

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**FAMILY DIVISION**  
**PROBATE & ADMINISTRATION CAUSE NO. 2991 OF 2007**

***IN THE MATTER OF THE ESTATE OF CHARLES THEURI ALIAS***  
***CHARLES THEURI MUTHURI (DECEASED)***

<b>CAROLINE MIGARE</b>	.....	<b>1<sup>ST</sup> APPLICANT</b>
<b>MILLY WANJIKU</b>	.....	<b>2<sup>ND</sup> APPLICANT</b>
	<b>VERSUS</b>	
<b>NESTER WANJA THEURI</b>	.....	<b>RESPONDENT</b>

**RULING**

1. Before the Court is Summons for Revocation of Grant dated 9 December 2024, brought under Section 76 of the Law of Succession Act, Rule 44 of the Probate and Administration Rules, alongside Articles 40 and 159 of The Constitution.
2. The Applicants seek the following substantive and ancillary orders from this Court:
  - (i) That pending the hearing and determination of this Cause, the Respondent by herself, her servants, agents, or otherwise be restrained from interfering, selling, alienating, and carrying out any further constructions on the parcel of land legally described as SHAWA/GICHEHA BLOCK 12/18 (KAMWAGO FARM).

- (ii) That the Grant of Letters of Administration Intestate issued to the Respondent in 2009 in respect of the Estate of the Late Charles Theuri be wholly revoked or annulled.
  - (iii) That the costs of the Application be provided for.
3. The architectural premise of the application is built upon three primary statutory grounds as set out in section 76. Firstly, the Applicants allege that the proceedings to obtain the Grant were defective in substance. Secondly, it is averred that the Grant was obtained fraudulently by the making of a false statement or by the deliberate concealment from the Court of something material to the case—specifically, the existence of the Applicants as creditors of the estate. Thirdly, the Applicants contend that the Grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the Grant, notwithstanding that the allegation may have been made in ignorance or inadvertently.
4. The dispute revolves around the Estate of the Late Charles Theuri, who passed away intestate on 25 May 2007. At the time of his demise, the Deceased was the registered proprietor of a prime parcel of land known as SHAWA/GICHEHA BLOCK 12/18 (KAMWAGO FARM) (hereinafter "the suit property").
5. Following the demise of the Deceased, his widow, the Respondent herein, petitioned the Court for a Grant of Letters of Administration Intestate. A Grant of Letters of Administration was issued to the Respondent on 6 March 2008 and was subsequently confirmed by the Court in 2009. The Grant underwent a rectification process on 7 January 2021 to accurately reflect the assets of the estate. All assets forming part of the Deceased's Estate, most notably the suit property, were devolved to the Respondent as the rightful beneficiary and administrator, and she subsequently transferred the title into her own name.

6. The genesis of the present conflict predates the death of the Deceased. During his lifetime, the Deceased had initiated a process to subdivide the suit property into twenty (20) distinct sub-plots. To facilitate the marketing and sale of some of these sub-plots, an individual named Anthony Wachira Karimi, trading under the business name Rukenya Commercial Agencies, became involved. It is a matter of common ground between the parties that the sales of plot numbers 2, 3, and 20 were lawfully completed prior to the Deceased's demise, with the Deceased's full authorization and knowledge.
7. However, a fierce dispute arose regarding the remaining seventeen plots (plot numbers 1, and 4 through 19). The Applicants allege that they entered into a valid Land Sale Agreement with Anthony Karimi (acting on behalf of Rukenya Commercial Agencies) for the purchase of Plot 12. The Applicants aver that they paid the requisite consideration to Rukenya Commercial Agencies, were issued with receipts, and subsequently took possession of the plot on 5 January 2007, a few months prior to the Deceased's death. The Applicants operate on the fundamental assumption that Anthony Karimi acted as the duly authorized and legally recognized agent of the Deceased for the entirety of the subdivided parcel. Consequently, they posit that by virtue of being purchasers for value, they automatically became creditors of the Estate and ought to have been listed, acknowledged, and provided for during the succession proceedings initiated by the Respondent.
8. The Respondent paints a starkly different picture of the events. Upon taking charge of the estate and visiting the suit property, she discovered various individuals, including the Applicants, in what she termed as unlawful occupation of the sub-plots. The Respondent categorically denied that Anthony Karimi had any legal authority, power of attorney, or agency to sell the remaining plots (including Plot 12) on behalf of the Deceased or herself. After attempts to resolve the matter amicably through the local provincial

