

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT CHUKA**  
**CIVIL APPEAL NO. E003 OF 2025**

ALEX MUGAMBI M'NAIROBI.....1<sup>ST</sup> APPELLANT  
MARANGU M'NAIROBI.....2<sup>ND</sup> APPELLANT  
KITHINJI M'NAIROBI.....3<sup>RD</sup> APPELLANT  
MWITI M'NAIROBI.....4<sup>TH</sup> APPELLANT  
KARIMI M'NAIROBI.....5<sup>TH</sup> APPELLANT  
KAARI M'NAIROBI.....6<sup>TH</sup> APPELLANT

VERSUS

WILFRED KATHENDU.....1<sup>ST</sup> RESPONDENT  
GIBSON KABII JADIEL.....2<sup>ND</sup> RESPONDENT

*(Being and Appeal and decree from the ruling of Hon. Oscar Wakina (RM) delivered on 16<sup>th</sup> December 2024 in the Chuka Chief Magistrate's Court Succession Cause No. 137 of 2013.)*

**JUDGEMENT**

1. This Appeal arises from the ruling of Hon. Oscar Wakina (RM) delivered on 16<sup>th</sup> December 2024 in Chuka Chief Magistrate's Succession Cause No. 137 of 2013.

## **Brief background**

2. The 2<sup>nd</sup> Respondent (Gibson Kabii Jediel) petitioned for letters of administration intestate for the estate of Jediel Marangu M’Nkunene (deceased) in his capacity as a son. He was issued with grant of letters of administration intestate on 3<sup>rd</sup> December 2013. The grant was confirmed on 28<sup>th</sup> May 2014 with distribution as follows: -

- i. Washington Mwenda Marangu/Mwimbi/C. Magutuni/111 measuring 0.32 acres.
- ii. Gibson Kabii Jediel Mwimbi/C. Magutuni/111 measuring 0.32 acres.
- iii. Peterson Njeru Jediel Mwimbi/C. Magutuni/111 measuring 2 acres.
- iv. Washington Mwenda Marangu- Kiera/E. Magutuni/1088 measuring 1 acre.

- v. Gibson Kabii Jediel-Kiera/E. Magutuni/1088 measuring 1 acre.
- vi. Peterson Njeru Jediel- Kiera/E. Magutuni/1088 measuring 0.35 acres.
- vii. Geoffrey Mugambi Jediel- Kiera/E. Magutuni measuring 0.35 acres.
- viii. Michael Mutwiri Marangu- Kiera/E. Magutuni/2547 whole.
- ix. Josephine Mukwanyaga Marangu- Mwimbi/Kiraro/1700 whole.
- x. Gibson Kabii Jediel- Mwimbi/Kiraro/799 whole.
- xi. Michael Mutwiri Marangu- Plot No. 18B Nguruki whole.
- xii. Washington Mwenda Marangu- Plot No. 11A Kimache/E. Magutuni whole.
- xiii. Josephine Mukwanyaga Marangu-Plot No. 4B Pole Pole Market whole.

3. The Appellants (then Applicants) filed Summons for Revocation or Annulment of grant dated 20<sup>th</sup> July 2023 on grounds set out on the face of the Summons and the Supporting Affidavit of Alex M’Nairobi the 1<sup>st</sup> Applicant.
4. He stated that the land parcel number Mwimbi/Kiraro 799 which had been placed for distribution has been in their family line for several decades and they have resided on the said portion of land without any interruption.
5. He deponed that the Petitioner (Gibson Kabii) was aware that the said portion of land was subject to litigation and the most recent judgment in Chuka Civil Case No. 65 dated November 2001 held that the same belonged to M’Nairobi their late father. That their late father’s mistake was that he never got the register updated for which reason the Respondents used an order that was later

changed. That the mistake was not intentional or reckless since they were young by then and the fact that they were residing on the said land.

6. It was also deponed that they became aware that a lot had taken place when they were served with court papers in Chuka Misc Application No. E096 of 2022 which sought to hinder their late mother's burial but the court allowed them to bury their mother. That before then, they had not had any issues pertaining the land that they had been in actual occupation and use.

