



**Chebii & 2 others v Chebii & another (Family Appeal E001 of 2024)
[2026] KEHC 2629 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2629 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
FAMILY APPEAL E001 OF 2024
JRA WANANDA, J
FEBRUARY 27, 2026**

BETWEEN

PHILIP CHEBII 1ST APPELLANT

JOSHUA KIMUTAI CHEBII 2ND APPELLANT

JAMES KIPCHUMBA CHEBII 3RD APPELLANT

AND

JOHANA KIPNGENY CHEBII 1ST RESPONDENT

PAUL KWAMBAI CHEBII 2ND RESPONDENT

*(Appeal from the Ruling dated 8/11/2023 delivered in Iten Senior Principal
Magistrate's Court Succession Cause No. E037 of 2021 by Hon. C. Kutwa-SPM)*

JUDGMENT

1. The background of the Magistrate's Court proceedings the subject of this Appeal is that the deceased, Chebii Chepkurui Kiprop, died on 20/01/2004 at the age of 83 years. By the Petition filed more than 7 years later on 22/06/2021, his sons, Johana Kipngeny Chebii (1st Respondent) and Paul Kwambai Chebii (2nd Respondent), through Messrs Ledishah J.K Kittony & Co. Advocates, applied to be issued with a Grant of Letters of Administration Intestate in respect to the estate of the deceased. In the Petition, a total of 17 persons, including all the parties herein, were listed as survivors of the deceased. 6 parcels of land were also listed as comprising the estate.
2. The Court then granted the Letters of Administration to the Respondents on 28/23/2022 as prayed, who then, by the Summons dated 9/03/2023, sought for Confirmation thereof. However, before the Summons could be heard, the Appellants, together with one Zakayo Kiprono Chebii, (as Objectors) through the Messrs Bundotich Korir & Co. Advocates, filed their own Summons dated 24/05/2023 seeking revocation of the Grant obtained by the Respondents, and appointment of new



Administrators. The ground alleged was that despite they also being sons of the deceased, they had not been consulted about the commencement of this Cause. The Appellants also subsequently filed the Notice of Preliminary Objection dated 11/09/2023 in which they contended that the value of the estate was approximately Kshs 264,000,000/-, thus way above the pecuniary jurisdiction of the Magistrate's Court.

3. The Preliminary Objection was then canvassed by way of written Submissions and the Court delivered its Ruling thereon on 8/11/2023. The Court dismissed the same on the basis of the finding that "a Preliminary Objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts leads to but one conclusion", and that the Objectors' contention that the estate is valued at Kshs 264,000,000/- was not evidenced by supporting documents, since the attachment of documents to written submissions is "unconventional and alien", as evidence can only be produced through a witness. It is this Ruling that elicited this Appeal.
4. In their Memorandum of Appeal dated 14/11/2023, the Appellants listed 3 grounds as follows:
 - i. That the learned trial Magistrate erred in law and in fact in his findings over by dismissing the Preliminary Objection.
 - ii. The learned trial Magistrate erred in law equity and that in finding that the Appellants had not proved to Court that the Court lacked jurisdiction to preside over the proceedings over the estate whose value exceeds 100 million.
 - iii. The learned trial Magistrate erred in law, fact and equity in considering matters that he ought not to have considered as a result arrived at an erroneous.
5. In canvassing this Appeal, the parties filed written Submissions. The Appellant's Submissions is dated 15/09/2025, while the Respondents' is dated 18/09/2025. The Respondents, with, leave of the Court, also filed the Supplementary Submissions dated 31/10/2025.

