



**In re Estate of Leonard Kibinge Kiruri (Deceased) (Succession Cause
626 of 2015) [2025] KEHC 16149 (KLR) (Family) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16149 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 626 OF 2015
PM NYAUNDI, J
NOVEMBER 7, 2025**

BETWEEN

SHEILA WANJIKU KINUTHIA APPLICANT

AND

JANE WANGARI GACHERU 1ST RESPONDENT

JUDY WAMBUI NYAMBURA 2ND RESPONDENT

GEOFFREY NG'ANG'A KIRURI 3RD RESPONDENT

RULING

1. Sheila Wanjiku Kinuthia (the applicant) presents summons dated 28th September 2020 under Section 3, rule 59 (1and 5) of the [Law of Succession Act](#) and Section 49 of the [Land Act](#) and seeks the following orders;
 1. That the Honourable Court be pleased to issue a declaration that the properties Muguga/Gitaru/1112 and Original Leases over Flats B7, B8, B9, B10, B11, B12, B13, B14 and B15 erected on LR (Msa) No. Mainland North Section/ 1/2179 (Original No. 973/20) were jointly held by the DECEASED and the Petitioner thus not “free property” of the deceased and under the principle of jus accrescendi unavailable for distribution to the beneficiaries as the Estate of the deceased.
 2. That the Honourable Court be pleased to grant an order for the remitting of accounts over the properties Original Leases over Flats B7, B8, B9, B10, B11, B12, B13, B14 and B15 erected on LR (Msa) No. Mainland North Section/ 1/2179 (Original No. 973/20) for which they have been administrators since 14th November 2018.
 3. The costs of this application be borne by the Respondents.



2. The Application is supported by her affidavit sworn on even date, in which she asserts that as the properties were in joint names with the deceased, they cannot be part of the estate of the deceased.
3. In opposing the summons, the Respondents filed a Replying Affidavit sworn on 15th April 2021 by the 2nd Respondent and a Preliminary Objection dated 15th April 2021. The Preliminary Objection is framed thus-
 1. That the Honourable Court lacks jurisdiction to hear and determine prayer (1) of the application dated 28/09/2020 by dint of Article 162 (1), 2(2) b and 30 of *the Constitution* and Section 13 of the *Environment and Land Court Act* No. 19 of 2011 as the applicant seeks declaration relating to land pursuant to Section 60 of the *Land Registration Act* and Section 49 of the *Land Act*, a jurisdiction expressly exclusive to the Environment and Land Court.
 2. That the application is an abuse of the court process.
4. So as to proceed expeditiously on 13th May 2025, I gave directions that both the application dated 28th September 2020 and the Preliminary Objection be heard concurrently and be canvassed by way of written submissions. The Applicant's submissions are dated 14th April 2025 whilst the Respondents submissions are dated 7th October 2025.

Applicant's Submissions.

5. The applicant framed the following as the issues to be determined by this court;
 - i. Whether properties Muguga/Gitaru/1111, Muguga/Gitaru/1112 and Original leases over flats B7, B8, B9, B10, B11, B12, B13, B14 and B15 erected on LR (Msa)No. Mainland North section 1/2179 (OriginalNo.973/20) (hereinafter Nyali properties) are free property.
 - ii. Whether the Court has Jurisdiction over the Application and matrimonial property and whether the Preliminary Objection ought to be dismissed.
 - iii. Who bears the Costs of the Application?
6. On the first issue, the applicant argues that these properties were acquired by her and the deceased on 23rd June 2011 after they had solemnized their marriage. Relying on the decisions of *Cornella Nabangala Nabwana vs. Edward Vitalis Akuku & 2 others* [2017]eKLR and *Isabel Chelangat vs Samuel Tiro Rotich & 5 Others* [2012] eKLR, it was her submission that properties registered under a joint tenancy cannot pass to the deceased through will or intestacy. It automatically passes to the surviving tenant. In this case, the properties jointly registered in her name and the deceased's name pass to her.
7. On the second issue, it was her submission that this court has jurisdiction to determine only free property in succession matters. In this case, she argued that the properties in issue are matrimonial property which were jointly acquired with the deceased and therefore, do not form part of the estate of the deceased.
8. On the issue of costs, it was her submission that the Respondents be condemned to bear the costs of the Application since costs follow the event.

