

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MACHAKOS  
SUCCESSION CAUSE NO. 121 OF 2010

IN THE MATTER OF THE ESTATE OF REBECCA NDUKU MANTHI

AARON MUTHIANI NZYUKO .....APPLICANT/  
ADMINISTRATOR

VERSUS

HENRY MULI NZYUKO .....1<sup>ST</sup>  
RESPONDENT

MARY MAINA NANDEKA.....2<sup>ND</sup>  
RESPONDENT

**RULING**

1. **Aaron Mithiani Nzyuko**, the Administrator/Applicant's filed an application dated 10/4/2025 under the provisions of **Section 80 (1) of Land Registration Act, Section 3A of the Civil Procedure Act and all enabling provisions of the law** seeking for orders that:
  - a) Spent
  - b) THAT a declaration that the resultant subdivisions of Land Parcel No. Matungulu/Kawethei/430 and Land Parcel No. Matungulu/Kawethei/517 is null and void.
  - c) THAT the honourable court be pleased to issue an order compelling the Land Registrar, Machakos County to cancel the land title deeds Matungulu/Kawethei/5061, 5062, 5063 & 5064 emanating from the subdivision of the Land title No. Matungulu/Kawethei/430.
  - d) THAT the honourable court be pleased to issue an order compelling the Land Registrar, Machakos County to cancel the land title deeds Matungulu/Kawethei/5065, 5066, 5067 & 5068 emanating from the subdivision of the Land/Title No. Matungulu/Kawethei/517.
  - e) THAT upon cancellation of the resultant title deeds, the land does revert back to Land Parcel No. Matungulu/Kawethei/430 and Land Parcel No. Matungulu/Kawethei/517 registered in the name of Rebecca Nduku Manthi (deceased).
  - f) THAT the costs of this application be provided for.

2. The application is supported by the Supporting Affidavit of even date and a Further Affidavit dated 04/07/2025 sworn by the Applicant on his own behalf and on behalf of **John Mukulya Manthi**.
3. The application is opposed through Replying Affidavit by **Mary Nandeka**, 2<sup>nd</sup> Respondent sworn on 10/6/2025 as well as the Relying Affidavit by **Henry Muli Nzyuko**, 1<sup>st</sup> Respondent sworn on 11/6/2025
4. The application was canvassed through written submissions. The Applicant's submissions are dated 04/07/2025 while the 2<sup>nd</sup> Respondents' submissions are dated 29/07 2025. There are no submissions filed by the 1<sup>st</sup> Respondent.

#### **Applicant's Submissions**

5. The Applicant submitted on the issue as to whether this court has jurisdiction to grant the orders sought and stated that the application is brought under **Section 47** of the Law of Succession Act and **Rule 73** of the Probate and Administration Rules which provides that;

"Section 47-Jurisdiction of High Court

**"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."**

"73. Saving of inherent powers of court

**"Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."**

6. That these provisions of the law were buttressed in the case of **In re Estate of the Late Dedan Kariuki (Deceased) (Succession Cause 145 of 1999) [20241 KEHC 10490 (KLR) (15 August 2024) (Ruling)** where Justice Mohochi stated thus;

**"That, Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules grant a succession court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. Such powers include cancellation of title deeds obtained through fraud or where there has been an abuse of the process of the court."**

7. It was further submitted that Section 3A of the Civil Procedure Act Cap 21 preserves the inherent powers of the court. It states thus;

3A. Saving of inherent powers of court.

"Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

8. The Applicant argued that the above provision was essentially made to allow courts to address situations that are not specifically covered in the Act or its rules for sole purpose of the administration of justice.
9. That in this application, the Applicant/Administrator is praying for cancellation of titles that had emanated from a confirmed grant and which were erroneously processed in the wrong names. In essence the resultant titles issued has names interchanged with regard to what each beneficiary owned on the ground and the Administrator is only seeking to cure this anomaly.
10. That to further put the above into perspective, the resultant titles captures, for instance, the portion currently owned and developed by 'beneficiary A' on the ground as registered in the name of 'beneficiary B' and visa versa. That this application seeks to correct that mistake and it is the Applicant's submissions that this court in the interest of justice has the jurisdiction to grant the orders sought.
11. The Applicant avers that the beneficiaries of the deceased estate have all agreed to have the resultant titles cancelled and for the land to revert back to the name of the deceased, REBECCA NDUKU MANTHI. This is made in the spirit of ensuring the proper administration of the deceased estate so that each beneficiary get titles that reflect the portions of land they occupy on the ground after subdivision. Moreover, there will be no prejudice to be suffered by any of the beneficiaries of the deceased estate as this application if allowed will be in their interests of fast tracking the completion of the administration of the deceased estate.
12. The Applicant submitted that the power of a Succession Court to order for cancellation of titles was again enunciated in the case of **Santuzza Bilioti allas Mel Santuzza (Deceased) vs Giancarlo Falasconi (2014) eKLR** where the court held that;

