdiction of the Environment and Land Court.
8. The Petitioner submitted that the Application was time barred under section 7 of the Limitation of Actions Act. That although the Application was a succession Application, the underlying claim was for entitlement to land based on an alleged gift inter vivos and it attracted the operation and application of the Limitation of Actions Act. He relied on Benson Oketch Okello v Benson Nyandiga Onguru [2019] KEELC 1864 (KLR) (16). The Petitioner further submitted that the claim was stale and the Application was time barred.

The Objector's submissions

9. Through his written submissions dated 28th July 2025, the Objector submitted that the Preliminary Objection was an attempt to oust this court's jurisdiction. That he invoked this court's jurisdiction under section 76 of the Law of Succession Act to revoke a Grant tainted with fraud and omission. Reliance was placed on Naomi Wanjiru Njoroge & 2 others v Winston Benson Thiru (2018) eKLR and Estate of Prisca Ong'ayo Nande (Deceased) (2020) eKLR. The Objector further stated that this court had full jurisdiction to determine the validity of the impugned Grant.
10. It was the Objector's submission that a person could not benefit from fraud. He relied on Estate of Katana Vuko Wale v Hamisi Katana Vuko (2021) eKLR. That fraud vitiates all transactions and the Limitation of Actions did not run where fraud is pleaded. He relied on Edward Githaka Kiandingu vs Mary Naomi Mwangi & another (2020) eKLR.
11. The Objector submitted that he discovered the fraud upon confirmation of the Grant on 13th November 2020 and his Application for Revocation dated 30th May 2024 was filed within reasonable time and could not be statute barred. The Objector further stated that it was not in dispute that the



deceased lawfully gifted him the suit land inter vivos through a deed of donation. That the Petitioner obtained the Grant without informing the court that the Objector was entitled to the subject land and it amounted to concealment of material facts as envisaged under section 76 of the Law of Succession Act. He relied on re Estate of Magangi Obuki (Deceased) (2020) eKLR et.al.

12. I have considered the Preliminary Objection dated 8th July 2025, the Petitioner’s written submissions dated 17th July 2025 and the Objector’s written submissions dated 28th July 2025. The only issue for my determination was whether the Preliminary Objection was sustainable.

13. What constitutes a Preliminary Objection was set out in the oft cited case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696, where it was held that: -

“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... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.” (Emphasis mine)

14. In Daqare Transporters Limited v Zainab Hashi [2021] KEHC 2600 (KLR), Mogeni J. held: -

“In the case of Ahmed Noorani & another v Rajendra Ratilal Sanghani [2020] eKLR the Court of Appeal held that: “For a preliminary objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid preliminary objection should, if successful, dispose of the suit.” (Emphasis mine)

15. The Petitioner claimed that this court lacked jurisdiction to determine the Objector’s Application dated 30th May 2024. Jurisdiction is defined in the Black’s Law Dictionary, 10th Edition as: -

“A court’s power to decide a case or issue a decree”.

16. In the case of Phoenix of E.A. Assurance Company Limited v Simeon Muruchi Thiga t/a Newspaper Service [2019] KECA 770 (KLR), the Court of Appeal stated that: -

“It is a truism jurisdiction is everything and is what gives a court or a tribunal the power, authority and legitimacy to entertain any matter before it. What is jurisdiction?”

In common English parlance, ‘Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae”.



17. Further, in *Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] KESC 8 (KLR), the Supreme Court of Kenya held that: -

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

18. It was the Objector’s contention that the Grant dated 15th November 2017 should be revoked as the Petitioner failed to include him as a beneficiary. It was the Objector’s further contention that he had been gifted Nakuru/Molo/Sirikwa/559 by the deceased as a gift in his lifetime. The Objector attached a Land Agreement dated 8th June 2010 between himself and the deceased.

19. In my view and with respect to the Objector, his claim relating to the suit land is based on ownership. This court cannot grant the prayer for revocation without determining the ownership status of the suit land. This is so because the primary duty of the Probate court is to distribute the free estate of a deceased. In the case of *re Estate of Julius Ndubi Javan (Deceased)* [2018] KEHC 8523 (KLR) Gikonyo J. held: -

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”

20. I am in total alignment with *re Estate of Stone Kathuli Muinde (Deceased)* [2016] KEHC 3725 (KLR) where the court held that: -

“With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.

Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it”. (Emphasis mine)

21. The jurisdiction of determining the ownership of the suit land is vested in the Environment and Land Court and not this court. Section 13 of the *Environment and Land Court Act* provides: -

(1) 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 law applicable in Kenya relating to environment and land.



- (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.....

22. Flowing from the above, it is my finding that this court lacks jurisdiction to determine the Application dated 30th May 2024 and I must down my tools. I hereby sustain the Preliminary Objection dated 8th July 2025 and strike out the Application dated 30th May 2024 with costs to the Petitioner.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 12TH DAY OF NOVEMBER, 2025.

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HON. JULIUS K. NG'ARNG'AR
JUDGE

Ruling delivered in the presence of:
Siele/Susan (Court Assistants).
Mugumya for the Petitioner/Applicant
Bore for the Objector

