



**Njoroge & another v Kinuthia (Environment and Land Case
E126 of 2025) [2026] KEELC 185 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 185 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E126 OF 2025**

**JA MOGENI, J
JANUARY 22, 2026**

BETWEEN

ANNE WAMANI NJOROGE 1ST PLAINTIFF

SARAH MUTHONI NJOROGE 2ND PLAINTIFF

AND

AGNES WAIRIMU KINUTHIA DEFENDANT

RULING

1. This Ruling is in respect of the Notice of Motion dated 12/06/2025 filed by the Plaintiff/Applicant and a Preliminary Objection dated 16/07/2025 filed by the Defendant/Respondent. The Plaintiff/Applicant sought the following prayers in the Notice of Motion Application:
 1. Spent.
 2. That this Honorable Court be pleased to issue orders compelling the Respondent herein to release the title documents listed here-below:-
 - a. L.R No. 139/27 registered in the names of Kinuthia Njoroge (deceased), Paul Gacheru Njoroge (deceased) and Anne Wamani Njoroge as Trustee of Norman Ndugo Njoroge and Shadrack Kuira Njoroge. The trusteeship of Kinuthia Njoroge and Paul Gacheru Njoroge extinguished upon their death, leaving Anne Wamani Njoroge as the sole trustee of Norman Njoroge and Shadrack Kuira Njoroge (deceased).
 - b. L.R No. 4480/201 registered in the name of Peter Njoroge Kinuthia.
 - c. Githunguri/Riuki/65 registered in the name of Peter Njoroge Kinuthia.
 3. That this Honourable Court be pleased to declare the ongoing holding of the above captioned title deeds by the Respondent, as illegal.



4. That in the event of the Defendant/Respondent by herself or her agents or any other parties failing to obey the express orders of this Court in relation to the suit properties the Officer Commanding Station Central Police Station do supervise the enforcement of the same.
5. That this Honorable Court be pleased to issue any other order it deems fit.
6. That cost of the Application be in the cause together with interest accruing therefrom.
2. The Application is based on the grounds on the phase of it and the Supporting Affidavit of Anne Wamani Njoroge sworn on even date.
3. Before the Notice of Motion Application was canvassed and when the parties appeared in Court on 17/07/2025, the Plaintiff/Applicant informed the Court that they had been served with a Preliminary Objection dated 16/07/2025.
4. Counsel for the Plaintiff/Applicant proposed to canvass both the Application and the Preliminary Objection by way of written submissions.
5. The Plaintiff/Applicant filed Grounds of Opposition to the Preliminary Objection and stated that the Preliminary Objection did not raise pure points of law since the main issue in contention revolve around ownership of property of a deceased person after conclusion of Succession proceedings.
6. That the Family Court was functus officio having issued the Grant of Letter of Administration. According to the Applicant, the subject matter is Transmission of a Deceased person's property which is a preserve of the Land Registration Act and so the Environment and Land Court (ELC) and not the Family Court had jurisdiction over the matter. This being the case, the Preliminary Objection the Applicant objected was improperly raised and is unmerited and ought to be dismissed with costs.
7. The Court issued directions on disposal of both the Notice of Motion and the Preliminary Objection by way of written submissions.
8. Both parties have complied with the Court's directions that the Notice of Motion and the Preliminary Objection be canvassed via written submissions. The Submissions of the Applicant to both the Notice of Motion and the Preliminary Objection are dated 12/6/2025 while those of the Respondent to both application is dated 18/12/2025.
9. In their submissions the Applicants state that the Environment and Land Court has mandate to handle the dispute. Further it was submitted that Preliminary Objection is not on a pure point of law and therefore must fail.
10. The Objector framed only one issue for determination-

a. Whether the Court has jurisdiction to determine the issues raised in the application?

11. Whenever an issue of jurisdiction is raised this is considered to be a pure point of law and the Court must of necessity address the issue of jurisdiction immediately it arises.

Analysis and Determination

12. The following are the issues for determination by this Court;
 - a. Whether the Preliminary Objection dated 16/07/2025 is merited?
 - b. Whether the Notice of Motion application dated 12/06/2025 is merited?
 - c. What are the appropriate orders to issue?



