

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**

**ELC CASE NO. E030 OF 2025**  
**(Formerly HCCC Misc No. E096 of 2025)**

**MARTIN MITHAMO NDUNYU .....1<sup>ST</sup> RESPONDENT**  
**ANDREW THUKU NDUNYU ..... 2<sup>ND</sup> RESPONDENT**  
**LYDIA KABUCHI NDUNYU ..... 3<sup>RD</sup> DEFENDANT**

**VERSUS**

**RICHARD NGURU NDUNYU ..... 1<sup>ST</sup> APPLICANT**  
**AGNES WANJIRU MWANGI ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. By the Notice of Motion dated 9<sup>th</sup> April 2025, Richard Nguru Ndunyu and Agnes Wanjiru Mwangi (the Applicants) pray for the following:
  1. **Spent;**
  2. **Spent;**
  3. **That the Court be pleased to transfer: Mombasa BPRT E091/2025; Martin Ndunyu, Andrew Thuku & Lydia Kabuchi -vs- Richard Nguru Ndunyu;**

**Mombasa RRT 120/2023 Martin Mithamo, Andrew Thuku & Lydia Kabuchi -vs- Richard Nguru Ndunyu; Nairobi RRT 1900/2023 Martin Mithamo, Andrew Thuku & Lydia Kabuchi -Vs- Agnes Wanjiru Mwangi & 3 Others and consolidate the same for hearing and determination with Nairobi High Court Succ. No. 718/2017; In the matter of the Estate of Gabriel Mithamo Ndunyu between Martin Ndunyu Mithamo, Andrew Thuku Mithamo & Lydiah Kabuchi Mithamo (Petitioners) Versus Richard Nguru Ndunyu & Agnes Wanjiru Mwangi (Objectors);**

**4. Spent; and**

**5. That costs be provided for.**

2. The application is supported by a joint Affidavit sworn by the Applicants on 9<sup>th</sup> April 2025 and is premised on the grounds that:

**i) The Respondents are forum shopping and it is highly prejudicial to the Applicants to defend multiple applications piecemeal;**

- ii) The subject matter in the Tribunals is part of the deceased's Estate which is being handled in the said Nairobi High Court Succession Cause No. 718 of 2017;**
  - iii) The Respondents have moved the two (2) Tribunals to seek rental income from the Estate whereas they have made a similar application in the Succession Cause.**
  - iv) That the filing of similar applications in multiple courts contravenes the Applicants' right to fair administrative action and fair hearing as enshrined in Articles 47 & 51 of the Constitution and amounts to abuse of the court process; and**
  - v) That the High Court has power to transfer suits from one court to another.**
3. Martin Mithamo Ndunyu (the 1<sup>st</sup> Respondent) is opposed to the claim. In a Replying Affidavit sworn on 19<sup>th</sup> August 2025, the 1<sup>st</sup> respondent avers that the application is defective and meant to mislead the court into arriving at an unjust decision. It is the 1<sup>st</sup> Respondent's case that the Applicants have failed to inform the court that all the matters they are

seeking to consolidate herein have been stayed by various courts.

4. The 1<sup>st</sup> Respondent avers that Mombasa BPRT No. E091 of 2025 was dismissed for lack of jurisdiction while in Mombasa RRT No. E120 of 2023, directions were given that rent be deposited in the Tribunal pending the outcome in the ELC Case No. 182 of 2018. He further avers that in Nairobi RRT E1900 of 2023, the Tribunal allowed rent to be paid to the Administrators.
5. The 1<sup>st</sup> Respondent further avers that despite judgment issued in ELC No. 182 of 2018, the Applicants have filed a fresh suit, being ELC E095 of 2024 relating to disputes that have already been determined by the Court. It is further his case that the Applicants have obtained stay orders in Nairobi High Court Succession Cause No. 718 of 2017 in respect of the orders issued in Nairobi RRT No. 1900 of 20203 and Mombasa BPRT No. E091 of 2025.
6. Further and in addition to the foregoing, the 1<sup>st</sup> Respondent avers that the Applicants herein have filed a similar application such as this one in the Nairobi Succession Cause

and that the present application is a waste of the Court's time and amounts to an abuse of the court process.