7. It was stated that unbeknown to them, the Respondents' family registered the land in their name by virtue of the decision in Meru Principal Magistrate's Court and in Civil Suit No. 371 which decision the Respondents were aware had been appealed and won and the decision adopted in

**Chuka Land Civil Case No. 65 of 2001** which decision was neither appealed or reviewed.

8. He stated that the Respondents with the knowledge and information above went ahead and listed the suit land in the Succession proceedings which mess ought to be rectified by revoking the grant.

9. The Respondent's filed a replying affidavit dated 13<sup>th</sup> October 2023 sworn by Gibson Kabii Jediel the 2<sup>nd</sup> Respondent. He deponed that the land parcel number Mwimbi/Kiraro/799 was prima facie the registered property of his late father Jediel Marangu M'Nkunene and never at all material times did the suit land belong to the Applicants, their late father or any other member of their family.

10. He also stated that the Applicants were fully aware that together with their late father tried all

means to fraudulently take possession of his family's property which issue was addressed in various cases namely: -

- i. Chuka Criminal Case No. 1403 of 1995 where the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants together with their father M'Nairobi Kanampiu were charged and found guilty of trespass and malicious damage to the suit land.
- ii. Meru Civil Suit No. 371 of 1983 where both an arbitral award and subsequent appeal determined that the suit land belonged to Jediel Marangu M'Nkunene.

11. That following the above determinations, the suit land was registered in his late father's name and remained so, undisturbed until the year 2013 when the same was subdivided into Mwimbi/Kiraro 2173 and Mwimbi/Kiraro 2174 through the

succession process. Subsequently, land parcel number Mwimbi/Kiraro/2174 was lawfully sold to Wilfred Kiruja Kithendu the 1<sup>st</sup> Respondent.

12. He stated that he was not aware of any judgment or court order that at any time purportedly declared the suit land the property of M’Nairobi and such judgment has not been annexed by the Applicants.

13. It was also stated that on or about April 2022, the Applicants sneaked into the suit land and constructed structures to create a claim of ownership to the suit land. Further, in the same April, the Applicants’ mother the late Jane Ruguru M’Nairobi died and they buried her on the suit land as they had buried their father. That they demanded a revocation of the grant on the basis that they buried their kin on the suit land.

14. The application proceeded for hearing viva voce with the Applicants calling three witnesses to testify on their behalf and one witness testified on behalf of the Respondents.

15. Upon hearing the parties and considering the submissions by the parties, the trial court delivered its ruling on 1th December 2024 dismissing the application on the following grounds: -

- i. That the determination of the Application was dependent on determination of who the owner of the suit land was which does not fall under the jurisdiction of the probate court. That despite the court having indicated to the advocates to consider the issue of jurisdiction, none of the parties did. Thus the trial court did not have the jurisdiction to determine the question of ownership of the suit property.

- ii. That the Applicants lacked locus standi on account that there were no letters of administration either full or ad litem to sue on behalf of their late father.

16. Aggrieved with the decision of the trial court, the Appellants lodged this appeal on the following grounds as per the Memorandum of Appeal dated 15<sup>th</sup> January 2025.

- i. That the learned trial magistrate erred in law and fact by misunderstanding and misapprehending the Appellant's case and in so doing arrived at an erroneous decision.
- ii. That the learned trial magistrate erred in law and in fact in failing to adequately consider the Appellants' oral and written submissions and in so doing arrived at an erroneous decision.

- iii. That the learned trial magistrate erred in law and in fact in failing to adequately consider or at all the Appellants' documents and in so doing arrived at an erroneous decision.
- iv. That the learned trial magistrate misdirected himself by completely disregarding the Appellants' oral and documentary evidence proving that the proceedings to obtain the grant dated 25<sup>th</sup> May 2014 was defective in substance as the Respondents omitted some substantial information about the estate of the deceased and that the grant was obtained by untrue allegations of a fact essential in point of law to justify the grant.

v. That the learned trial magistrate misdirected himself by completely disregarding the Appellants' oral testimony and documentary evidence proving that the proceedings to obtain the grant dated 25<sup>th</sup> May 2014 was marred by fraud and misrepresentation or concealment of the fact that LR. No. Mwimbi/Kiraro/799 belonged to the Appellants' father and therefore did not form part of the Respondent's father's land.

vi. That the learned trial magistrate misdirected himself by finding and holding that obtaining letters of administration ad litem was a prerequisite for filing summons for revocation of grant.

