

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC NO. E020 OF 2025

PAUL MUTUNGA MAINGI.....
.....PLAINTIFF

-VERSUS-

PHILIP MUSYOKI MUUTU.....1ST
DEFENDANT

ISAAC MUTUKU MUUTU..... 2ND
DEFENDANT

JAMES MAINGI MUUTU..... 3RD DEFENDANT

AND

THE LAND REGISTRAR MAKUENI COUNTY....INTERESTED
PARTY

RULING

1. This is a ruling in respect of a notice of motion dated 27th May, 2025 in which the Plaintiff/Applicant seeks the following orders:

- 1) Spent
- 2) That pending the hearing and determination of this application, this honourable court be pleased to issue orders staying proceedings in Succession Cause Number E033 of 2025 Makueni, in the matter of the estate of Daudi Muutu Maingi.
- 3) Spent
- 4) That this honourable court be pleased to issue orders to the Defendants to render an account and full material disclosure of all portions disposed of the suit property, particulars of buyers and total sum received from the sales aforesaid.
- 5) That this honourable court be pleased to issue orders directing the Defendants to deposit all proceedings of sale aforesaid, into court or into a joint interest earning account, pending the full hearing and determination of this application and suit.

6) That the OCS, Kikumini police station do enforce compliance with the orders herein.

7) That this honourable court be pleased to impose the lawfully prescribed penalty and/or punitive remedies against the Defendants for intermeddling with the estate of the late Maingi Mutyangao, the deceased owner/original allottee of parcel No. Makueni/Kikumini/372.

2. The dispute in this matter revolves around LR No. Makueni/Kikumini/372 measuring 20.25 hectares (suit property). This property belonged to Maingi Mutyangao who died in 1967 (deceased).
3. The deceased had two wives that is Nthemba Maingi who is the Applicant's mother and Ndugwa Maingi who is the grandmother of the Defendants/Respondents. The deceased died before the suit property was registered in his name.
4. The suit property was shared equally between the two wives of the deceased with each wife getting 25.5 acres. In 1977, Daudi Muutu who is the Respondents' father obtained title to the suit property in his sole name.
5. The Respondents' father passed away and the Respondents are in the process of obtaining grant of letters of administration in respect of his estate with a view to distributing his estate.
6. The Applicant contends that the Respondents' father obtained the title to the entire suit property in his name and that the Respondents have been selling portions of the suit property without any grant of letters of administration in respect of the estate of the deceased.
7. The Applicant is apprehensive that if the Respondents proceed with the succession cause which they have filed before the Chief Magistrate's court, they will obtain grant and proceed to distribute the estate before the ownership dispute is resolved.

8. The Respondents opposed the Applicant's application based on replying affidavit sworn on 26th June, 2025. The Respondents contend that this court lacks jurisdiction to stop or punish the Respondents for intermeddling in the estate of Maingi Mutyangao. They state that the suit property belongs to their late father and that any issues being raised by the Applicant can be addressed in the succession cause which they have filed.
9. The Respondents contend that this court cannot be turned into an investigative agency to inquire into the land dealings over the suit property.
10. The parties were directed to file written submissions in respect of the application. The Applicant filed his submissions dated 2nd October, 2025. The Respondents filed their submissions dated 28th July, 2025.
11. The Applicant submitted that where there are issues touching on matters partly within the jurisdiction of the Environment and Land Court and the other matters touching on succession matters, this court has jurisdiction to deal with this matter as the dominant issue is ownership of the suit property.
12. The Applicant further submitted that he had met the threshold set out in the case of **Giella –vs- Cassman Brown & Co. Ltd (1973) EA 358**.
13. The Respondents submitted that this court lacks jurisdiction to deal with matters touching on succession and cannot punish for intermeddling in the estate of a deceased person. The Respondents further submitted that the Applicant has not met the threshold for grant of injunctive orders.
14. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. There are two issues which emerge for determination. The first is whether this court has jurisdiction to grant the orders sought. The second is whether the Applicant has demonstrated a prima facie case against the Respondent.
15. As can be seen from the orders sought, the Applicant is seeking to stop Succession Cause No. E033 of 2025 at Makueni. He is also seeking orders of account of the sold portions and that money be deposited in court or in a

joint interest earning account. The Applicant is also seeking this court to punish the Respondents for intermeddling with the estate of Maingi Mutyangao.

16. This court has no jurisdiction to issue any orders as set out hereinabove. A succession court deals with distribution of the estate and other orders ancillary thereto. The Environment and Land Court on the other hand deals with ownership of property.

17. In the instant case, the suit property is in the name of the father of the Respondents. If the issue of ownership is to be addressed, then the same can be directed to persons who have legal standing to represent the estate of Daudi Muutu. If the court were to stop the Respondents from obtaining letters of administration in respect of their father's estate, then the Respondents will have no capacity to be sued because no orders can issue touching the estate of Daudi Muutu without there being a legal representative of his estate.

18. The Applicant is not seeking any orders of injunction pending determination of this suit. Even if there was such a prayer, it cannot be directed to the Respondents who have no capacity as they have not been sued as administrators of the estate of Daudi Muutu. There is therefore no prima facie case against the Respondents. I therefore find no merit in this application which is dismissed with costs to the Respondents.

It is so ordered.

.....

HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF NOVEMBER, 2025.

IN THE PRESENCE OF:

Ms. Okinyi for Applicant.

Mr. Muthiani for Respondents.

Court assistant - Steve Musyoki

ORIGINAL