"...the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to

cancellation of the title deed. Further, a succession court can order a cancellation of a title deed if a deceased's property is being fraudulently taken away by non-beneficiaries' such as where the property is being sold before a grant is confirmed."

13. Reference was made to the decision of Justice Njuguna in the case of **In re Estate of Adriano Nthiga Thangari (Deceased) (Succession Cause 175 of 2015) [2024] KEHC 8913 (KLR) (24 July 2024)** (Ruling) found in favour of Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules and ordered the Land Registrar Embu County to cancel and/ or void any subdivisions, transfers and/or sale of parcels of land in question.
14. That the Learned Judge while emphasizing that the High Court under the strength of the foregoing provisions of the law had the discretionary powers to determine any issue in the interest of justice including cancellation of titles quoted the cases of **In re Estate of Simon Kiprop Cheruiyot (Deceased) [2021] eKLR and the Late Kubuta Kamara Nguuro Alias Pharis Njegegu (Deceased) [2021] eKLR.**
15. The Administrator/Applicant concluded that he had submitted in depth on the question of the jurisdiction of this court and has provided compelling and reliable case laws that this honourable court is clothed with inherent jurisdiction to hear and determine the instant application as well as granting the orders sought therein. Therefore, having established jurisdiction, the Applicant beseeched this court to issue the orders sought in the application for the ends of justice to be met; and in this case, for the proper administration of the deceased estate.

### **2<sup>nd</sup> Respondent's Submissions**

16. The 2<sup>nd</sup> Respondent submitted that the Applicant, Aaron Muthiani Nzyuko, is seeking a declaratory order in respect of Title Nos. Matungulu/Kawethei/430 & 517 and three (3) other orders directed against the Land Registrar, Machakos, for the cancellation of Title Nos. Matungulu/Kawethei/5061 - 5064; 5065 - 5068; 430 and 517.
17. That the Land Registrar, Machakos is not a party to the application yet the application seeks orders against the Land Registrar.
18. The 2<sup>nd</sup> Respondent submitted that his concerns which are raised in her Replying Affidavit are as follows:-
  - a) The nature of the application and the orders sought by the Applicant are such that it is doubtful if this court, a Family Court,

has jurisdiction to grant the declaratory order and the orders cancelling the title deeds in question.

- b) The Applicant is not candid with the court. Contrary to the submission by the Applicant's Advocates that the application is brought under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, the Summons dated 10<sup>th</sup> April, 2025 has actually been brought under Section 80 (1) of the Land Registration Act. This means that even the Applicant himself appreciates that the application falls within the jurisdiction of the Environment and Land Court.
  - c) The Applicant is also not candid with the court on the question as to how he, as one of Administrators, was able to do subdivision of Title Nos. Matungulu/Kawethei/430 & 517 and how he obtained the resultant titles which he now seeks orders to cancel. The subdivisions were done after the death of the 3<sup>rd</sup> Administrator, Monicah Mwenga, and also after the death of George Nzyuko, yet new titles were issued in the name of George Nzyuko without the knowledge or participation of the 2<sup>nd</sup> Respondent who is the widow and legal representative of the estate of George Nzyuko.
19. The 2nd Respondent submitted that in view of the above, the Applicant's averment or submission that the titles he intends to cancel were as a result of genuine mistake is not true. The subdivisions and the resultant titles were procured through fraud and the Applicant was directly involved or was a party to the fraud.
20. The 2nd Respondent prays that the application be dismissed with costs.

### **Determination**

21. I have carefully considered the summons dated 10/04/2025, the rival affidavits and the parties' Counsel submissions. The pertinent single issue I consider for determination is whether the Summons application should be allowed.
22. First and foremost, and as submitted by the 2nd Respondent, contrary to the submissions by the Applicant's Advocates that the application is brought under **Section 47** of the Law of Succession Act and **Rule 73** of the Probate and Administration Rules, the Summons dated 10<sup>th</sup> April, 2025 has actually been brought under **Section 80 (1)** of the Land Registration Act and **Section 3A** of the Civil Act Cap 21 of the laws of Kenya. The Applicant's Counsel cannot therefore purport to have brought his application on provisions of the law cited in his submissions.

