

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KITALE**  
**SUCCESSION CAUSE NO.E069 OF 2014**

**IN THE MATTER OF THE ESTATE OF DESTERIO MUSINAKA  
KHAOYA (DECEASED)**

**FREDRICK WANYONYI WABWILE (suing as legal  
representative of FRANCIS WABWILE (DECEASED)  
.....OBJECTOR/APPLICANT**

**VERSUS**

**ALFRED OKUMU  
MUSINAKA...ADMINISTRATOR/RESPONDENT**

**RULING**

1. Fredrick Wanyonyi Wabwile, the applicant herein has moved this court vide amended summons for revocation of grant dated 13<sup>th</sup> October 2025 seeking to annul the grant issued on 25/6/2015 in respect to land parcel No.Bungoma/Kabisi/61. He also seeks for a declaration that Salome Naliaka Wabwile was the only beneficiary entitled to the said parcel No.Bungoma/Kabisi/61 (hereinafter to be referred to as disputed parcel for ease of reference).
2. The applicant contends that the grant was obtained fraudulently by making of a false statement and/or concealment from the court of material facts and untrue allegations of fact.
3. In his affidavit sworn on 13/10/25, the applicant avers that he is one of the children of the late Francis Wabwile who

purportedly bought the disputed parcel measuring approximately 15 acres from one Julius Wekesa who had also purportedly bought from one Gabriel Mafunga who had bought it from Desterio Musinaka Khaoya the deceased in this cause.

4. He claims that the deceased herein sold the parcel and relocated to Uganda. He avers that he has been living in the disputed parcel and has never seen any family member of the deceased in the disputed parcel and that his family has been living on the parcel exclusively since 1971.
5. That the late Desterio Musinaka Khaoya died on 4/1/2002 and the respondent granted letters of administration in respect of the estate of the deceased on 12/6/2014 and that the disputed land was listed as part of the estate in the cause herein.
6. He faults the administrator for concealing the fact that the deceased had sold the disputed parcel to one Julius Wekesa who in turn sold to Francis Wabwile.
7. He avers that his father had sold some portions to 3<sup>rd</sup> parties during his life time.
8. He further avers that the respondent instead of transferring the disputed parcel to purchasers he secretly moved the court and allocated the disputed parcel to himself.
9. In his further affidavit sworn on 26/1/25 he concedes the existence of a land matter vide Bungoma ELC No.107 of 2017 involving the disputed parcel.

10. He however alleges that he became aware of this succession cause after filing the Environment and Land Court case which he also concedes was heard and determined.
11. He however insists that this succession cause is what gave the respondent title to the disputed parcel which he claims he has been occupying with his family for 40 years.
12. He avers that even after obtaining title over the disputed parcel the respondent has never settled on the said parcel.
13. That the respondent misled this court into believing that he was the sole beneficiary.
14. That Land Disputes Tribunal gave the parcel to his late mother and the respondent herein never appealed the decision.
15. That the Land Disputes Tribunal's award was adopted and a vesting order issued in favour of his mother. That his mother subsequently fell ill and owing to financial challenges the process was halted.
16. He faults the respondent for using court process to propagate injustice and should not rely on Environment and Land Court case which he claims is distinct from this succession cause.
17. The respondent has opposed this application vide his replying affidavit sworn on 16/10/25.

18. The respondent avers that the applicant concedes that the deceased never sold the disputed land to Francis Wabwile the father to the applicant adding that no evidence has been tabled in court to prove the purported sale of the disputed parcel.
19. The respondent avers that the applicant is trying to undo a judgment in Bungoma ELC No.107 of 2017 which determined fully the rights of the parties with respect to the disputed parcel. He argues that the Environment and Land Court in Bungoma is a court of competent jurisdiction and that once it determined the land dispute the decision is binding and courts are bound by principle of finality because litigation must come to an end.
20. He further contends that the applicant and his family are not related to the deceased in any way and are not creditors. In its view Environment and Land Court was the right forum for the applicant to ventilate his claim.
21. He insists that there is no appeal pending against the judgment in Bungoma ELC No.107 of 2017.
22. This court has laid out both the applicant's case as well as the respondent's case. The applicant is asking for revocation of grant in this cause and has invoked the provisions of section 47 of Law of Succession Act rather than the provisions of section 76 of Law of Succession Act which deals with grounds upon which a grant can be revoked. Section 47 only speaks of jurisdiction of this court to

entertain any application and determine disputes under the Act and to make any such orders as maybe necessary. That provision provides for inherent powers to court even where there is no specific provision to be invoked in a given circumstance but in this instance section 76 of the Act as stated above specifically provides for revocation of grant if an applicant can establish or demonstrate any of the grounds stated there under.