- vii. That the learned trial magistrate misdirected himself by finding and holding that the proceedings before the trial court were meant to establish the ownership of the estate property whereas the proceedings sought to revoke and/or annul grant.
- viii. That the learned trial magistrate misdirected himself by finding and holding that the trial court lacked the requisite jurisdiction to hear and determine the Appellants' Application dated 20<sup>th</sup> July 2023.
- ix. That the learned trial magistrate failed to apply the correct and/or appreciate the law/principles governing the Law of Succession in particular Revocation and/or Annulment of grants.

17. The Appellants prayed that the appeal be allowed with costs in the favour of the Appellants and the ruling of the trial court delivered on 16<sup>th</sup> December 2024 be set aside and Appellants' Application be allowed with costs.

### **Analysis and determination**

18. This being a first appeal, the Court is under duty to re-evaluate, re-analyse and reconsider the evidence on record and draw its own independent conclusions and findings. This duty was restated by the Court of Appeal in the case of **Imanyara & 2 others v Attorney General [2016] KECA 557 (KLR)** as thus:- -

**“This being a first appeal, it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court**

**below and that an appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.”**

19. The Appeal was disposed of by way of written submissions. The Appellants filed their written submissions dated 11<sup>th</sup> June 2025. They combined grounds 1,7, and 8 which touch on jurisdiction, grounds 2,3,4 and 5 that touch on the trial court disregarding the Appellants’ oral and documentary evidence and grounds 6 and 9 which faulted the

trial court for finding and holding letters of administration ad litem were a prerequisite for filing summons for revocation of grant.

20. The Respondents filed written submissions dated 11<sup>th</sup> July 2025 raising the following issues for determination: -

- i. Whether the trial court erred in declining jurisdiction over land ownership.
- ii. Whether the Appellants had *locus standi* to seek revocation of grant.
- iii. Whether the Appeal discloses any meritorious grounds.
- iv. Who should bear the costs of the appeal.

21. Upon consideration of the Memorandum of Appeal, the record, and the parties' written submissions, I find that the appeal turns on the following three core issues:

- i. Whether the trial court erred in law in declining jurisdiction, particularly in relation to issues touching on land ownership arising within a succession cause.
- ii. Whether the trial court erred in holding that the Appellants lacked locus standi to institute summons for revocation of grant on account of absence of letters of administration *ad litem*.
- iii. Costs

### **(i) Jurisdiction**

22. The Appellants submitted that the trial court was sitting as a succession court thus clothed with the requisite and mandatory jurisdiction as provided for under Section 76 of the Law of Succession Act but simply misconstrued the same as a claim for ownership.

23. The Respondents submitted Article 162 of the Constitution of Kenya 2010 and Section 13 (2) of the Environment and Land Court Act, 2011 vest exclusive jurisdiction in the Environment and Land Court to handle disputes. They relied on the case of **Phoenix of E. A Assurance Company Limited v M. Thiga t/a Newspaper Service [2019] eKLR** where the court held that a suit filed devoid of jurisdiction is dead on arrival and cannot be remedied.

24. They submitted that the Appellants were challenging the title of Jediel Marangu M'nkunene (deceased) in succession proceedings yet a probate court lacks jurisdiction to hear and determine land ownership disputes. To buttress their point, they relied on the following authorities:

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(i) **In Re Estate of Kiraithe Mucheke (deceased) [2024] KEHC 3411 (KLR)**

where the court held that succession proceedings are not the appropriate way to challenge the title of the deceased's properties.

(ii) **In re Estate of Atibu Oronje Asioma (deceased) [2022] KEHC (KLR)**

where the court held that the probate court only distributes assets that are undisputedly owned by the deceased.

