



REPUBLIC OF KENYA



Muchiri & 2 others v Gakuru (Sued as Legal Representative of Joshua Gakuru Kariuki) & 6 others (Environment and Land Case E021 of 2023) [2025] KEELC 8087 (KLR) (13 November 2025) (Judgment)

Neutral citation: [2025] KEELC 8087 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE E021 OF 2023**

**JM MUTUNGI, J
NOVEMBER 13, 2025**

BETWEEN

**JOYCE MIIRU MUCHIRI 1ST PLAINTIFF
MARY KABARI MURIITHI 2ND PLAINTIFF
LOICE WANJIRA KIMOTHO 3RD PLAINTIFF**

AND

**TABITHA MUTHONI GAKURU (SUED AS LEGAL REPRESENTATIVE OF JOSHUA GAKURU KARIUKI) 1ST DEFENDANT
CHARLES ZAK KARIUKI (SUED AS LEGAL REPRESENTATIVE OF JESSEE KINYA KARIUKI) 2ND DEFENDANT
GAKURU PETER JESEE 3RD DEFENDANT
PAULINE TOROITICH CHESANG 4TH DEFENDANT
JAMES NJERI ZAKAYO 5TH DEFENDANT
HELLEN MUTHONI NDWIGA 6TH DEFENDANT
ZAKAYO KARIUKI GAKURU 7TH DEFENDANT**

JUDGMENT

1. The Plaintiffs commenced this suit by way of a plaint dated 5th April 2023, seeking the following orders:
 1. A declaration that the subdivision of land parcels NgariamaNyangeni274 and KirinyagaGathigiriri569 and subsequent transfer was done through fraud.



2. An order of cancellation of all the resultant portions after subdivision of land parcels NgariamaNyangeni274, KirinyagaGathigiriri569 and Plot No.14 Njukiini Market in the name of the deceased Zakayo Kariuki Ndwiga for purpose of filing a proper succession.
 3. The order be served upon the land Registrar Kirinyaga for compliance.
 4. costs of the suit.
2. The Plaintiff is anchored on the assertion that land parcels NgariamaNyangeni274, KirinyagaGathigiriri569 (later subdivided into KirinyagaGathigiriri1937, 1938, 1939, 1940, and 1941) and Plot No. 14 Njukiini Market were originally registered in the name of their father, the late Zakayo Kariuki Ndwiga. The Plaintiffs state that the deceased had two wives (both now deceased) and was survived by eleven children.
 3. They aver that upon their father's death, their brother, the late Joshua Gakuru Kariuki, fraudulently and secretly filed succession proceedings in respect of the estate of their late father in CM's Succession Cause No. 163 of 2003 without their knowledge or consent. They aver that they only discovered the existence of the succession proceedings in 2021, whereupon they filed summons for revocation of grant. That application was dismissed on the ground that the estate had already been fully distributed to the beneficiaries and no unadministered estate remained; consequently, the Court held that it lacked jurisdiction to entertain the matter and directed them to the Environment and Land Court.
 4. The Plaintiffs set out particulars of fraud against the late administrator as follows: that he obtained the grant through concealment of material facts; that he excluded the Plaintiffs, who were rightful beneficiaries ranking equally with him; that he allocated portions of the estate to his children and daughter-in-law while deliberately disinheriting the Plaintiffs; and that despite being aware of the Plaintiffs' existence, neither he nor the other beneficiaries disclosed the succession proceedings to them.
 5. The Plaintiffs further aver that upon confirmation of the grant, the estate was distributed as follows:
 - i. KirinyagaGathigiriri569 was subdivided and distributed to the late Joshua Gakuru Kariuki, the late Jesse Kinya Kariuki, Hellen Muthoni Ndwiga (6th Defendant), and Ndwiga Zakayo, each receiving approximately 2.96 acres.
 - ii. NgariamaNyangeni274 was subdivided and distributed as follows: Joshua Gakuru Kariuki – 3.87 acres Jesse Kinya Kariuki – 1.87 acres Gakuru Peter Jesse – 1.0 acres Pauline Toroitich Chesang – 1.0 acres Hellen Muthoni Ndwiga (to hold for herself and James Njeru Zakayo) – 3.87 acres.
 - iii. Plot No. 14 Njukiini Market was bequeathed to Zakayo Kariuki Gakuru.
 6. The Plaintiffs' case is that through this process, the administrator unfairly distributed the estate to his own children and associates, thereby disinheriting them. They urge this Court to cancel the subdivisions and restore the properties into the deceased's name to pave the way for a fresh and proper succession cause.
 7. The 1st, 2nd, 3rd, 4th, 6th, and 7th Defendants filed a joint Statement of Defence dated 17th May 2023, categorically denying the Plaintiffs' claim. They first contended that this Court lacks jurisdiction to entertain the matter because as per the confirmed grant the assets of the deceased estate had already been distributed to beneficiaries and no estate remained unadministered. Secondly, they argued that since this Court is not a Family Court, it could not interrogate or reopen questions concerning the succession and administration of the estate.



