

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ELC CASE NO. E014 OF 2025

CHRISTINE ATIENO ONIMBO (Suing as the legal representative of estate of Camlus Ochomo Ogwel (Deceased)).
.....**PLAINTIFF**

VERSUS

MARGARET ATIENO ONYANGO.....1ST
DEFENDANT

FRANK OMONDI OCHOMO.....2ND
DEFENDANT

KENNETH OCHOMO 3RD
DEFENDANT

LAND REGISTRAR, UGENYA.4TH
DEFENDANT

DISTRICT LAND SURVEYOR, UGENYA.....5TH
DEFENDANT

RULING

BACKGROUND

1. The Plaintiff filed this suit against the 1st 2nd 3rd defendants as the administrator of the late Camlus Ochomo Ogwel by dint of a grant of Letters of Administration intestate dated 11/3/2004 which empowered her to administer and distribute the

deceased's estate to the rightful beneficiaries lawfully and which Land Parcel No. Uholo/Rambula/79 "the suit property".

2. That vide Amended Certificate of Confirmation of grant dated 31st October 2018 she was to distribute the suit property to Michael Onyango (1.00 Ha), Clement Ochomo (1.00 Ha), Pascalia Auma (1.00 Ha) and the Plaintiff (1.00 Ha). That upon approval of the Land Control Board the Plaintiff engaged the office of the 5th Defendant to have the suit property surveyed and subsequently subdivided. However, the efforts by the 5th Defendant to visit the suit property to conduct a survey were frustrated by the 1st 2nd and 3rd Defendant who organised goons to disrupt the process. Further the 1st and 2nd defendants mobilised the registration of an unlawful and fraudulent Restriction on the suit property.
3. The Plaintiff avers that she has made several efforts to have the said Restriction removed, including lodging a formal application with the 4th Defendant on 10th March 2025 who issued the Defendants with a 30-day Notice of intention to remove the Restriction. That the notice lapsed and objections were received to the same. That despite this the Registrar has refused to remove the restriction todate. The Plaintiff claims that the 1st 2nd 3rd Defendants have taken advantage of the restriction and continue constructing and developing on the suit premises in clear

violation of the orders of the succession court and the proprietary interests of the beneficiaries.

4. The Plaintiff seeks interalia the following reliefs;-
 - 1) A permanent injunction to restrain the 1st, 2nd and 3rd Defendants, their servants, workmen, licensees, agents or any other persons acting on their behalf or on behalf of the 1s, 2nd and 3rd Defendants from continuing any further construction and/or developments on Land Title number Uholo/Rambula/79.
 - 2) An order compelling the 4th Defendant to remove any unlawful encumbrances or restrictions wrongfully placed on Land Title number Uholo/Rambula/79.
 - 3) An order of prohibition restraining the 4t Defendant from registering any encumbrance on Land Title number Uholo/Rambula/79.
 - 4) General damages for the unlawful interference with the Deceased's estate, quantified at the Court's discretion.
 - 5) Costs
5. Together with the Plaint, was filed a Notice of Motion application dated 6/5/2025 seeking interalia prayer No. 1 but by way of temporary injunction. Additionally, an order compelling the 4th Defendant to remove the caution.

Preliminary Objection

6. The the 1st,2nd and 3rd Defendants have raised a Notice of Preliminary Objection dated 1st October 2025 by on the following verbatim grounds;

- 1) THAT under the provisions of Article 162 of the Constitution of Kenya 2010, the Environment and Land Court is vested with exclusive jurisdiction to hear and determine matters related to ownership and use of land.
- 2) THAT this Honorable Court is lacking in jurisdiction to entertain this suit.
- 3) The application and suit be struck out for having been filed in a court without the requisite jurisdiction.

Submissions

7. The subject of this ruling is the above preliminary objection. The same was canvassed by way of written submissions. The Defendants submissions are dated 6/10/2025 and the Plaintiffs 19/10/2025.

Defendants Submissions

8. It is submitted that the Letters of Administration Intestate were issued to the Plaintiff to administer and ensure that all the beneficiaries get their share as ordered in the KISUMU HCC SUCC CAUSE NO. 167 OF 2003 and which has never been vacated. Instead, the plaintiff has proceeded to apply to the land board to have the same subdivided into two contrary to the Rectified certificate of grant issued by the

learned Judge Justice F. Ochieng while seating in Kisumu, thus necessitating the lodging of the caution on the suit parcel by the 1-3rd defendants.

9. It is submitted that what stands out in this case is that the Estate of the Late Camlus Ochomo Ogwel yet to be administered and settled fully after the grant had been confirmed and Rectified Certificate of Grant issued on 31/10/2018 in **KISUMU HCC SUCC CAUSE 167 OF 2003..**
10. That it is a requirement in law that upon confirmation and receipt of the rectified certificate of grant, the administrator is expected to move and ensure distribution is done as per the mode of distribution set out by court. Soon there after administrator is to report back to the Probate and Administration court of conclusion of the process.
11. That from the facts as pleaded and the operation of the law what comes clear is that the plaintiff herein being the administrator has not done so, instead she has come to the Environment and Land Court stating that she is unable to settle the estate of the deceased which court lacks jurisdiction as far as administration of the estate of the deceased is concerned.
- 12 It is contended that probate is regulated by the Law of Succession Act and the Probate and Administration Rules. That probate process is a special jurisdiction with its own processes and procedures. Succession causes are designed for the sole purpose of facilitating succession to the estate of

a dead person. The ultimate goal being distribution of the estate amongst the persons, if they are more than one.

