

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MOMBASA  
(FAMILY DIVISION)  
HC SUCCESSION CAUSE NO. E017 OF 2025**

**IN THE MATTER OF THE ESTATE OF MATANO BIN KOMBO  
(DECEASED)  
RAMADHAN KOMBO MATANO .....APPLICANT  
VERSUS  
RAMADHANI MATANO KOMBO ..... RESPONDENT**

**AND  
REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MOMBASA  
FAMILY DIVISION  
HC SUCCESSION CAUSE NO. E018 OF 2025  
IN THE MATTER OF THE ESTATE OF JUMA BIN KOMBO  
(DECEASED**

**RAMADHAN KOMBO MATANO .....APPLICANT  
VERSUS**

**RAMADHANI MATANO KOMBO .....RESPONDENT  
AND**

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MOMBASA  
FAMILY DIVISION  
HC SUCCESSION CAUSE NO. E019 OF 2025  
IN THE MATTER OF THE ESTATE OF SALIM BIN KOMBO  
(DECEASED)**

**SALIM HASSAN SALIM .....APPLICANT  
VERSUS**

**SALIM ABDALLAH SALIM .....RESPONDENT**

**CONSOLIDATED RULING**

1. Before this court are notices of preliminary objection, all dated 16<sup>th</sup> May 2025. Vide the said objections, the respondents seek the

summary dismissal of the applicants' applications, with costs, to the respondents on the grounds that the honourable court lacks subject matter jurisdiction to entertain the respective proceedings, on account of the express mandatory provisions of, *inter alia*, Sections 5, 6 and 7, Civil Procedure Act, as read with Sections 3, 47, 48, 51 and 76 of the Law of Succession Act, that the said proceedings, have been presented in the absence of a valid, lawful Succession petition herein, seeks revocation of grant of letters of administration intestate made before a different court, is res subjudice and/or res judicata, and seeks the dual progression of the instant Succession Proceedings alongside and/or after proceedings conducted in Mombasa CMC, in respect of the estates of the same deceased persons.

2. During the hearing Mr. Ngonze submitted that the entire proceedings are illegal as the applicant seeks the revocation of a grant made before a different court, that is to say, High Court Succession Cause No E017 of 2025 (CMC Succession Cause No. 418 of 2018; Re Estate of Matano Bin Kombo), HC Succession Cause No E018 of 2025 (CMC Succession Cause No 416 of 2018; re Estate of Juma Bin Kombo), and in HC Succession Cause No E019 of 2025, (CMC Succession Cause No 419 of 2018; Re Estate of Salim Bin Kombo). In all matters, the grant had already been issued. Mr Ngonze urged that filing the summons before this court after the matter was filed in the lower court constitutes an illegality under the law.
3. Mr Mohamed, learned counsel for the respondent, submitted that the preliminary objection does not meet the threshold of a

preliminary objection as it is factual rather than legal. He contended that the provisions of the Civil Procedure Act are inapplicable in the current case. Rule 44 of the Probate & Administration Rules provides that a summons must be filed in the High Court. Therefore, the preliminary objections raised in the respective matters herein lack merit and should be dismissed with costs.

4. In rejoinder, Mr. Ngonze counsel submitted that the matter is not an appeal and that Section 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules state that the court that issued the grant is the one that hears the objection. He urged the court to uphold the objections.
5. Jurisdiction, as has been said, is everything. In the case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR), Nyarangi, JA** stated as follows: -

**"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity, and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction."**

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

**“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. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”**

7. Section 47 of the Law of Succession Act

**(1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7 of the Magistrates' Courts Act (Cap 10).**

**(2) For the avoidance of doubt it is hereby declared that the Kadhis' courts shall continue to have and exercise jurisdiction in relation to the estate of a**

**deceased Muslim for the determination of questions relating to inheritance in accordance with Muslim law and of any other question arising under this Act in relation to such estates.**

**8.** Rule 44(1) of Probate and Administration Rules provides that: -

**(1) Where any person interested in the estate of the deceased seeks pursuant to the provisions of section 76 of the Act to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in Form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause in which the grant was issued or, where the grant was issued by a resident magistrate, through the High Court registry situated nearest to that resident magistrate's registry.**

**9.** I have considered the preliminary objection and the rival submissions by both counsels. In my view, the applicants correctly applied the provisions of Rule 44 of the Probate and Administration Rules. The said provision is clear that an application for revocation of the grant is made at the High Court. I can't, therefore, fault the applicants for doing something that the Rules require.

**10.** It is therefore my view that the preliminary objections filed in these three matters lack merit. Consequently, the same are hereby dismissed.

**11.** Each party shall bear its own costs.

**12.** It is so ordered.

**Dated and signed in Mombasa, this 14<sup>th</sup> day of November 2025.**

**Delivered virtually through Microsoft TEAMS.**

**Gregory Mutai**

**JUDGE**

In the presence of: -

Mr Mohamed, holding brief for Mr Malombo, for the Applicants;

Mr Ngonze, for the Respondents; and

Arthur – Court Assistant.