23. The omission by the applicant notwithstanding, this court is inclined to determine this application on its merit courtesy of the provisions of Article 159 (2) (d) of the Constitution.

24. The issues in this application are basically two namely;

- i) Whether this court is seized with the jurisdiction to entertain the dispute.***
- ii) Whether the issues raised in the application are re-judicata.***

25. (i) **Whether this court is seized with the jurisdiction**

This court finds it expedient and just to begin with the question of jurisdiction because jurisdiction is everything. It is now well settled that when a matter is presented to a court without jurisdiction, the only option is for such a court to down tools and do no more.

26. Jurisdiction is donated either by Statute or the Constitution. In this instance the jurisdiction of this court to

deal with succession matters is donated by section 47 of the Law of Succession Act. Section 2(1) specifically provides for the application of the Act. It states;

***“Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after, the commencement of this Act and to the administration of estates of those persons.”***

It is quite apparent from the above therefore that the Law of Succession Act or succession causes only deals with issues of intestacy or testamentary succession of estates of deceased persons. An estate is defined under section 3 of the Act as free property of a deceased person.

27. Flowing from the above it is clear that the applicant’s claim is a bit misconceived in law because for one, the applicant is disputing that the property comprising the estate herein is **“free property”** as defined under section 3 of the Act. That the deceased had sold the disputed property to another person who in turn sold it to his late father. The issue raised by the applicant therefore relates to ownership of the disputed parcel and not succession of the same. This is because his claim is not pegged on

dependency under section 29 of the Law of Succession Act but rather he disputes the fact that the disputed parcel was free property or an estate to the deceased herein.

28. Disputes relating to title, use or occupation of land are outside the sphere or the scope of Law of Succession Act and therefore falls outside the jurisdiction of this court. Article 162 (2) of the Constitution donates jurisdiction of such matters to specialized court under Article 162 (2) and that court is Environment and Land Court. Under Article 165 (5) (b) of the Constitution, this court is estopped from dealing with such matters.

29. The applicant's application and the prayers sought are in effect an invitation for this court to deal with an issue that is beyond its purview. This court declines the invitation for lack of requisite jurisdiction.

**30. ii) Whether the issue(s) raised by the applicant is res-judicata.**

The respondent has raised a pertinent issue with respect to a matter that was filed vide Bungoma ELC No.107 of 2017 by the applicant's mother against the respondent herein. This court has perused the judgment in the Environment and Land Court which has been exhibited as AOM I by the respondent. The issue before court was the ownership of Bungoma/Kabisi/61 which is the subject matter in this cause. The Environment and Land Court heard the matter and determined that Salome Naliaka Wabwile, the mother to the

applicant had failed to establish her claim on the disputed parcel and not only dismissed her case but went ahead to order her eviction. The respondent's ownership of the disputed parcel was therefore not impeached. There is no evidence adduced herein showing that an appeal against the decision of Bungoma Land and Environment court was preferred. The decision in the Environment and Land Court case remains unchallenged.

31. It is instructive to note that in this cause the same Salome Naliaka Wabwile is the same party who moved this court vide summons for revocation of grant dated 10/9/2021 for revocation of grant. The applicant herein moved this court to substitute the late Salome Naliaka Wabwile vide an application dated 16/1/2025. He is therefore standing on the shoes of Salome Naliaka Wabwile and by operation of the provisions of section 7 of Civil Procedure Act, this application is res judicata. Section 7 of Civil Procedure Act provides;

***“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in***

***which such issue has been subsequently raised, and has been heard and finally decided by such court.”***

The suit filed by the applicant’s mother in Bungoma ELC No.107 of 2017 (which court I add was well seized of the requisite jurisdiction to deal with the question of ownership of the disputed parcel) dealt with the claim of the disputed parcel and rendered itself. The decision was made in personam. The rights of the applicant’s mother in other words were determined with finality. That question cannot be re-litigated afresh.

This court has said enough in that regard. The upshot is that the application dated 13/10/2025 is incompetent, misconceived and lacks in merit. The same is dismissed with costs.

**DELIVERED, DATED and SIGNED at KITALE this .....27<sup>TH</sup> ..... day of .....JANUARY....., 2026.**

**HON JUSTICE R.K. LIMO  
KITALE HIGH COURT**

**Ruling delivered in open court**

**In the presence of**

**Samba for petitioner/respondent**

**Fredick Wanyonyi - present**

**Alfred Okumu -present**

**Duke/Chemosop -Court assistants**