8. The Defendants further averred the Plaintiffs were guilty of inordinate delay in asserting their rights pointing out that the Plaintiffs had waited for nineteen (19) years before filing the present suit, which they termed as inordinate. The Defendants contended and maintained that Succession Cause No. 163 of 2003 was filed and concluded lawfully, with the full knowledge and participation of all the survivors of the deceased, including the Plaintiffs, and that the present claim is without merit and an afterthought.
9. On the merits, the Defendants averred that the deceased had two houses. They contended that Ndwiga Zakayo of the first house, who has not been joined in these proceedings, assisted the deceased in acquiring land parcel NgariamaKabari98 through the clan. For that reason, the members of the first house were not entitled to any share in land parcel NgariamaNyangeni274 and were only to benefit from land parcel KirinyagaGathigiriri569. They also stated that Plot No. 14 Njukiini Market had been purchased by the 7th Defendant, Zakayo Kariuki, from the beneficiaries and that he was solely entitled to it.
10. The Defendants further averred that NgariamaNyangeni274, being adjacent to NgariamaKabari98 (already allocated to the first house), was earmarked for distribution only among members of the second house. They averred that by the time of their father's death, the Plaintiffs were all married. They further claimed that the deceased had, during his lifetime, shown his sons the portions of land they were to inherit, and that they had already settled and developed those portions. They added that before his demise, the deceased convened his family and explained that his land would be distributed to his sons. At the same time, his daughters would be hosted in the households of their respective brothers should they return from their matrimonial homes. They explained that each brother was to host a specific sister and receive her dowry as part of the deceased's wishes.
11. The Defendants further averred that after the conclusion of the succession, the 1st Plaintiff went and settled on the land of the 5th Defendant, where she has constructed a house. They added that the 5th Defendant indeed received the dowry of his niece, Nester Wanjiru, in line with their late father's wishes. They dismissed the 1st Plaintiff's claim of ignorance about the succession process as "heightened hypocrisy." They further challenged the 3rd Plaintiff's standing, arguing that her mother had been buried in her father's land, and that she therefore lacked both legal capacity and entitlement over the estate.
12. The Defendants further pointed out that after distribution of the estate. Some of the grandchildren transacted with their portions for instance, Pauline Toroitich and Gakuru Peter Jesse purchased land from Jesse Kinya, while the 5th Defendant, James Njeru Zakayo, sold his share (KirinyagaGathigiriri1938) to Rosetta Kuthii Muriithi. They contended that the present suit is bad in law for being time-barred; for want of locus standi by the Plaintiffs; for misjoinder of parties; for want of jurisdiction; and for failure to include the estate of Ndwiga Zakayo. The Defendants urged the Court to dismiss the suit with costs.

Evidence of the Parties

13. The Plaintiffs' case was supported by Joyce Muri Muchira's (PW1) testimony, heard on 9th July 2024. She testified on her own behalf and on behalf of the second Plaintiff, adopting her witness statement and list of documents.
14. PW1 stated that the estate administrator had distributed her late father's property without their knowledge. She averred that the Plaintiffs, being children of the deceased, had not been considered in



