



REPUBLIC OF KENYA



**In re Estate of Parbat Lalji Halai alias Halai Parbat Lalji Mulji (Deceased) (Succession Cause 207 of 2017) [2025] KEHC 16206 (KLR) (Family) (10 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16206 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**SUCCESSION CAUSE 207 OF 2017**

**CJ KENDAGOR, J**

**NOVEMBER 10, 2025**

**IN RE ESTATE OF PARBAT LALJI HALAI ALIAS HALAI PARBAT LALJI  
MULJI (DECEASED) (SUCCESSION CAUSE 207 OF 2017) [2025] KEHC 16206**

**BETWEEN**

**MANISHA GOPAL VAGJIANI ..... APPLICANT**

**AND**

**KANBHAI PARBAT LALJI HALAI ..... RESPONDENT**

**AND**

**NARAN VALJI PATEL ..... INTERESTED PARTY**

**RULING**

1. This matter was concluded, and the Grant of Probate with Written Will was confirmed on 13<sup>th</sup> November, 2017.
2. The matter was reignited by an application dated 19<sup>th</sup> March, 2025 which is seeking the following orders;
  - i. That this application be certified as urgent and service be dispensed with and heard in the first instance;
  - ii. That pending the hearing of this application inter partes, Naran Valji Patel be restrained whether by himself, his agents, servants or representatives from in any manner meddling in the administration of the estate of the late Parbat Lalji Halai or any manner interfering with the estate or properties comprised thereof;



- iii. That pending the hearing of this application inter partes Naran Valji Patel and or the executor hereof be restrained whether by themselves, their agents, servants or representatives from in any manner meddling with the proceeds from the sale of the property known as Title No. Mavoko Block 2 15796;
  - iv. That Naran Valji Patel be compelled whether by himself, his agents, servants or representatives to deposit in court all the title documents, account statements, full account of receipts had and received from the estate, and all documents which he is holding in respect of property forming part of the estate of the late Parbat Lalji Halai;
  - v. That Kanbai Parbat Lalji Halai the executor of the estate of the late Parbat Lalji Halai be ordered to provide full, detailed and accurate accounts of the estate including all income and expenditure within 14 days;
  - vi. That further in default of providing accounts as above, the grant of administration to Kanbai Parbat Lalji Halai be revoked;
  - vii. That the honourable court be pleased to make and order that the affairs of Kanbai Parbat Lalji Halai be managed by P.J. Kakad, Advocate, who is the current advocate of the executor and Ashok Dave of Lalji R Raghvani, advocate who have been the family lawyers for over fifty years;
  - viii. That the costs of this application be provided for;
  - ix. That the court may grant any or further orders that may favour the cause of justice.
3. The Applicant is the daughter of the deceased and a beneficiary of the estate. The Respondent is the executrix and administrator of the estate, while the interested party is reportedly an agent of the Respondent acting on a power of attorney granted by the executrix.
  4. At the hearing of the application, Counsel for the Respondent and the interested party filed a notice of Preliminary Objection dated 28<sup>th</sup> April, 2025. This ruling is on the Preliminary Objection.
  5. Both parties filed submissions which I have duly considered.
  6. The issue for determination is whether the Preliminary Objection is merited.
  7. What constitutes a PO was discussed in *Mukisa Biscuits Manufacturing Ltd v West End Distributors* (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...”
  8. In *Muumbo & another (C o Muigai Kemei & Associates Advocates) v Mwingi View Point Lodge Limited & 8 others* (Environment & Land Case 10 of 2023) [2024] KEELC 6921 (KLR), Mogeni J. held as follows;
 

“.....a preliminary objection is a motion asking the judge not to entertain the matter or take into account the validity of the claims raised in the suit. By inference, a preliminary objection can only be raised purely on a point of law and not to question the truthfulness of a fact in a case because then it would be a breach of rules of procedure and ought not be entertained by courts of law.”
  9. The essence of the preliminary objection is threefold;



- i. That the suit is res judicata as the matter is already heard and determined;
  - ii. That the application contravenes Section 5 of the Law of Succession;
  - iii. That this Court lacks jurisdiction to entertain the suit.
10. The Grant in this case was issued and confirmed. This, however, does not prevent any proceedings from being taken in the same matter after the grant is confirmed. The issue in the application, besides the injunctive reliefs sought, pertains to the filing of accounts by the administrator, which application has not been handled by this court before. The doctrine of res judicata states that a matter that has been finally determined by a Court of competent jurisdiction cannot be re-litigated by the same parties or their privies in a later suit. The present application not having been previously filed and determined, and considering that Section 97 of the *akn ke act 1972 14 Law of Succession Act*, Probate and Administration Rules Rule 41 anticipate that proceedings on filing and taking of accounts may be initiated after the grant of confirmation, then the same is not res judicata.
  11. On the second ground, the respondent argues that the application infringes upon the fundamental right to testamentary disposition, a right protected under Section 5 of the *akn ke act 1972 14 Law of Succession Act*. Upon review of the application, it is clear that the issues raised pertain specifically to the execution of the executrix's responsibilities in managing the estate, rather than contesting the validity or authenticity of the will itself. As such, this argument does not hold water and ultimately lacks the merit.
  12. The third ground similarly fails as this Court is vested with jurisdiction under Section 47 of the *akn ke act 1972 14 Law of Succession Act* to hear and determine any application and determine any dispute under the Act and to pronounce such decrees and make such orders as may be expedient.
  13. The Preliminary Objection is not merited and the same is dismissed. Costs shall be in the cause.
  14. The application dated 19<sup>th</sup> March, 2025 shall be set down for hearing forthwith. The firm of P.J. Kakad & Co. Advocates indicated that the Notice of Preliminary Objection was filed on behalf of the Respondent and the interested party. The Respondent and the interested party are granted leave to respond to the application within 14 days, and the Applicant is granted leave to file a further affidavit, if need be, within 14 days of service of the response.
  15. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 10<sup>TH</sup> DAY OF NOVEMBER, 2025.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Administrator: Beryl

Ms. Koki Advocate for Applicant

No appearance for Respondent