(iii) **In Re Estate of Okisai Kiroge (deceased) [2024] (KLR)**

where the court held that the Petitioner had already confirmed the grant and should proceed to distribute the estate of the deceased and if there are any challenges relating to ownership he

could move to the relevant court for redress.

(iv) **Monica Wangari Njiiri & 4 Others V Eunice Wanjiru Igamba & Another [2016] eKLR** where the court stated that the mandate of the probate court under the Law of Succession is limited and does not extend to determining issues of ownership of property.

(v) **In Re Estate of Stone Kathuli Muinde (deceased) [2016] eKLR** where the court held that claims to ownership of alleged estate property between the state and a third party should be resolved through the civil process in a civil suit.

25. Jurisdiction is the foundation upon which judicial authority rests. A court can only exercise

powers expressly conferred upon it by the Constitution or statute. Where a court acts outside those limits, its decision is a nullity, regardless of the merits of the dispute. This principle was authoritatively stated in **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1**, where the Court of Appeal held that once a court determines it lacks jurisdiction, it must down its tools.

26. The Appellants contend that the trial court misdirected itself by declining jurisdiction, arguing that it was merely invited to exercise its mandate under section 76 of the Law of Succession Act. The Respondents, on the other hand, maintain that the application before the trial court was, in substance, a land ownership dispute disguised as a summons for revocation of grant.

27. I have carefully examined the pleadings, affidavits, and the viva voce evidence presented before the trial court. It is evident that the gravamen of the Appellants' case was that land parcel Mwimbi/Kiraro/799 did not belong to the deceased, Jediel Marangu M'Nkunene, but rather to their own late father, M'Nairobi. The Appellants invited the trial court to interrogate historical litigation, criminal proceedings, alleged judgments, occupation, burial on the land, and registration of title, all with a view to establishing proprietary rights.

28. Section 76 of the Law of Succession Act empowers a probate court to revoke a grant obtained through fraud, misrepresentation, or concealment of material facts. However, the Probate court's mandate is confined to identifying beneficiaries and distributing the free estate of a

deceased person. It does not extend to resolving complex and contested claims of ownership between the estate and third parties.

29. The Court of Appeal in **Trouistik Union International & another v Jane Mbeyu & another [1993] KLR 230** made it clear that the free estate of a deceased person comprises only property which the deceased was legally competent to freely dispose of during his lifetime. Where ownership of property is disputed, the probate court must first be satisfied that such property forms part of the estate. The Probate Court's inquiry however must not mutate into a full adjudication over title or ownership.

30. In **re Estate of Alice Mumbua Mutua (Deceased) 2017 eKLR** Musyoka J. held that: -

**“It may be argued that the subject land is estate property and by dint of that fact**

**the probate court would have jurisdiction thereon. The position is not as simple. The Law of succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.**

**Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules.**

**Such have to be resolved through the structures created by the Civil Procedure Act and Rules, which have elaborate rules on suits by and against executors**

**and administrators. The Probate and Administration Rules recognize that, and that should explain the provision in Rule 41 (3), which provides as follows -**

**‘where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or property comprising it to abide the determination of the question in proceedings under ... the Civil Procedure Rules ....’**

Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the meantime, the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be *functus officio so far as*

**the property in question is concerned.**

***The primary mandate of the probate court is distribution of the estate and once an order is made distribution the estate, the court's work would be complete. The proposition therefore is that not every dispute over property of a dead person ought to be pushed to the probate court. The interventions by the court are limited to what I have stated above."***

31. The above persuasive authority aptly gives the correct exposition of the law. In the present case, the Appellants were not beneficiaries of the estate of Jediel Marangu M'Nkune. They were third parties asserting an adverse proprietary claim against the estate of the deceased. Their claim was not incidental or peripheral; it went to the very root of

ownership of Mwimbi/Kiraro/799 one of the properties listed for distribution. Determining whether the land belonged to the deceased or to the Appellants' late father would necessarily require the court to evaluate past judgments, criminal convictions for trespass, registration of title, and alleged appeals; matters that fall squarely within the jurisdiction of the Environment and Land Court under Article 162(2)(b) of the Constitution.