administration (including meetings convened by the local Chief) failed to yield a settlement, the occupants of the disputed plots instituted a civil suit.

9. The resulting litigation was filed before the Environment and Land Court (ELC) at Nakuru, ELC Case No. E046 of 2022 (*George Theuri & 18 Others vs. Nester Wanja Theuri & Rukenya Commercial Agencies*). In that suit, the plaintiffs sought declaratory orders affirming their ownership of the respective plots and, in the alternative, entitlement by way of adverse possession. They also sought orders compelling the Respondent to execute transfer forms. The Respondent filed a defence and a counterclaim seeking eviction orders against the occupants.
10. In a comprehensive judgment delivered on 23 May 2024, the ELC dismissed the plaintiffs' suit in its entirety. The ELC scrutinized the alleged agency relationship and held that the plaintiffs had failed to discharge the burden of proving that Anthony Karimi possessed the requisite legal capacity or authorized agency to contract on behalf of the Deceased. The ELC held that the lack of a duly authorized agent for the vendor fundamentally vitiated the contracts, rendering the sale agreements null and void. Consequently, the ELC granted the eviction orders prayed for in the Respondent's counterclaim against all occupants of the disputed plots, explicitly exempting only plot numbers 2, 3, and 20, whose sales the Respondent had conceded were lawful.
11. Following the delivery of the ELC judgment, the Respondent proceeded to enforce the eviction orders. Notices to vacate were duly issued, and the eviction process was executed on 7 March 2025, resulting in the Applicants' removal from Plot 12.
12. This eviction catalysed the filing of the present Summons for Revocation. The Applicants contend that they were not explicitly named as plaintiffs in

ELC Case No. E046 of 2022, that their constitutional right to be heard has been flagrantly violated, and that the Respondent's failure to disclose them as creditors of the Estate to the Probate Court constitutes material concealment amounting to fraud, thus justifying the immediate revocation of the 2009 Grant.

### **The Applicants' Case**

13. The Applicants' case is primarily set out in the Supporting Affidavit of Caroline Magare sworn on 9 December 2024, a Further Affidavit sworn on 16 July 2025, and detailed written submissions.
14. The Applicants submit that this Court possesses the requisite and unhindered jurisdiction to hear and determine the matter pursuant to section 47 of the Act. This section, they argue, empowers the High Court to entertain any application and determine any dispute arising under the Act. To distinguish their claim from an ordinary land dispute that would fall exclusively within the purview of the Environment and Land Court, they rely heavily on the holding in ***In re Estate of George Gikundi (Deceased) eKLR***. They argue that where a creditor has a claim over the estate of a deceased person—particularly where the claim was admitted or ratified by the deceased through conduct—such a claim is not free property but a liability of the estate that can be lodged and determined via a succession cause in the Probate Court. They assert that the Deceased ratified the sale of Plot 12 by allowing them to take peaceful possession of the land in January 2007, months before his demise.
15. On the substantive issue of the validity of the sale, the Applicants contend that a legally binding agency relationship existed between the Deceased and Anthony Karimi. They argue that this relationship is irrevocably evidenced by the Respondent's own admission in her Replying Affidavit that Anthony Karimi successfully and lawfully sold plots 2, 3, and 20 under the Deceased's