7. I have carefully perused and considered the application as well as the response thereto. I have similarly considered the submissions placed before me by the Learned Advocates representing the Respondents. The Applicants did not file any submissions.
8. By their application before the Court, the Applicants have sought for orders that Mombasa BPRT Case No. E091 of 2025, Mombasa RRT Case No. 120 of 2023 and Nairobi RRT Case No. 1900 of 2023 be transferred and consolidated for hearing and determination with Nairobi High Court Succession Cause No. 718 of 2017.
9. The basis for those prayers is the Applicants' contention that the Respondents have been forum shopping and that it is highly prejudicial to the Applicants to defend multiple applications when the subject matter being litigated in the Tribunals are part of the estate of Gabriel Mithamo Ndunyu that is being handled in the said Nairobi High Court Succession Cause No. 718 of 2017.

10. It is the Applicants' case that the filing of similar applications in multiple courts contravenes their right to fair administrative action and fair hearing as enshrined in the Constitution and that the same amounts to an abuse of the court process.
11. From a perusal of the Supporting Affidavit sworn by the Applicants, they aver that they are a brother and wife of the late Gabriel Mithamo Ndunyu who passed away sometimes the year 2017. It was further evident from the said Affidavit that the Applicants are embroiled in a succession dispute with the Respondents whom they describe as the children of the deceased from another marriage.
12. The Applicants are aggrieved that even though the Respondents have filed another application in the Nairobi Succession Cause seeking to have all rental income from the estate of the deceased deposited in Court, the Respondents had gone ahead to file the 3 cases which are pending before the Tribunals.
13. The Respondents do not deny that they had filed the 3 matters before the Tribunals. It is however their case that

Mombasa BPRT No. E091 of 2025 had since been dismissed by the Tribunal for lack of jurisdiction while the other two matters pending before the Rent Restriction Tribunal had been stayed.

14. From the material placed before the court, it was apparent that the Respondents are presently the joint Administrators of the Estate of the late Gabriel Mithamo Ndunyu. The Respondents have annexed copies of the decisions made in regard to the matters that they had filed before the Tribunals. From a perusal thereof I was unable to find the basis for the accusation that the matters had been filed for purposes of prejudicing the Applicants' and/or contravening their constitutional rights.
15. As the Administrators of the estate of the deceased, the Respondents were entitled in law to manage and preserve the deceased's estate. While it was indeed true that matters concerning the estate ought to be handled under the said Nairobi High Court Succession Cause No. 718 of 2017, it was clear to me that the matters filed before the Tribunals were meant to enable the preservation of the estate by ensuring

that all rent due were paid to the Administrators and not to anybody else.

16. In my considered view, the Law of Succession Act and the Rules made thereunder confer jurisdiction to the Probate Court with respect to determining the assets of the deceased, his survivors and the persons with beneficial interest, and finally, the distribution of those assets amongst the survivors and the persons beneficially interested. Claims made against third parties, that is, those persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Act and the Rules. Such claims have to be resolved through the structures created under the Civil Procedure Act and Rules.
17. In the matter herein, it was apparent that the Respondents as administrators of the estate were contesting the fact that the 2<sup>nd</sup> Applicant is a wife of the deceased. The 1<sup>st</sup> Applicant as a brother of the deceased was not an automatic or direct beneficiary of the estate. Given those circumstances, it was clear to me that where the Respondents had any claim against the Applicants as was apparent from the matters

filed before the Rent Restriction Tribunal, such a claim could only be resolved outside the framework provided under the Law of Succession Act.

18. In the premises I was not persuaded that the matters before the Tribunals were similar to the succession dispute and/or that they contravened any of the Applicants' rights as alleged, or at all. Unless and until the Applicants could prove that they were survivors of the deceased and/or beneficially interested in the estate, there was no basis upon which this court could make an order for consolidation.

19. It follows that I did not find any merit in the Notice of Motion dated 9<sup>th</sup> April 2025. The same is dismissed with costs to the Respondents.

**Ruling dated, signed and delivered in open court and virtually at Mombasa this 19<sup>th</sup> day of February, 2026**

.....  
**J.O. OLOLA**  
**JUDGE**

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Ms. Wahome Advocate for the Plaintiffs/Applicants
- c) Ms. Kariuki holding brief for Ms. Okech Advocate for the Defendants/Respondents

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