Appellants' Submissions

6. Counsel for the Appellants, Mr. Bundotich, cited Section 23 of the Magistrate's Court Act governing the jurisdiction of the Magistrate's Court in Succession matters, and urged that it is not in dispute that the assets listed in the Preliminary Objection had also been listed by the Respondents in the Petition, and also in the Summons for Confirmation of Grant. He cited the case of Motor Vessel Lilian 'S' Vs Caltex Oil Kenya Ltd and faulted the trial Magistrate for failing to take into account the fact that once an issue of jurisdiction is raised other than the evidence adduced, the Court should, and/or, ought to interrogate the issue even on its own motion to ensure that it possesses jurisdiction before proceeding any further with the matter, and he thus faulted the trial Magistrate for insisting that the Appellants ought to have called a witness to adduce the Valuation Report. He urged that it is a fact that the net intestate estate herein consisted of 4 properties all measuring over 55 acres, including a town plot in Iten Town, and there is no way the estate could be worth less than Kshs 15,000,000/- presided over by a Senior Principal Magistrate. He further faulted the trial Magistrate for failing to take into account the principle that once the issue of jurisdiction is raised, it is immaterial how scanty or limited the evidence is and the Court is bound to consider the evidence tendered. He thus urged this Court to set aside the decision of the trial Court and, substitute it with one striking out the Succession Cause with costs.

Respondents' Submissions

7. Counsel for the Respondents, Ms. Kipseii, on her part, restated the principle that an appellate Court ought not to interfere with the decision of the trial Court unless there was a significant error in law,



the trial Court discretion was exercised arbitrarily or perversely, or there was failure to consider crucial evidence or legal principle. She cited the case of *Mkube v. Nyamuro* [1983] LLR. She then defended the trial Court's said Ruling and described it as founded on the right principles since the Appellants did not adduce any evidence, and urged that the evidence purported to be introduced was brought in by way of written submissions, and that it is a settled principle of the law that when a Preliminary Objection is raised challenging the Court's pecuniary jurisdiction, the party raising it generally bears the burden of proving the facts that establish such alleged lack of jurisdiction. She submitted that this is because, while a Preliminary Objection raises a pure question of law, an objection to pecuniary jurisdiction requires an assessment of monetary value of the claim, which is a factual matter, and as such, the party raising the Objection must present evidence or arguments to demonstrate such lack of pecuniary jurisdiction.

8. In the Supplementary Submissions, Counsel basically restated matters already captured in the her main Submissions, which I will not therefore recount. She then contended that the Respondents have never been given an opportunity to assess the veracity of the Valuation Report alleged by the Appellants, contrary to the provisions of Article 50(2)(c) of *the Constitution*, which enshrines the right of every accused person to be given adequate time and facilities to prepare his defence. Counsel submitted that the Appellants were under the duty of disclosure, to reveal any documents that were relevant to the case during the filing of the Preliminary Objection. She cited the Court of Appeal case, NBI CA 150/1997, *Japhet Nkubitu County Council of Meru vs Regina Thuindi*.

Determination

9. The issue for determination before this Court is clearly “whether the decision of the trial Court dismissing the Appellants’ Preliminary Objection challenging that Court’s pecuniary jurisdiction to entertain the Succession Cause before it was properly reached”
10. This being a first Appeal, this Court has the duty to analyze and re-examine the arguments and submissions made before the lower Court and reach its own conclusions. This has been restated by the Court of Appeal in many cases, including for instance, the case *Abok James Odera t/a A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, in which the following was stated:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”
11. It is also trite law that an appellate Court will only interfere with the decision of the lower Court, if the decision is founded on wrong legal principles. That was the holding of the Court of Appeal in the case of *Mkube v Nyamuro* [1983] LLR (supra) at 403, in which *Kneller JA & Hancox Ag JJA* held that:

“A Court on appeal will not normally interfere with the finding of fact by a trial Court unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion.”
12. The subject of this Appeal is the issue of jurisdiction as raised by the Appellants before the trial Court by way of a Preliminary Objection. Indeed, jurisdiction is crucial in all cases, and it must be present at the time that the suit is initially filed. If a suit is filed without jurisdiction, the only option is to withdraw it and re-file it in the proper Court. As has been oft stated, a suit filed without jurisdiction is dead on arrival and cannot be revived (see *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd.* (1989)).