instructions. The Applicants rely on the equitable doctrine of agency by estoppel. Citing **George Oloo Aringo v Anthony Omondi Kadede & 4 others eKLR** and the appellate decision in **Nthiga v Nyaga (Civil Appeal 67 of 2023) KEHC 4512 (KLR)**, they argue that a principal-agent relationship can be created by the express or implied agreement of the parties, or by the principal's subsequent ratification of the agent's acts. The Applicants submit that having ratified the sales of some plots through the exact same agent, the Respondent is strictly estopped from disrupting the agency relationship regarding Plot 12 merely because she now finds it inconvenient. They further rely on **Serah Njeri Mwobi v John Kimani Njoroge eKLR** to cement the argument that estoppel precludes a person from asserting a position contrary to what is implied by their previous actions.

16. Furthermore, the Applicants invoke the Indoor Management Rule, an established legal doctrine, asserting that they were under no obligation to question the internal arrangements or specific limits of authority between the Deceased and his agent. They argue they were entirely entitled to assume that the agent, Rukenya Commercial Agencies, had been properly and fully instructed regarding the sale of the entire subdivided parcel, not just select plots.
17. In aggressively addressing the adverse judgment in the Nakuru ELC case, the Applicants vehemently argue that they were at no point named as parties to the suit. They assert a fundamental tenet of law that eviction orders apply *in personam* rather than *in rem*. Therefore, they argue the eviction order should not have been executed against them, and doing so constituted a breach of their constitutional right to a fair hearing and the right to property.
18. Ultimately, the Applicants submit that the Respondent's deliberate failure to disclose their status as *bona fide* purchasers for value, and consequently as creditors of the Estate, constitutes a fraudulent concealment of material facts

under section 76 of the Act. They urge the Court to find that this concealment rendered the entire probate proceedings defective, warranting the immediate revocation of the Grant.

### **The Respondent's Case**

19. The Respondent's robust opposition is anchored on her Replying Affidavit sworn on 19 June 2025 and the comprehensive written submissions filed.
20. The Respondent raises a formidable preliminary issue regarding the jurisdiction of this Court. She submits that the Probate Court possesses a strictly limited and circumscribed sphere of inquiry. Its mandate is restricted to ascertaining the assets available to the estate, identifying the rightful beneficiaries, and determining the appropriate mode of distribution. Relying on the precedents set in **Jackson Kamau Nthiga v Humprey Kirimi Mbuba & another eKLR** and firmly reiterated in **In re Estate of William Koike Riyies (Deceased) KEHC 4177 (KLR)**, the Respondent argues that the Probate Court completely lacks the jurisdictional competence to delve into establishing the validity of a highly contested land claim. She posits that anyone claiming against the estate whose claim is heavily contested must first crystalize that claim by obtaining a decree in a court of competent jurisdiction, the ELC, before approaching the Probate Court.
21. On the substantive merits of the property dispute, the Respondent relies heavily on the doctrines of *res judicata* and judgments *in rem*. She submits that the ELC in Nakuru Case No. E046 of 2022 undertook a full trial on the merits and conclusively determined that Anthony Karimi had absolutely no legal capacity to transact in respect of the suit property. Consequently, the ELC dismissed the ownership claims of the alleged purchasers and ordered their eviction. Citing **Abukar G Mohamed v Independent Electoral and Boundaries Commission eKLR** and **George William Kateregga vs. Commissioner for Land Registration & Others**, the Respondent argues that a judgment determining the inherent status, title, or condition of property

operates as a judgment *in rem*. Such a judgment, she submits, binds the whole world, including the Applicants, regardless of whether they were explicitly named as plaintiffs in that specific suit.