32. It is also significant that the Appellants sought to impeach a confirmed grant issued over a decade earlier, on the basis of alleged ownership disputes that had allegedly been litigated in other forums. Such claims, if entertained within succession proceedings, would undermine the principle of finality and open probate courts to protracted land

litigation, contrary to the orderly administration of estates.

33. The Appellants submitted that the evidence they adduced before the trial court proved that the suit land belonged to one M’Nairobi Kanampiu prior to the filing of Chuka CMSUCC Cause No. 137 of 2013 by the Respondents herein and that the Respondents are not the beneficiaries of the deceased’s estate. That the Respondents who are strangers of the deceased’s estate had no business filing a succession cause in respect of the deceased’s estate. They submitted that the trial court’s judgment dated 16<sup>th</sup> December 2024 establishes that the learned magistrate totally ignored the Appellant’s evidence, oral and written submissions and in so doing arrived at an erroneous decision.

34. In my view, the trial court correctly appreciated that the determination of the summons for revocation was wholly dependent on resolving the question of ownership of the suit land. However, the trial court in hearing evidence on ownership of the suit property fell in error as it was clear that it did not have jurisdiction on the issue. Thus, the proceedings by the trial court to establish ownership were of no legal consequence. Without first establishing, in the proper forum, that Mwimbi/Kiraro/799 did not belong to the deceased, the Probate court could not purport to exclude it from the estate. The title exhibited prima facie was in the name of the deceased before subdivision. I have no reason to fault the finding of the trial court.

35. On jurisdiction therefore, the trial court was right in arriving at the finding that it had no

jurisdiction to determine the ownership of the disputed land parcel.

## **Locus standi**

36. The Appellants further submitted that the trial court misdirected itself by finding and holding that obtaining letters of administration ad litem was a prerequisite for filing an application for revocation of grant and thus failed to apply the correct and/or appreciate the law/principles governing the Law of Succession in revocation and/or annulment of grants. They relied on **In Re Estate of Helena Wangechi Njoroge (Deceased) [2015] eKLR** where the court held: -

**“Section 79 vests the property of the deceased in the personal representative, so that the latter can then exercise the**

**powers set out in Section 82 and discharge the duties set out in Section 83 of the Act. It should be pointed out that the provisions in Section 82 can only be fully exercised by a substantive administrator, that is the person holding, not a limited grant, but a full grant. Likewise, the duties imposed by Section 83 are to be discharged to their fullest by the holder of a substantive grant of representation...”**

**It was limited to the purpose of filing suit to preserve the three assets of the estate. It is what is called a grant of letters of administration *ad litem*. The suit envisaged to be filed on the strength of a grant *ad litem* is not a probate or**

**succession case, or an interlocutory application within a probate or succession cause, but rather a civil suit. Indeed, one need not obtain a grant of any sort to enable him file a succession cause. A grant of representation is only necessary where one intends to file a civil suit to protect or defence the estate against third parties.”**

37. The Respondents on their part submitted that locus standi is the key to the court house. They relied on the case of **Ibrahim v Hassan & Charles Kimenyi Macharia [2019] eKLR** where the court held that locus standi is basically the right to appear or be heard in court or other parties and without it a party cannot be heard.

38. They submitted that the Appellants have no locus as they are not beneficiaries, dependants or administrators of the Jediel Marangu's estate and the Appellant's late father, M'Nairobi Kanampiu was never declared a beneficiary or rightful claimant. Further, that the Appellants did not obtain grant ad litem or demonstrate any legal entitlement to file for the revocation. They relied on the following authorities: -

a. **Rajish Pranjavin Chudasama v Sailesh Pranjivan Chudasama [2014] eKLR** where the Court of Appeal held that a litigant is clothed with locus standi upon obtaining letters of administration in cases of intestate succession.

b. **Wekesa & Another v Mwangi & Another (Suing as the administrators of the Estate of James Kanene Mwangi-**

**Deceased) [2023] KECA 1150 KLR** where the Court of Appeal held that a person without grant of representation has no locus standi to file a suit and an action brought by such a person is incompetent and null and void in limine.

