



REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE NO 26 OF 1984

IN THE MATTER OF THE ESTATE OF TIMOTHY MBINDO
NDOLO (DECEASED)

RHODA MUTONO MBONDO.....1ST
ADMINISTRATOR

TABITHA MUENI MBONDO.....2ND
ADMINISTRATOR

TITUS MUTUA MWANGANGI.....3RD
ADMINISTRATOR

DANIEL NGAO MBONDO.....4TH
ADMINISTRATOR

RULING

1. The 3rd Administrator filed an affidavit of protest dated 30/04/2024 wherein he stated that before the Grant of letters of Administration Intestate dated 16/02/88 was revoked, the 1st, 2nd and 4th Administrators herein had already effected transfer by transmission of Land Parcel no MUTHETHENI/KIONYWENI/12, to the names of his father, the 1st and 2nd Administrators herein.

2.He contended that his father MWANGANGI NDOLO who was the brother of the deceased herein, solely bought Land Parcel no MUTHETHENI/KIONYWENI/77 from MBOLE MUTUMBA alias MBOLE NG'OLI and that owing to the absence of the adjudication process,

the deceased herein unlawfully caused the same to be registered in their joint names. He contended that the deceased herein plucked pages of the sale agreement of MUTHETHENI/KIONYWENI/63 which they had jointly purchased from Muthiani Uvatha and Kyule Uvatha who passed on before transfer could be effected. He indicated that he had no contention with the parcel at Muthwani was the family of KYULE NDOLO was given the same. That Mwangangi Ndolo was bequeathed plot no 2 Kionyweni Market by his father-in-law, KIILU NDEKE and was later subdivided into two; 2A and 2B Kionyweni market. Further, that a meeting was held by the family on 22/11/81 where they discussed sharing of all the properties and an agreement was reached.

3. In opposition of the Affidavit, the 3rd Administrator filed a Notice of Preliminary Objection dated 24/10/2024 on the validity of the protest and in asking the court to strike out the affidavit raised the following issues;

“a. By dint of the partial mediation agreement entered into herein on 6th June 2024 and adopted by the Court on 23rd October 2024, all issues herein were dispensed with save for property MUTHETHENI/KIONYWENI/ 77

b. Under Paragraph 7 of his Affidavit of protest sworn on 30th April 2024, the said THOMAS MWANGANGI MUTUA has joined issues with other Administrators on the root of Title in property MUTHETHENI/KIONYWENI/ 77 in effect inviting the Court to determine, as a matter of fact the title thereto, as a preliminary issue.

- c. The question of Title to the said MUTHETHENI/ KIONYWENI/ 77 is one that must be determined preliminarily before the Court can settle the matter of the devolution thereof in this cause**
- d. The question of Title to the said MUTHETHENI/ KIONYWENI/ 77 is the exclusive jurisdictional preserve of the Environment & Land Court under Article 162(2)(b) of The Constitution as read together with Section 13 of The Environment & Land Court Act**
- e. Accordingly, this Court has no jurisdiction to hear and determine the question of Title to the property."**

4. The 3rd Respondent filed a reply to the Notice of Preliminary objection where he reiterated the contents of the affidavit of protest and indicated that the objection was an afterthought. In addition, that nobody raised the issue of jurisdiction on all the other deceased's assets that had been contested.

5. The Preliminary Objection was determined by way of written submissions.

6. The 1st Administrator submissions are dated 28/06/2025 in which he submitted that the court had no jurisdiction to determine the question of title to the property in question. That the question of jurisdiction is so central and dispositive of any proceedings that it can be raised at any stage, even on Appeal. That matters relating to use, occupation and Title to land are reserved for the Environment & Land Court as well as special Courts as gazetted by the Chief Justice under the Environment & Land Court.

7. It was contended that it is now trite law that the inherent powers of the Court only come handy in instances where there are no specific provisions to the contrary. That it would be an overreach to purport that Section 47 of the Law of Succession can afford a Court creeping jurisdiction and give it inherent powers to hear and determine matters relating to land in offence of the Constitutional and statutory mandates on jurisdiction.
8. In support of its submissions, reliance was placed on the following cases; ***Mombasa Court of Appeal Civil Appeal No. 50 of 1989 Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR, Supreme Court Application No. 2 of 2011 Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] Eklr, Attorney General & 2 others v Okiya Omtata Okoiti & 14 others [2020] eKLR, Succession Cause No. 312 of 2008 In re Estate of Atibu Oronje Asioma (Deceased) (Succession Cause 312 of 2008) [2022] KEHC 11046 (KLR), In re Estate of the Late Julia Wanjiku Wachiuri (Deceased) (Succession Cause E005 of 2022) [2023] KEHC 20301 (KLR), Kageche v Kamande & 2 others; Wanjohi (Proposed Interested Party) (Succession Cause 11 of 2020) [2024] KEHC 5637 (KLR), Kiambu High Court Succession Cause No. 11 of 2020 Kageche v Kamande & 2 others; Wanjohi (Proposed Interested Party) (Succession Cause 11 of 2020) [2024] KEHC 5637 (KLR) (17 May 2024), ELC Case. No. E007 of 2023 Waita & another v Njiraini & another (Land Case E007 of 2023) [2024] KEELC 5777 (KLR), Civil Suit No. 342 of 2008 In the matter of the Estate of Kibowen Komen***

(Deceased) [2011] eKLR, Misc Application No. 120 of 2018 Republic v Kenya School of Law & another Ex Parte Kithinji Maseka Semo & another [2019] eKLR, Misc Application No. E041 of 2023 Republic v Chiloba, Director General Communications Authority of Kenya; Katiba Institute & 5 others (Exparte Applicants) (Judicial Review Application E041 of 2023) [2023] KEHC 23791 (KLR).