- the succession cause and prayed that the resultant titles be cancelled so that the land could revert to their father's name for proper succession.
15. On cross-examination, PW1 confirmed that the 2nd Plaintiff was her sister, while the 3rd Plaintiff was the daughter of their late eldest sister. She explained that the Plaintiffs only sought to be recognized and involved as beneficiaries of their father's estate. She admitted that they had not taken out a grant of representation regarding their father's estate.
 16. PW1 testified that she had previously taken out a grant in respect of her late brother's estate, in the name of his widow, Tabitha Muthoni Gakuru, which she used for succession purposes. She conceded that she did not obtain a fresh grant when filing this suit. She stated that she became aware of the succession cause concerning her father's estate around 2007.
 17. PW1 denied the assertion that her father had, before his death, indicated how he wished his land to be distributed. She, however acknowledged that by the time the estate was distributed she was already married. She further confirmed that she returned in 2007 and built her house on a portion of land that had been allocated to the 5th Defendant.
 18. On re-examination, PW1 clarified that she brought this suit on her own behalf and on behalf of her sister, and reiterated that they were neither informed of, nor involved in the succession cause initiated by their late brother.
 19. The Defendants' case was heard on 2nd April 2025. Hellen Muthoni Ndwiga (DW1), testified on behalf of the Defendants and as her evidence she. She adopted her witness statement and relied on the documents exhibited in the Defendants bundle of documents.
 20. On cross-examination, DW1 confirmed that the Plaintiffs were indeed children of her father-in-law, the late Zakayo Kariuki Ndwiga. She explained, however, that the Plaintiffs were not allocated land because they themselves declined to take any. She stated that the deceased had made it known that should any of his married daughters return home, they would be accommodated by their brothers in order of seniority.
 21. DW1 further confirmed that the deceased did not leave behind a written will. She explained that land parcel NgariamaNyangeni274 was meant to be shared exclusively among members of the second house. With respect to Plot No. 14 Njukiini Market, she stated that the beneficiaries collectively agreed to sell it, although no formal written sale agreement was executed.
 22. On re-examination, DW1 reiterated that all the children of Zakayo Kariuki, including the Plaintiffs, were present during the confirmation of the grant, and that they were in Court at the time the grant was confirmed.

Submissions of the Parties

23. The Plaintiffs filed their written submissions dated 8th May 2025. Counsel for the Plaintiffs argued that although DW1 had testified that the Plaintiffs participated in the succession cause, the Defendants had not produced any evidence to prove that assertion. Similarly, the claim by DW1 that the Plaintiffs refused to take land was, in counsel's view, unsupported by any documentary or independent evidence.
24. On the objection that the suit was time-barred, counsel submitted that the Plaintiffs only discovered the fraud in 2021 and that the limitation of actions could not begin to run before the discovery of the alleged fraud. Therefore, it was the Plaintiffs position that the present suit was filed within time.
25. Counsel further emphasized that the Plaintiffs were never informed of the succession cause, nor were they involved in it, and as a result they were unfairly disinherited. It was also pointed out that the 3rd



and 4th Defendants were not beneficiaries of the deceased's estate, yet they ended up on the list of those who benefited.

26. The Defendants filed their written submissions dated 17th July 2025. Counsel submitted on the issue of jurisdiction, arguing that what the Plaintiffs sought was essentially a finding that the grant issued in Kerugoya SPM Succession Cause No. 163 of 2003 had been fraudulently obtained and that they were unlawfully excluded as beneficiaries. Counsel submitted that such questions fall squarely within the province of the probate and administration court, not the Environment and Land Court. In the Defendant's Counsel's view, the dispute in this suit was between administrators and beneficiaries, and the proper forum for its resolution was the succession Court.
27. Counsel further submitted that the estate in question had been fully distributed and wound up in 2007, yet the Plaintiffs filed this suit some 14 years later without offering any cogent explanation for the delay. Counsel emphasized that the Plaintiffs were in reality challenging the validity of the grant and their alleged exclusion from the inheritance which are matters that are succession-related and outside the jurisdiction of this Court.
28. On the issue of locus standi, Counsel argued that Tabitha Muthoni Gakuru had been sued as the wife and legal representative of Joshua Gakuru Kariuki (deceased), and that Charles Zakayo Kariuki had been sued as the representative of Jesse Kinya Kariuki (deceased). Counsel submitted that the dispute in this suit concerned the estate of the late Zakayo Kariuki Ndwiga, and as such, neither Tabitha nor Charles could represent their respective husband or father in these proceedings. Counsel added that even the late Joshua Gakuru Kariuki could not be sued as the grant he held had become inoperative upon his death.
29. On whether the resultant titles should be cancelled, counsel submitted that the 1st Plaintiff left her matrimonial home in 2007 and was allocated land by her brother, on which she has lived for 16 years and even erected a permanent house. Counsel relied on Section 4(4) of the *Limitation of Actions Act*, which bars actions against judgments after 12 years; Section 7, which bars recovery of land after 12 years; and Section 9(2), to submit that this suit was hopelessly out of time, having been brought 18 years after the estate was distributed and 21 years after the deceased's death.
30. Counsel argued that the Plaintiffs could not claim ignorance of the distribution when the 1st Plaintiff had been residing on the land for many years. He stressed that limitation goes to the root of the Court's jurisdiction. On the issue of fraud, counsel submitted that the Plaintiffs were aware that portions of land had already been sold, as per the exhibited sale agreements produced in evidence without contest. Counsel urged that the suit be dismissed as it lacked any merit.