Respondents Submissions.

6. The Respondents submit that the issues raised by the applicant can only be determined by the Matrimonial Court and the Environment and Land Court. Reference is made to the decision in re



Estate of Josephine Magdalena Motion (Deceased) [2017] KEHC 6008 (KLR), it was their submission that the question of jus accrescendi is a determination by the Environment and Land Court.

10. They also place reliance on the decision of In re Estate of Teresa Wangui Muruga (Deceased) [2021] eKLR for the submission that the appropriate order is for this court to stay proceedings in the succession case to allow the applicant ventilate the issue of ownership in the Environment and Land Court.

Analysis And Determination

11. I discern that the issues for determination as-
 - a) Is the preliminary objection merited?
 - b) Depending on a) above what orders should the Court on application dated 28th September 2020
 - c) What if any are the consequential orders?
 - d) What orders as to costs?
12. On the 1st issue, in the locus classicus case of Mukisa Biscuits Manufacturing Company Limited v West End Distributors (1969) EA 696, the court stated on preliminary objections:

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.
13. In the case of Hassan Ali Joho & Another v. Suleiman Said Shahbal & 2 Others, Petition No. 10 of 2013, [2014] eKLR [paragraph 31] the Court opined thus:

To restate the relevant principle from the precedent-setting case, Mukisa Biscuit Manufacturing Co. Ltd –vs.- West End Distributors (1969) EA 696: ‘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 has to be ascertained or if what is sought is the exercise of judicial discretion
14. The clear position appears to be that for a preliminary objection to meet the threshold it must be: on a point of law pleaded or arising from the pleadings; and must be founded on an understanding that the facts are agreed or undisputed; and that it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.
15. In this case, the issue arising here is on jurisdiction. The preliminary objection is therefore competent. The Respondents argued that this court lacks jurisdiction to entertain the application dated 28th September 2020. It is submitted that this application can only be made before the Environment and Land Court.
16. Jurisdiction goes to the core of every proceeding that comes before a court of law. A court is required to down its tools in respect of a matter the moment it holds the opinion that it is without jurisdiction - see Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (1989)eKLR.



17. Section 60 of the *Land Registration Act* provides:
If any of the joint tenants of any land, lease or charge dies, the Registrar shall, upon proof of death delete the name of the deceased tenant from the register by registering the death certificate.
18. Likewise Section 49 of the *Land Act* states-
49. Transmission on death of joint proprietor
If one of two or more joint proprietors of any land, lease or charge dies, the Registrar shall, on proof of the death, delete the name of the deceased from the register by registration of the death certificate.
19. . The statutory provisions are clear, it is the Land Registrar who has the mandate to delete the name of the deceased joint owner upon proof of death. It is well established by judicial precedent that the mandate of the probate Court is limited to distributing the free estate of a deceased person to rightful beneficiaries. See the decision in *Re Estate of Alice Mumbua Mutua* [2017] eKLR,
The function of the probate court is limited to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets...
20. The moment that the issue of ownership is raised the Court can stay the distribution of the asset (s) in contention to await determination of that issue at the appropriate forum. In this case before the registrar in the first instance and if that fails before the Environment and Land Court.
21. For the aforesaid reasons, I will uphold the Preliminary Objection and strike out the application dated 28th September 2020 for want of jurisdiction.
22. The applicant will move the appropriate forum. The proceedings herein are stayed awaiting the outcome of the application to the Registrar of Lands or decision of the Environment and Land Court.
23. The estate has rental income. It is directed that the administrators will open an estate account within 21 days and all the rental income of the estate will be deposited therein effective rent due at the end of November 2025.
24. The matter will be mentioned on 10th February 2026 to confirm compliance and take further directions.

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 7th DAY OF NOVEMBER, 2025.

M. NYAUNDI

HIGH COURT JUDGE

In the presence of:-

Fardosa Court Assistant

Owala holding brief for Owala Eliankim for Administrators/Respondent

Ms. Namunda for Applicant