22. Regarding the persistent allegations of an agency relationship, the Respondent categorically denies that Anthony Karimi was an authorized agent for the unsold plots. She relies on the exact same case cited by the Applicants, ***George Oloo Aringo v Anthony Omondi Kadede & 4 others eKLR***, to argue that for agency by estoppel to arise, there must be an express or implied representation directly from the principal that the agent had authority, and that the third party relied on it. She submits that the Applicants adduced zero evidence to demonstrate that the Deceased or the Respondent ever made such representations to them.
23. Finally, the Respondent addresses the core prayer for revocation. She submits that the Estate has been fully administered and the assets distributed long ago, rendering the Applicants' attempt to reopen the succession proceedings 15 years after confirmation legally untenable and offensive to the principle of finality in litigation. She maintains that the Grant was obtained lawfully, transparently, and without any fraud or concealment, primarily because the Applicants possessed no recognized, crystallized legal interest in the Estate that warranted disclosure. She urges the Court to dismiss the application with costs as an abuse of the court process.

### **Analysis & Determination**

24. The foundational and most critical issue that must be addressed at the threshold is whether this Court is clothed with the jurisdiction to entertain the Applicants' grievances. It is a trite and enduring principle of law that jurisdiction is everything; without it, a court has no power to make even one more step. Where a court lacks jurisdiction, any orders it issues, no matter how well-intentioned, are a nullity *ab initio*.

25. The Applicants anchor their presence in this Court on section 47 of the Act, which indeed grants the High Court jurisdiction to entertain applications and determine disputes arising under the Act. They bolster this with the decision in ***In re Estate of George Gikundi (Deceased) eKLR***, arguing that a creditor's claim over the estate of a deceased person can be lodged and adjudicated within a succession cause.
26. However, it is fundamentally necessary to contextualize the jurisdiction of the Probate Court against the specialized and exclusive jurisdiction of the ELC. Following the promulgation of the Constitution of Kenya, 2010, Article 162(2) (b) explicitly mandated Parliament to establish a specialized court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. The Environment and Land Court Act operationalized this constitutional directive, vesting exclusive original and appellate jurisdiction over all land matters in the ELC.
27. The jurisprudence emanating from the superior courts over the last decade has consistently and sharply delineated the boundaries between the Probate Court and the ELC. The Probate Court is not a panacea for all disputes involving a deceased person's property. In ***Jackson Kamau Nthiga v Humprey Kiriimi Mbuba & another [2018] eKLR***, the Court eloquently summarized this strict demarcation:

*“The net holding in those decisions was that the jurisdiction of a family court dealing with a Succession Cause is limited. Such a court’s sphere of inquiry is limited to ascertaining what assets are available to the estate, who the beneficiaries are and the mode of distribution of the estate. Such a court cannot delve into establishing the validity of a claim such as the one before this court. In the case before this court, there are serious*

*issues that need to be established and or ascertained by either the lower court or the court which has jurisdiction to entertain a claim to land. That however, does not bar a family court from ascertaining if one is a creditor of an estate. In the circumstances of this case, the Interested Party and the Objector have not yet been so determined by a court of law. This court cannot determine their claims in these proceedings.”*

28. The Applicants' heavy reliance on ***In re Estate of George Gikundi*** is factually and legally distinguishable from the present matrix. In ***Gikundi***, the deceased had personally sold the parcel of land, subdivided it, personally proceeded to the Land Control Board with the applicant, and obtained the requisite statutory consent to transfer the land prior to his death. The claim in that case was largely unassailable as the deceased's direct, documented actions admitted the liability.
29. Conversely, in the instant matter, the very foundation of the Applicants' claim—the validity of the land sale agreement executed by Anthony Karimi—is fiercely and fundamentally contested by the Respondent. The Respondent emphatically denies that Karimi had the authority to alienate the specific plot claimed by the Applicants. Because the Applicants' status as creditors is inherently tied to a highly contested land transaction involving disputed agency, this Court, sitting in its probate jurisdiction, lacks the statutory and constitutional mandate to conduct a mini-trial to ascertain the validity of that land sale. Such a dispute falls squarely and exclusively within the province of the ELC. The Applicants' claim remains unliquidated and unproven in law. Consequently, this Court cannot recognize them as crystallized creditors of the Estate for the purposes of these succession proceedings.
30. Further, the Respondent has annexed the judgment of the Nakuru ELC in Case No. E046 of 2022. In that comprehensive suit, 18 individuals claiming