13. The Supreme Court of India in *Lafia L.G. V. Exec. Govt. Nasarawa State* [2013] ALL FWLR (pt 668) 956 S.C. @982 para H Rhode- Vivour JSC pointed out that jurisdiction is fundamental in every suit. It is a threshold matter, so once raised, it must be decided quickly before anything else. This is so because if a Court lacks jurisdiction to hear a case, but goes ahead to hear the case, no matter how well the case is decided, the entire proceedings would amount to a nullity. It is the life and soul of a case. It is so important that it can be raised at any time in the Court of first instance, on appeal, and even in the Supreme Court for the first time. It can also be raised suo moto provided Counsels are given the opportunity to address the Court on it before a decision is taken.
14. The case of *Petrojessica Enterprises Ltd v. Leventis Technical Co Ltd* (1992) 5 NWLR (pt.244) 675 at 693 provided that jurisdiction is the very basis on which any Tribunal tries a case. It is the lifeline of all trials. A trial without jurisdiction is a nullity and this importance is the reason why it can be raised at any stage of a case be it at trial.
15. Furthermore, in *Ajayi V. Adebiyi* [2012] ALL FWLR (pt 634) 1 S.C. @30 para C, Adekeye JSC mentioned inter alia that an application or Preliminary Objection seeking for an order to strike out a suit for being incompetent on the ground of absence of jurisdiction is not a demurrer and therefore can be filed and taken even before the Defendant files his Statement of Defence or without the Defendant filing a Statement of Defence. The reason being that the issue of jurisdiction can be raised at any time.
16. Back home, in *Independent Electoral and Boundaries Commission v Jane Cheperenger and Others* (2015) eKLR, the Supreme Court stated;
 - “ 21) ...The true Preliminary Objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection- against the profligate deployment of time and other resources. And secondly, it serves the public cause of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the Preliminary Objection as a sword for winning a case otherwise destined to be resolved judicially and on the merits.”
13. From the foregoing, it is apparent that a Preliminary Objection can only be raised on a pure point of law on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or if the Court is called upon to exercise judicial discretion. Further, a Preliminary Objection if upheld should be capable of disposing off the suit.
14. As a matter of fact, the essence of a Preliminary Objection was succinctly set out by the Court of Appeal in the locus classicus case of *Mukisa Biscuits Manufacturing Co. Ltd. vs. West End Distributors* (1969) EA 696 at 700 where Law, JA stated 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.”
13. At the same time, the Supreme Court in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] eKLR held that the jurisdiction of a Court flows from either *the Constitution* or Statute or both. The Respondent in the Preliminary Objection contend that the matter before the Court constitutes a succession dispute, rather than a land dispute and therefore, falls outside the jurisdiction of this Court.



14. The mandate of this Court is as established under Article 162(2) (b) of *the Constitution* which provides that Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land. To give effect to Article 162 (2) (b) of *the Constitution*, Parliament enacted the Environment & Land Court Act. Section 13(2) of the said Act provides as follows:-

- “2. 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 inland; and
 - e. any other dispute relating to environment and land.”

13. The *Law of Succession Act* in Section 47 provides for the jurisdiction of the High Court in respect of matters falling under the Act as follows:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”

13. In *Mbula Muoki Ndolo & Another vs Kenya Power and Lighting Company Limited* [2017] eKLR Nyamweya J, while making reference to the case of *Salome Wambui Njau (suing as Administratrix of the Estate of Peter Kiguru Njuguna (Deceased) v Caroline Wangui Kiguru, ELC (2013) eKLR* stated as follows:

“I held that in matters of succession disputes touching on land, Environment and Land Court Pursuant to Article 162(2) of *the Constitution* and the High Court as the Succession Court under Section 47 of the *Law of Succession Act* would appear to have a concurrent jurisdiction. It would thus depend on the circumstances of each case which Court is best suited to hear and determine the dispute.”

13. When the Applicant filed their Plaint dated 12/06/2025, they contemporaneously filed a Notice of Motion Application on even date seeking orders compelling the Respondent to release the title documents to the suit properties being LR No. 139/27; LR No. 4480/201 and Githunguri/Riuki/65. The Applicant also sought orders to declare the continued holding of the title deeds by the Defendant as illegal.

14. The Environment and Land Court has the exclusive and original jurisdiction to hear and determine disputes relating to the use, occupation of, and title to land, [Emphasis Added] as per Article 162(2) of *the Constitution* of Kenya and the *Environment and Land Court Act*.



