

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**  
**ELC OS NO. E001 OF 2023**

**JOHNSON MUNYOKI MWANGANGI..... PLAINTIFF**  
**-VERSUS-**  
**ANNASTACIA SYOMBUA MULI..... DEFENDANT**

**RULING**

1. This is a ruling in respect of a preliminary objection dated 29<sup>th</sup> July, 2025 in which the Respondent raises the following grounds:

**a. That the issue raised before this honourable court ought to be heard in Probate and Administration Court and not before an ELC Court.**

**b. That the issues raised by the Applicant are issues that touches on the estate of the father to the Applicant.**

2. The Applicant had filed an amended originating summons dated 18<sup>th</sup> October, 2023 in which he sought the following orders:

**1. A declaration that the registration of land reference number Makueni/Unoa/4079 & 4080 from the name of Johnson Munywoki Mwangangi to the Respondent's name was fraudulent, illegal and void.**

**2. A declaration that the said Applicant be registered as the sole proprietor of the said parcels of land namely LR. Nos. Makueni/Unoa/4079 & 4080 in place of the above named Respondent in whose favour the land is currently registered.**

**3. The last original indentures in respect of LR. No. Makueni/Unoa/4079 & 4080 which are with the Respondent be dispensed with.**

**4. Costs of this application be provided for.**

3. Before the Respondent could file a response to the originating summons, she filed the preliminary objection which is the subject of this ruling.
4. The parties were directed to dispose of the preliminary objection by way of written submissions. The Respondent filed submissions dated 25<sup>th</sup> August, 2025. The Applicant filed submissions dated 8<sup>th</sup> May, 2025.
5. The Respondent submitted that the issues which are being raised by the Applicant fall within the jurisdiction of the succession court and therefore this court has no jurisdiction to hear this originating summons. The Respondent contends that the questions which this court will have to answer include who were the rightful beneficiaries of the estate of the late Mwangangi Kwinga; was the Applicant a beneficiary of the estate of the deceased; what properties were transmitted to the Applicant by dint of being such a beneficiary; was the Respondent a beneficiary of the estate of the deceased and was consent of the other beneficiaries needed before the suit lands were transferred to the Respondent.
6. The Respondent contends that all the above issues can only be addressed in a succession court.
7. The Applicant submitted that this matter squarely falls within the jurisdiction of this court as the issue in contention is registration of titles to the suit properties through fraud.
8. The Applicant contends that the probate court is only concerned with administration and distribution of a deceased's estate. Any post distribution disputes regarding ownership or title which has been registered falls within the jurisdiction of this court. Once there is registration, a property ceases to form part of the estate of the deceased and any challenge to the registration or ownership falls under the jurisdiction of the Environment and Land Court.
9. I have considered the submissions by the parties. The only issue for determination is whether this court has jurisdiction to hear the originating summons. Though there are scant details on how the Respondent came to be

registered as owner of the two suit properties, at least there is mention that the Applicant claims the same on the ground that he was entitled to the same on account of being a beneficiary of the estate of his late father Mwangangi Kwinga.

10. What is clear is that the suit properties have already been registered in the Respondent's name. Whether this registration stems from a succession matter or ought to have gone through succession is beyond a succession court. The properties are already registered in the Respondent's name and the contention of the Applicant is that the said registration was fraudulent. This therefore puts the issue in question within the jurisdiction of the Environment and Land Court.

11. In the case of **Re Estate of Stone Kathuli Muinde (deceased) (2016) eKLR**, the court held that once a property has been transmitted and title issued, any subsequent dispute over ownership or alleged fraud must be determined by the Environment and Land Court.

12. In **Phyllis Wanjiru Kamau –vs- Agnes Njeri Kamau (2016) eKLR** it was held as follows:

**“The moment a title has been issued to a party, any challenge to the validity of that title, whether arising from fraud or illegality, falls within the jurisdiction of the Environment and Land Court”.**

13. Equally in **Peter Moturi Ogutu –vs- Emelda Basweti Matonda & 3 Others (2013) eKLR** the court affirmed that the question touching on title, fraud and ownership of land are reserved for the Environment and Land Court, even where they incidentally relate to succession issues.

14. The Respondent is already registered as owner of Makueni/Unoa/4079 and 4080. The Applicant is not claiming for distribution of his father's estate but for a declaration that the registration of those parcels in the Respondent's name was fraudulent and illegal. I therefore find that this court has

jurisdiction to hear the originating summons. Consequently this preliminary objection is devoid of merit. It is dismissed with costs to the Applicant. It is so ordered.

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**Hon. E. O. OBAGA**  
**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT  
TEAMS THIS 18<sup>TH</sup> DAY OF DECEMBER, 2025.**

**IN THE PRESENCE OF:**

Mr. Ojienda for Applicant

M/s Omari for Mr. Mulyungi for Respondent

Court Assistant - Steve Musyoki

ORIGINAL