9. The 3rd Administrator filed submissions dated 18/08/2025 and raised two issues. First, it was submitted that the Honourable Court had jurisdiction over the said land. While relying on the cases of ***Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969] EA 696, The Owners of the Motor Vessel Lilian 'S' vs. Caltex Oil Kenya Ltd [1989] KLR1, In re Estate of Leah Wangui Nding'uri (Deceased) [2020] eKLR, In re Estate of Teresa Wangui Muruga (Deceased) [2021] eKLR*** it was submitted that a preliminary objection should be on pure points of law. That the 4th Administrator herein by the name DANIEL NGAO MBONDO was present in the abovementioned meeting and appended his signature therein hence he is barred by The Doctrine of Estoppel from changing goal-posts. That this matter is Forty-One (41) Years Old and that the Instant Preliminary Objection was raised too late in the day with a view of frustrating the conclusion of the matter contrary to Article 159 (2) (b) of The Constitution. The court was urged to dismiss the Preliminary objection and find that the 3rd Respondent had sufficiently established that the Honourable Court is clothed

with jurisdiction to deal with Land in question. He also prayed for costs.

Analysis and determination

10. The court must first make a determination on the Preliminary Objection whose main issue is the jurisdiction of this court to determine the dispute regarding land parcel known as Muthetheni/ Kionyweni/77 and the validity or otherwise of the mediation agreement dated 6th June 2024.
11. A preliminary objection was defined by the Supreme Court in **Joho & another v Shahbal & 2 others [2014] KESC 34 (KLR)** which cited the leading decision on Preliminary Objections, **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd. (1969) EA 696**, where the Court held as follows:

“ 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”.

12. **Rule 2 of the Probate and Administration rules** defines a protestor as a person who has filed a protest under rule 40(6) against the confirmation of a grant.

13. **Rule 40 (6)** provides as follows;

Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection.”

14. From the record, this case is unique to the extent that there was an agreement between the parties including the protestor on distribution of the estate save for the title of parcel known as Muthetheni/Kionyweni/77 and that is why this court went ahead to grant a partial certificate of Confirmation of a Grant. The Applicant herein has in his affidavit of protest proposed how the estate should be distributed including the ones that were already agreed upon during mediation. That cannot stand as the mediation agreement is a valid agreement unless it is set aside for the reasons used to vitiate a usual contract. Consequently, the orders of the court dated 23/10/2024 resulting in the Partial Confirmation of Grant shall not be varied, set aside and or interfered with.

15. As regards Muthetheni/ Kionyweni/ 77, the Applicant contends that it his late father that bought the property solely and owing to his absence during the adjudication process, the deceased herein unlawfully caused the same to be registered in their joint names.

16. The 3rd Administrator in his preliminary objection has made reference to Article 162 of the constitution of Kenya provides that;

***“(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
(b) the environment and the use and occupation of, and title to, land.”***

17. **Article 165 (5) (b) of the Constitution** provides;

***“(5) The High Court shall not have jurisdiction in respect of matters—
(b) falling within the jurisdiction of the courts contemplated in Article 162 (2).”***

18. **Article 162 (2) of the Constitution** clothes the Environment and Land Relations Court with the Jurisdiction to hear and determine land disputes while **Article 165 (5) of the Constitution** prohibits that High court from usurping jurisdiction of courts of equal status.

19. **Section 13 of the Environment and Land Relations Act** provides as follows with regards to Jurisdiction of the Court;

***“(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—
(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
(b) relating to compulsory acquisition of land;
(c) relating to land administration and management;***

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.[Empasis mine].

20. From the copy of the green card that has been annexed, Muthetheni/ Kionyweni/77 is registered in the name of the 1st, 2nd and Mwangangi Ndolo. The same is not in the name of the deceased herein, Timothy Mbondo Ndolo. Further, the issue of the title, how it was acquired and the serious issues raised by the Protestor need to be tested in a court through evidence and that cannot be done by the court going by the provisions of the law referred to hereinabove. I therefore find that the Preliminary Objection has merit and that this court has no jurisdiction to determine the question of ownership and interest in Muthetheni/ Kionyweni/77. Consequently, the affidavit of protest is found to be without merit. This being a family matter, each party shall bear its own costs.

Orders accordingly.

Ruling signed, dated and delivered virtually this 18th December, 2025.

**E. N. MAINA
JUDGE**

IN THE PRESENCE OF:

Mr. Githinji for 1st Administrator

Mr. Mwangi for Ms Nyaata for 2nd Administrator

No appearance for Mr. Mukula for Titus Mwangangi

Geoffrey – Court Assistant/Interpreter

ORIGINAL