13. That the Environment and Land Court under the provisions of Article 162 of the Constitution of Kenya 2010, is vested with exclusive jurisdiction to hear and determine matters related to ownership and use of land.

14. That if in any event that the plaintiff is unable to administer the estate as she alleged she is supposed to make the necessary application to the court that dealt with the succession cause. She therefore ought to have made an application before the Learned Judge in KISUMU HCC SUCC CAUSE 167 OF 2003 now that this file exists before the court clothed with proper jurisdiction so as to avoid usurping of powers.

Plaintiffs Submissions

15. The Plaintiffs submission is that the court is seized of jurisdiction pursuant to the provisions of Sections 13 (1) and (2) of the Environment and Land Court Act read together with section 78(2) of the Land Registration Act which gives power to the court to order removal of the restriction. It also urged that section 101 of the Land Registration Act gives the ELC power to hear and determine disputes emanating from the said Act.

16. The application and suit herein are termed to be a nullity having been filed in a court without jurisdiction and the court is invited to strike out the same. Reliance is placed on the

case of **Joseph Muthee Kamau & Another Vs. David Mwangi Githure & Another (2013) eKLR.**

ANALYSIS AND DETERMINATION

17. The main issue for determination is whether the preliminary objection is merited.

18. The nature of a preliminary objection was explained in **the case of Mukisa Biscuits Manufacturing Co. Ltd -vs- West End Distributors [1969] E.A. 696** where Law JA at page 700 stated;

“... 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 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.”

19. Justice Newbold in the said case argues that; -

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 had to be ascertained or if what is sought is the exercise of judicial discretion”

20. In the case of **Oraro Vs. Mbaja (2005) eKLR**. J.B.Ojwang remarked, that anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.
21. Further Black's law Dictionary 11th Edition defines a preliminary objection as
- '..as an objection that, if upheld would render further proceedings before the tribunal impossible or unnecessary. An objection to the court's jurisdiction is an example of a preliminary objection'.**
22. None of the parties has questioned whether the PO has been properly raised. I have looked at the same. It challenges the jurisdiction of the court to determine matters arising from probate which fall under the jurisdiction of the High Court sitting pursuant to its jurisdiction as the court that handles succession and probate issues. The preliminary objection is therefore properly raised on a pure point of law.
23. As noted in the case law cited herein. The pleadings are the first port of call. This is where the claim and the facts upon which it arises from are outlined. From the plaint the substratum of the suit is clearly the distribution of the estate of the deceased and specifically the suit property herein. There is no contestation about the ownership of

the suit property herein to warrant the intervention of this court. The Plaintiff has approached the court as the administrator of the estate of the deceased. Her case is that she is not able to execute the grant by distributing the estate because survey could not be undertaken due to interference by the defendants who also placed a restriction against the title.

24. The above is equal to execution of a decree of the court and it is trite that anything arising out of the execution of the decree must be resolved before the court that issued the decree. Infact the plaintiff calls the 1-3 defendants intermeddlers.
25. There is no need to belabour the point. The substratum of this suit clearly is the distribution of the estate of the deceased and the correct forum is the court that issued the confirmed grant of letters of administration namely **KISUMU HCC SUCC CAUSE 167 OF 2003.**
26. My hands are tied. This court is divested of jurisdiction and must down its tools. In **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd. [1989] KLR 1**, Nyarangi, Masime and Kwach, JJ.A had this to say of jurisdiction:-

"... Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down

tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'

27. What then is the fate of the present suit? Nothing comes out of a nullity. I'm guided by the Court of appeal decision in **Joseph Muthee Kamau & Another v. David Mwangi Gichure & Another (supra)** where the court restated thus;-

25.'When a suit has been filed in a court without jurisdiction, it is a nullity. Many cases have established that; the most famous being the case of Kagenyi v Musirambo [1968] EA 43.'

28. For the foregoing reasons the suit is struck out for being filed in a court lacking jurisdiction.
29. As to costs noting that the parties seem to be beneficiaries and to encourage harmonious relations moving forward, I will order that each party should bears its own costs of the suit.

Orders accordingly

It is so ordered.

Dated, signed and delivered at Siaya this 12th day of February 2026.

HON. JUSTICE A. E. DENA

JUDGE

12/02/2026

**Ruling delivered virtually through Microsoft Teams
Video Conferencing Platform in the Presence of:**

Ms. Odhong for the 1st and 2nd Defendant

Mr. Magesa for the Plaintiff

Court assistant: Elisha Mboya

ORIGINAL