13. On the issue of the jurisdiction of Magistrates' Courts in Succession matters, the same is governed by Section 48(1) of the [Law of Succession Act](#), as amended by Section 23 of the Magistrates Courts Act, 2015, which provides that:

“Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7(1) of the Magistrates Courts Act, 2015.”

14. The plain reading of the above amendment is that Magistrate's Courts have jurisdiction to deal with Succession matters as long as the value of the estate is within their pecuniary jurisdiction. In this instance, it is not in dispute that the case was before a Senior Principal Magistrate whose jurisdiction in Succession matters is limited to Kshs 15,000,000/-.
15. Regarding Preliminary Objection, the Supreme Court, in the case of Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others cited the statement made in the case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696, that:

“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 a 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 ... 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 has to be ascertained or if what is sought is the exercise of judicial discretion”.

16. Similar principles were echoed in the Supreme Court case of Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] eKLR and also by Ojwang J (as he then was) in the earlier case of Oraro vs. Mbaja [2005] 1 KLR 141, and in many other cases.
17. There is therefore no doubt that for a Preliminary Objection to be entertained, the Court must be satisfied that it raises a pure point of law, not blurred with factual contentions requiring further interrogation to verify.
18. In this case, it was pleaded in the Petition filed by the Respondents that the estate comprised of 5 parcels of land whose value they estimated at about Kshs 5,000,000/-. The Appellants, on the other hand, in their Preliminary Objection contended that the value of the 5 parcels of land amounted to an approximate aggregate of Kshs 294,000,000/-. No Valuation Report was however presented by either party at that point by way of an Affidavit as would be the appropriate procedure. The value of the 5 parcels of land therefore remained a contested fact as the parties were not in unison. To this extent therefore, the issue of the value of the parcels of land, clearly, could not be entertained as a Preliminary Objection as it would not, under these circumstances, amount to a pure point of law within the meaning contemplated in the case of Mukisa Biscuits (supra). It was not until the point of filing written Submissions that the Appellants attached a copy of their Valuation Report to their written Submissions. Needless to state, this was irregular since evidence such as the Valuation Report could not, procedurally, be introduced in that manner. The Appellants should have considered filing a formal Application, supported by an Affidavit to which they would have then attached a copy of their Valuation Report, not introducing evidence by way of written Submissions.



19. Counsel for the Appellants has urged that once an issue of jurisdiction is raised, the Court should, and ought to interrogate the same even on its own motion to ensure that it has jurisdiction before proceeding further with the matter. While acknowledging that a Court might on its own motion find that it has no jurisdiction, in the instance case, the trial Court could not go on a fishing expedition to ascertain whether the value of the estate exceeded its pecuniary jurisdiction without any proof to that effect. It is trite law that he who alleges must prove. To that extent, the Appellant's act of seeking to introduce the Valuation Report by way of attaching it to their written Submissions could not suffice.
20. As aforesaid, an appellate Court can only interfere with the decision of the trial Court if it finds the decision to be based on no evidence, or on a misapprehension of the evidence, or the trial Court is shown to have acted on wrong principles in reaching its conclusion. In this case, the trial Court having found that the challenge to the Court's pecuniary jurisdiction was not a pure point of law, and thus could not amount to a Preliminary Objection, and also that the Valuation Report could not be introduced by way of written Submissions, I find no ground upon which I can, under the law, fault the trial Magistrate.

Final Orders

21. For the above reasons, this Appeal fails, and it is accordingly dismissed. However, this, being a dispute between siblings, to cultivate an environment of reconciliation, I direct that each party bears his own costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 27TH DAY OF FEBRUARY 2026

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WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

N/A for the Appellant

Mr. Kibichi h/b for Ms. Kipseii for the Respondent

Court Assistant: Brian Kimathi