39. At the outset, it is important to define locus standi. The term refers to the legal right or capacity of a person to bring an action before a court. It embodies the principle that courts should only adjudicate matters brought by parties with a direct and substantial interest in the outcome. Locus standi serves the dual purpose of protecting the rights of parties with legitimate claims and ensuring that the courts are not burdened with vexatious or speculative litigation.

40. In the case of **Alfred Njau -Vs- City Council of Nairobi [1983] KLR 625** the Court of Appeal, held inter alia that: -

**“...Locus standi” literally means a place of standing and refers to the right to appear or be heard in Court or other proceedings and to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding”.**

41. It is trite that a party must either be a recognized beneficiary under the estate or hold a substantive grant of representation to acquire locus standi in succession matters. In the case of **Isaya Masira Momanyi -vs- Daniel Omwoyo & Another [2017] eKLR** Kariuki J held that: -

**“It is trite law that the estate of a deceased person can only be represented in any legal proceedings by a person who is duly authorized to do so on behalf of the estate. Only a person who has been issued a grant of letters of Administration has capacity to represent the estate of a deceased person”.**

42. The Appellants assert that their father, M’Nairobi Kanampiu, had possession of Mwimbi/Kiraro/799 prior to the filing of the succession proceedings by the Respondents. They state that the court had awarded their late father the land but that he died before he acquired title and that they were still too young to take up the case. That therefore they were entitled as his children to step into his shoes. They relied on principles of equity, such as past performance and

equitable interest and argued that their father's occupation and improvements on the land created a recognized interest.

43. I have painstakingly perused the record. It is clear to me that there has been a decades old legal battle between the family of the Appellants and the family of the 2<sup>nd</sup> Respondent over ownership of Mwimbi/Kiraro/799. The battle it seems, dates back to the eighties and has traversed the land Dispute Tribunal, Civil and Criminal Magistrate's Courts both in Meru and Chuka, and now the high court in its appellate jurisdiction in Succession matters.

44. To the mind of this court, there must be a hidden truth somewhere that has been clouded by the multiple and complex legal processes. The dispute over ownership of the land parcel refuses to go away despite and in spite of the many court

judgements and rulings. Perhaps the parties (to the extent that they were members of the same community) should consider deferring to their traditional dispute resolution mechanisms in the Njuri ncheke for permanent closure.

45. In this appeal, it is clear that the Appellants were not part of the beneficiaries of the estate of the deceased. To that extent therefore, they needed letters of administration in respect of their own deceased father's estate in order to step into the present succession proceedings to claim the parcel. Even then, all that the succession court would do or would have done was to remove the claimed parcel from the known assets of the deceased, pending a determination by the Environment and Land Court of who the real owner was.

46. The Appellants have failed to provide evidence that their father was formally recognized as a beneficiary, nor have they obtained any letters of administration ad litem, which would have conferred locus standi to pursue revocation of the grant or otherwise challenge the succession process in a succession cause in which they were not beneficiaries.

47. The Respondent on the other hand exhibited title to the contested parcel which initially was in the name of their deceased father. A title is *Prima facie* evidence of ownership. Upon contest however, a Succession Court must down its tools as the contest ought to proceed before a civil court under Order 37 of the Civil Procedure Act or the Environment and Land Court. That being the case, and subject to any time limitation, the parties

ought to pursue their ownership claim in those fora.

48. Flowing from the foregoing, I find that the appeal lacks in merit and the same is hereby dismissed.

49. On costs, and noting the history of this litigation, I order each party to bear their costs in this appeal. Costs in the suit remain as awarded by the trial court.

Orders accordingly.

**Judgement delivered, dated and signed at Chuka this 12<sup>th</sup> day of March, 2026.**

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**R. LAGAT-KORIR**

**JUDGE**

**Judgment delivered in the presence of Ms David for the Appellants and N/A for the Respondents. Muriuki (Court Assistant.)**

ORIGINAL