Analysis and Determination

31. I have carefully considered the pleadings, the oral testimony, the documentary evidence, and the rival submissions of counsel. From the record, the following issues arise for determination:
 1. Whether this Court has jurisdiction to entertain the present dispute.
 2. Whether the suit is time-barred.
 3. Whether the Plaintiffs have proved fraud or unlawful exclusion from the estate.

Whether this Court has jurisdiction to entertain the present dispute

32. Jurisdiction is everything; without it, a court must down its tools. This principle was firmly stated in the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, where



Nyarangi JA stated that jurisdiction is the fountain from which all judicial authority flowed and cannot be assumed or implied.

33. The Plaintiffs' case, as presented through PW1, is premised on the allegation that their late father's estate was distributed without their knowledge, that they were excluded as beneficiaries, and that the administrator acted fraudulently in procuring the grant and having it confirmed. They pray for the cancellation of titles issued pursuant to the succession proceedings and for the land to revert to their deceased father's name.
34. On their part, the Defendants, through DW1 and their written submissions, have maintained that the gravamen of the dispute is the validity of the grant, the inclusion and exclusion of beneficiaries, and the propriety of the distribution of the estate of Zakayo Kariuki Ndwiga. They argued that these matters fall squarely within the jurisdiction of the Probate and Administration Court.
35. Therefore, the question is whether this Court, the Environment and Land Court, has jurisdiction to interrogate the propriety of a confirmed grant of representation and orders emanating therefrom.
36. It is not disputed that the estate of the deceased herein was the subject of Kerugoya SPM Succession Cause No. 163 of 2003. The Plaintiffs' complaint is that they were not involved and that their rights as beneficiaries were concealed. These allegations, in substance, challenge the process by which the grant was obtained and confirmed. That is, they seek a finding that the succession proceedings were defective for fraud and concealment of material facts.
37. Section 76 of the *Law of Succession Act*, Cap. 160 explicitly states that the Court may revoke or annul a grant if it was obtained fraudulently by making false statements or concealing something material to the case. The jurisdiction to revoke or annul a grant under this provision rests exclusively with the Succession Court, exercising its probate and administration jurisdiction. Section 76 of the *Law of Succession Act*, provides as follows:-
 76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—
 - a. that the proceedings to obtain the grant were defective in substance;
 - b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - ii. to proceed diligently with the administration of the estate; or
 - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - (e) that the grant has become useless and inoperative through subsequent circumstances.



