

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC ORIGINATING SUMMONS NO. E21 OF 2025

Under Sections 1A, 1B & 51 of the Civil Procedure Act and Order 37 Rule 1
of the Civil Procedure Rules)

ANTHONY MBURU WANYOIKE,

PETER WANYOIKE MBURU
APPLICANTS

VERSUS

JOHN BROWN NDUNGU IKENYE RESPONDENT

RULING

1. This ruling is in respect of a Notice of a Preliminary Objection by the Respondent dated 2nd December 2025, on the following grounds:

a) THAT this Honourable Court lacks jurisdiction to entertain and determine the origination Summons as framed, the same being an application whose substance and effect is to secure, preserve, and aid execution of a decree issued in MILIMANI HIGH COURT FAMILY & PROBATE CAUSE NO. 64 OF 2010 – IN THE ESTATE OF WANYOIKE JOSEPHAT MBURU, contrary to Article 162(2) (b) of the Constitution and Section 13 of the Environment and Land Court Act.

- b) The questions raised in the Originating Summons relate solely to the execution, and enforcement of a decree issued in the above probate Cause, and pursuant to Section 34 of the Civil Procedure Act, all such questions must be heard and determined only by the court that issued the decree, namely the High Court (Probate & Administration Division) and not the Environment and land Court.*
- c) THAT under Section 47 of the Law Of Succession Act and Rule 73 of the Probate & Administration Rules, all issues concerning enforcement of decrees, preservation orders , of protection of property arising from a Succession Cause must be addressed within the same Succession Cause and before the probate Court seized of the matter.*
- d) THAT the Originating Summons is fatally defective, incompetent, misconceived and amounts to a collateral attack on the authority and processes of the Probate Court, and therefore constitutes an abuse of the court process.*
- e) THAT this Honourable Court is divested of jurisdiction, and the matter ought to be struck out with costs.*

2. The Applicant filed a Notice of Motion dated 23rd October 2025, seeking the following orders:

- a) Spent*
- b) That this Honourable court do issue a Prohibitory Order prohibiting the Respondent from transferring, charging or in any other manner from dealing with the following properties:*

- i) *Langalanga/Block 1/209*
- ii) *Kabatini/Block 1/1140*
- iii) *Nakuru Municipality/Block17/23.*

3. Upon service of the Application, the Respondent filed the above Notice of Preliminary Objection, whereby counsel agreed to canvass the PO vide written submissions which were duly filed. Counsel agreed that the PO should be disposed of first.

RESPONDENT’S SUBMISSIONS

4. Counsel for the Respondent filed submissions dated 2nd December 2025, and relied on the provisions of Section 13 of the Environment and Land Court Act, on the jurisdiction of the court. Counsel submitted that the prayers sought in the Originating Summons are solely meant to assist in the execution of a decree from the Succession Court, as the Applicants are not claiming ownership, title, occupation, use, boundary, trespass or adverse possession.
5. Counsel relied on the case of MACHARIA & ANOTHER VERSUS KENYA COMMERCIAL BANK LIMITED (APPLICATION 2 OF 20211) [2-12] KESC 8 (KLR) (23 OCTOBER 20120 (RULING) where the Supreme Court held that jurisdiction is donated by the Constitution or statute and parties cannot confer jurisdiction by artful pleadings or consent.
6. Counsel further relied on Section 34(1) of the Civil Procedure Act, which provides that “all questions arising between parties to the suit relating to

the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate court,” and submitted that the court that should execute this decree is the **Probate & Administration Court in Milimani HCF P& A NO. 64 OF 2010.**

7. Ms. Wamae submitted that the prohibitory orders, sought by the applicant are orders of attachment before sale, which are expressly provided for under Order 22 Rule 48 – 55 of the Civil Procedure Rules, which are not available as standalone reliefs in the ELC unless the court is the executing court.
8. Counsel also relied on Section 47 of the Law of Succession Act, and Rule 73 of the P&A Rules, which gives the court powers to entertain any application and determine any dispute under the Act. The Succession Court has powers to issue preservation orders, injunctions, restrict the disposal of assets, supervise execution of its own decree, determine whether a property is free and authorize the sale of land for satisfaction of a decree.
9. According to counsel, the issue whether or not the property forms part of the estate is irrelevant, as what matters is that the decree was issued by the Probate Court. That the decree has not yet been satisfied, therefore the properties in question are still under the supervisory jurisdiction of the Succession Court. Counsel urged the court to uphold the preliminary objection and strike out the Originating Summons with costs to the Respondent.

APPLICANTS’ SUBMISSIONS

10. Counsel for the Applicant filed submissions dated 7th January 2026 and submitted that the ELC Court has jurisdiction to hear and determine the

Originating Summons as all the properties are situated within Nakuru County and therefore within the local jurisdiction of this court.

11. Counsel further relied on Article 159 of the Constitution, the overriding objective and the Environment and Land Court Act and urged the court to dismiss the preliminary objection with costs.

ANALYSIS AND DETERMINATION

12. The issue for determination is whether the Preliminary objection on the jurisdiction of this court to hear and determine the Originating Summons filed by the Applicants has merit.

13. In the Supreme Court case of **Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR** the court held as follows:

“If a court finds that it lacks jurisdiction to hear and determine a matter, it is obligated to halt the proceedings. It cannot expand or arrogate to itself jurisdiction which is not conferred upon it by the law.”

14. The jurisdiction of this court is set out in Article 162(2)(b) of the Constitution as follows:

“(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to:

(a) employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land.”

15. Parliament enacted the Environment and Land Court Act 2011, pursuant to the said Article 162(2)(b) of the Constitution. Section 13 of the Act sets out in detail, the extent of the jurisdiction of the court in the following terms:

“(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(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.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

(5) Deleted by Act No. 12 of 2012, Sch.

(6) Deleted by Act No. 12 of 2012, Sch.

(7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including;

(a) interim or permanent preservation orders including injunctions;

(b) prerogative orders;

(c) award of damages;

(d) compensation;

(e) specific performance;

(g) restitution;

(h) declaration; or

(i) costs”

16. The Supreme Court in the case of **Hassan Ali Joho & another -Vs- Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 [2014] eKLR** held:

“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”

17. The Respondent has submitted that the decree meant to be satisfied emanated from the Probate and Administration Court and hence the execution proceedings should be filed there.

18. Section 34 of the Civil Procedure Act provides as follows:

“34.(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge of satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

(2) The court may, subject to any objection as to limitation or jurisdiction, treat the proceeding, and may, if necessary, order payment of any additional court fees.

(3).....

19. It is trite that a court that issued a decree must handle questions about to execution unless the court that issued the decree sends it for execution to another court of competent jurisdiction as provided for under Section 31 of the Civil Procedure Act. There is no evidence that there was an order either transferring or sending the decree to this court for execution.
20. Counsel for the Applicants did not answer the question on why they filed an Originating Summons seeking prohibitory Orders against the respondent from selling, transferring or dealing with the named properties as the Applicants have obtained a monetary decree in High Court Succession Cause No. 64 of 2010. Counsel only stated that since the properties are within Nakuru County, therefore the Court has Jurisdiction to hear and determine the matter.
21. I find that the Preliminary objection has merit as there is an existing suit in the Probate & Administration Court which can issue the orders that the Applicants are seeking in this matter. The upshot is that the originating Summons is struck out with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH DAY OF FEBRUARY 2026.

M. A. ODENY

JUDGE