23. It also to be noted that the application is supported by the Supporting Affidavit of even date and a Further Affidavit dated 04/07/2025 sworn by the Applicant on his own behalf and on behalf of one **John Mukulya Manthi**. The said **John Mukulya Manthi** is not a party to the instant application and the Applicant has not attempted to explain how he is connected to the application,
24. It is further to be noted that the Applicant submitted that in this application, he is praying for cancellation of titles that had emanated from a confirmed grant and which were **erroneously processed in the wrong names**. In essence the **resultant titles issued has names interchanged with regard to what each beneficiary owned on the ground and the Administrator is only seeking to cure this anomaly**.
25. On this, it is this court's considered view that the Applicant ought to have instituted Summons for rectification of the grant to reflect the correct names and have them corrected on the titles instead of applying for revocation of the grant and cancellation of the titles.
26. In addition, the Applicant submitted that the resultant titles captures, for instance, the portion currently owned and developed by 'beneficiary A' on the ground as registered in the name of 'beneficiary B' and visa versa. That this application seeks to correct that mistake and it is the Applicant's submissions that this court in the interest of justice has the jurisdiction to grant the orders sought. This court notes that no such prayer is sought in the instant application.
27. The Applicant has also averred that the beneficiaries of the deceased estate have **all agreed** to have the resultant titles cancelled and for the land to revert back to the name of the deceased, REBECCA NDUKU MANTHI. However, it is again to be noted that **no agreement or consent** of the beneficiaries to that effect is attached to the application.
28. With the above observations by this court, it appears the Applicant has raised weighty and new matters through his submissions that are not captured in his application under determination. In **Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another [2014] eKLR:**

***“Submissions cannot take the place of evidence. The 1<sup>st</sup> respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties’ “marketing language”, each side endeavouring to***

***convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.***

29. Accordingly, this court finds that the Applicant by bringing the instant application under the provisions of Section **80 (1) of Land Registration Act** has failed to invoke or cite the applicable law which governs applications for revocation of Grants and or cancellation of Title Deeds in Succession matter.
30. This Court cannot therefore invoke rules on its own or rely of Provisions introduced through submissions and continue to make a finding without its jurisdiction being properly invoked by a party who seeks the court's intervention.
31. The Court of Appeal when faced with an instance where the Applicant filed an application under the wrong provisions of the law in the case of **Ann Wangeci Mariga & 2 Others v Margaret Waniiru Mariga & Another [2024] eKLR**, cited with approval the Supreme Court case of **Daniel Kimani Njihia v Francis Mwangi Kimani & Another [2015] eKLR**, which stated:

*"In the Hermanus case, this Court had indicated how it should be moved, thus [paragraph 23]: "...It is trite law that a Court of law has to be moved under the correct provisions of the law." Hence, without thus identifying the proper legal framework for the motion, an application is liable to be struck out. "*

32. Similarly, in the case of **Michael Munqai v Housing Finance Co. (K) Ltd & 5 other [2017] eKLR** the court held thus:

*"In the case of **Hermanus Phillipus Stevn v. Giovanni Gnechi-Ruscione, Supreme Court, Application No. 4 of 2012**, this Court was categorical that a Court has to be moved under a specific provision of the law. The Court stated that: it is trite law that a Court of law has to be moved under the correct provisions of the law. We reiterate that the only legal regime for the Supreme Court is the Constitution, the Supreme Court Act and the Supreme Court Rules, 2012 (as amended). Hence it is preposterous for the applicant to purport to bring his application under other statutory provisions that are not the Supreme Court Act. It is sadder that he has the audacity to even invoke provisions of repealed pieces of legislations. No court can be*

*moved on the basis of a repealed law. What right if at all does a repealed law give? The answer is clear: none".*

33. The Court of Appeal therefore found that the Application was fatally defective and incompetent and proceeded to strike it out.
34. Similarly, this Court finds the Applicant's Summons application dated 10<sup>th</sup> April 2025 to be incompetent and the same is dismissed.
35. Each party to bear own costs.

It is hereby so ordered.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 5TH MARCH 2026

**NOEL I. ADAGI  
JUDGE**

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 5TH MARCH 2026