38. In the case of *Re Estate of GKK (Deceased)* [2017] eKLR, the court explained the role of the Probate Court as follows:- “The role of the probate court should be to facilitate ascertainment of heirs and assets, collection and getting in of the assets and ultimately distribution. It should never be the duty of the court to macro-manage the estate, and therefore preside over all manner of disputes over the assets as between the beneficiaries.”
39. Similarly, in the case of *Njoroge v Njoroge & another (Environment & Land Case ...)* [2023] eKLR the Court stated:-
- “The court is of the opinion that the Applicant’s claim has nothing to do with the use, occupation or title to land per se within the meaning of Article 162(2)(b) of *the Constitution*. The Applicant is essentially aggrieved by the mode of distribution of the estate of the deceased in the succession cause. The Applicant is unhappy with the creation of the continuing trust to be managed by the Respondents. The court agrees with the contention by the Respondents and the Interested Parties that the proper forum for dealing with succession matters is the succession court and not this court. As a result, the court finds and holds that it has no jurisdiction to entertain this suit.”
40. Therefore, allegations of fraud, concealment of beneficiaries, or wrongful exclusion or unfair distribution of estate assets can only be remedied by an application for variation and/or revocation of the grant before the succession Court.
41. The Plaintiffs have urged this Court to cancel titles issued after the succession cause. The correct recourse is to move the probate court to revoke or amend the grant, and upon such revocation, consequential orders on titles may issue.
42. The Plaintiffs’ attempt to repackage their complaint as one of fraud in land registration does not change the essential character of the dispute. The fraud alleged is in the procurement and confirmation of the grant, not in any independent transaction at the Lands Registry. The relief they seek being the cancellation of titles and reversion of land to the deceased, is inextricably tied to the validity of the succession cause.
43. It is also not lost on this Court that the Plaintiffs were aware of the succession cause as far back as 2007, yet did not move the probate court for revocation. Their choice to approach the Environment and Land Court after the estate had long been distributed cannot confer jurisdiction on this Court where none existed.
44. In light of the pleadings, the evidence adduced, and the submissions made, the Court finds that the dispute before it, is a succession dispute concerning the validity of a grant, the participation of beneficiaries, and the distribution of the estate. These matters fall squarely under the jurisdiction of the Probate and Administration Court. By dint of Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*, this Court’s jurisdiction is limited to disputes relating to the environment and the use, occupation and title to land. It does not extend to matters of succession.
45. Accordingly, I find and hold that this Court lacks jurisdiction to entertain the Plaintiffs’ suit, which is a succession dispute disguised as a land matter.
46. Having come to the finding that this Court lacks jurisdiction to entertain the dispute herein, it follows that, as was emphatically stated in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1, this Court is enjoined to “down its tools” the moment it finds that it is bereft of jurisdiction. I am therefore constrained to refrain from pronouncing myself on the substantive merits of the case.



47. For completeness, and without making any conclusive determination in light of my finding on jurisdiction, I observe that even if this Court were to assume jurisdiction, the Plaintiffs' claim would still face insurmountable hurdles. The record shows that the succession of the deceased's estate was heard and determined between 2003 and 2004, culminating in a confirmed grant. By operation of law, the validity of titles flowing from that grant cannot be impeached collaterally in separate proceedings. Further, PW1 admitted in cross examination that she was allowed by her brothers to return and build on the land in 2007. That admission points to the fact that she had knowledge of the status of the estate at least by that year, thereby setting time running under Section 7 of the *Limitation of Actions Act*. A claim to recover land founded on fraud must be brought within twelve (12) years of the discovery of the fraud. Therefore, the Plaintiffs' cause of action would be statute barred going by their admission that they became aware of the distribution of the land way back in 2007. Counsel's argument that discovery occurred only in 2021 is not borne out by the evidence. Equally, questions were raised as to the propriety of the inclusion of the 3rd and 4th Defendants as beneficiaries, and whether the Plaintiffs were adequately notified or involved in the succession proceedings. Those matters, too, fell to be ventilated before the Probate Court and not through a collateral challenge in this forum.
48. In the case of *Geoffrey Kipkoech v Insurance Regulatory Authority & 2 others* (2021) KEHC 4419 (KLR), D. S Majanja relied in the English case of *Wilson v The Queen* [1983] 2 S.C.R. 594 in refusing to reopen a matter that had been determined by another Court on the basis the Court had been misled to make the orders that it had made. In the referenced English decision the Court stated:-
- “It has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment. Where appeals have been exhausted and other means of direct attack upon a judgment or order, such as proceedings by prerogative writs or proceedings for judicial review, have been unavailing, the only recourse open to one who seeks to set aside a court order is an action for review in the High Court where grounds for such a proceeding exists. Without attempting to give a complete list, such grounds would include fraud or the discovery of new evidence.
49. In the circumstances, having found that this Court lacks jurisdiction, I need not pronounce myself on the other framed issues of locus standi, limitation, or fraud, as jurisdiction is dispositive of the entire matter. The Plaintiffs are non suited and the suit is hereby struck out. The suit being between relatives, I in exercise of my discretion make no order for costs and therefore each party shall bear their own costs of the suit .

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUARY AT KERUGOYA THIS 13TH DAY OF NOVEMBER 2025.

J. M. MUTUNGI

ELC JUDGE