15. Thus, a claim seeking the release of a withheld title deed and challenging the proprietary interest does squarely fall under the Environment and Land Court's mandate because it involves determining rights and claims against the physical parcel of land itself, which is a matter of title and ownership dispute. The Defendant, in this specific action regarding the title, is treated as a third party to the core succession process, even if they were to be involved in the estate's administration.
16. The issues to be addressed as raised in the Preliminary Objection are whether this suit should be struck out because the 1st Applicant is the administrator of the Estate of Peter Njoroge Kinuthia (deceased) vide the Confirmation of Grant issued on 16/07/2021. Further that the 1st and 2nd Applicants are the administrators of the Estate of Shadrack Kuira Njoroge vide the Confirmation of Grant dated 10/05/2017.
17. It is clear that the Applicants' suit contends that the Defendant is holding titles to the estates of the deceased Peter Njoroge Kinuthia and Shadrack Kuira Njoroge being LR 139/27, LR 4480/201 and LR Githunguri/Riuki/65. Making it impossible for the administrators to conclude the transmission of the Estate of Shadrack Kuira Njoroge who is the registered owner of one half (1/2) undivided share of the parcel of land known as LR No. 139/27.
18. As a result, the 1st Plaintiff has not been able to conclude the transmission of the Estate of Peter Njoroge Kinuthia who is the registered owner of the parcels of land known as Githunguri/Riuki/65 and LR No. 4480/201 because the Defendant is unreasonably holding onto the title documents above. This has made the Plaintiffs not to be able to render a true and just account of the Estates of Shadrack Kuira Njoroge and Peter Njoroge Kinuthia as by law required.
19. According to the Applicant, the actions of the Defendant have deprived the Plaintiffs and all other beneficiaries of the Estates of Peter Njoroge Kinuthia, Shadrack Kuira Njoroge, Paul Gacheru Njoroge as well as Norman Ndugo Njoroge, of their rights to enjoy their share of the properties and caused them to suffer irreparable harm that cannot be compensated by way of damages.
20. My reading of the Complaint and the Preliminary Objection is that evidence needs to be tendered which require to be proved through production of evidence. This was enunciated in the case of Mukisa Biscuit Manufacturing Co Ltd –vs- West Ed Distributors (Supra).
21. It is my understanding, that the Succession Court's primary mandate under the *Law of Succession Act* is limited to the administration and distribution of the deceased's property among the rightful beneficiaries and dependants. In other words, it deals with who is entitled to inherit and what assets form part of the estate. It does not have the jurisdiction to determine contested questions of ownership or title where a third party is involved, or to make declarations of trust against a title.
22. Having carefully considered the pleadings, it is abundantly clear to me that the main point of contention is the ownership and title to the suit properties. It is trite that disputes between the estate of a deceased person and third parties are not necessarily adjudicated within the Succession Cause. The law provides that such disputes be resolved in the ordinary Civil Courts vested with jurisdiction and once a determination is rendered by a Civil Court of competent jurisdiction, any resultant decree or order may, where necessary, be presented to the Probate Court for purposes of implementation.
23. That being the case, it is my finding that this Court is vested with jurisdiction to determine this suit and I therefore find that the Preliminary Objection as raised is devoid of merit.
24. On the second issue whether the Notice of Motion Application is merited, I note that the orders sought in the Application are a replica of the orders sought in the Complaint.



25. My reading of the Complaint and Application point to the fact that the Plaintiff/Applicant is seeking the final orders through an interlocutory application and this amounts to circumventing the due process of the trial. The Applicants are attempting to obtain the final outcome of the suit without the necessity of proving the case through evidence despite having filed a Complaint.
26. The orders sought in the application must be anchored in the Notice of Motion Application dated 12/06/2025 flow from the prayers in the main complaint. As already stated, they are identical to the orders sought in the Complaint. These orders sought should of necessity aid in the granting of the final orders and should not be identical to the final orders as is the case. Naturally parties should not be allowed to obtain final remedies through interlocutory shortcuts.
27. For the foregoing reasons, I decline to grant the orders sought in the application dated 12/06/2025.
28. The upshot of my finding is that both the Notice of Preliminary Objection dated 16/07/2025 and the Notice of Motion dated 12/06/2025 are hereby overruled and dismissed accordingly. Costs shall be in the cause.
29. Parties referred to the Deputy Registrar for Pre-trial Conference on 16/03/2026.
Orders Accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 22ND DAY OF JANUARY, 2026 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Ms. Maingi for the 1st and 2nd Plaintiffs

Mr. Isahi for the Defendant

Mr. Melita – Court Assistant

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