to have purchased various sub-plots from Anthony Karimi sought declarations of ownership and specific performance. The ELC, after a full trial, dismissed their suit, holding unequivocally that Anthony Karimi lacked the legal capacity and authority to transact in respect of the suit property, thereby vitiating the contracts. Eviction orders were subsequently issued and enforced.

31. The Applicants mount a defence arguing that because they were not explicitly named as plaintiffs in that specific ELC suit, the judgment does not bind them. They assert a legal theory that eviction orders act *in personam* and not *in rem*.
32. This argument invites the Court to undertake a rigorous jurisprudential examination of the distinction between judgments *in personam* and judgments *in rem*. A judgment *in personam* determines the specific rights and obligations of the parties themselves in the subject matter of the action and binds only the parties privy to the suit. A judgment *in rem*, however, is a solemn adjudication pronounced upon the status, condition, or title of a particular subject matter by a tribunal having competent authority.
33. In ***Japheth Nzila Muangi vs. Kenya Safari Lodges & Hotels Ltd [2003] eKLR***, the Court elaborated on this vital distinction:

*"It is trite law that ordinarily a judgement binds only the parties to it. This is known as Judgement in personam. A judgement may also be conclusive not only against the parties to it but also against all the world. This is known as a judgement in rem. This is a judgement which declares, defines or otherwise determines the status of a person or of a thing i.e. the jural relation of the person or thing to the world generally."*

34. To further solidify this point, the Court refers to the Supreme Court's pronouncement in ***Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) KESC 30 (KLR)***. The Court emphasized the concept of the root of title and the indefeasibility of title. When a court of competent jurisdiction investigates a title and determines that the root of that title is tainted by illegality (in this case, an unauthorized agent selling land he did not own), that determination attaches to the land itself. No subsequent purchaser can claim a clean title if the root is defective. The legal principle *nemo dat quod non habet* applies.
35. The suit in the Nakuru ELC was not merely a localized breach of contract claim; it was a suit seeking to determine the proprietary status and legal ownership of the subdivisions of SHAWA/GICHEHA BLOCK 12/18. The ELC investigated the root of title and the authority of Anthony Karimi to alienate the land. By holding that Anthony Karimi lacked the requisite authority to sell the land, the ELC made a definitive, binding pronouncement on the status of the property itself. This pronouncement extinguished the legal validity of any transactions undertaken by Karimi regarding the disputed plots.
36. Therefore, the ELC judgment operates as a judgment *in rem* concerning the invalidity of the titles derived through Anthony Karimi. The mere fact that the Applicants were not named parties does not shield them from the legal reality that the root of their alleged title has been judicially nullified by a court of competent jurisdiction. Furthermore, the doctrine of *res judicata*, as codified in section 7 of the Civil Procedure Act, bars the re-litigation of issues that have been conclusively determined by a competent court. While the Applicants were not parties, the subject matter is identical.
37. To allow the Applicants to relitigate the validity of Karimi's agency before this Probate Court would not only usurp the exclusive jurisdiction of the ELC but would also violently offend the principles of finality in litigation, issue

estoppel, and the doctrine of judgments *in rem*. The Court finds that the Applicants are inextricably bound by the findings of the ELC in Case No. E046 of 2022.

38. In the premise, the Summons for Revocation of Grant dated 9 December 2024 is hereby dismissed. The costs of this Application are awarded to the Respondent, to be borne jointly and severally by the Applicants.

**DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF MARCH 2026**

**HELENE R. NAMISI  
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

for the Applicants: Ms Wanyama

for the Respondent: Ms Ngui

Court Assistant: Lucy Mwangi