



In re Kathima alias Wambua (Deceased) (Probate & Administration 367 of 1988) [2026] KEHC 3550 (KLR) (Family) (18 March 2026) (Ruling)

Neutral citation: [2026] KEHC 3550 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
PROBATE & ADMINISTRATION 367 OF 1988
H NAMISI, J
MARCH 18, 2026
IN THE MATTER OF THE ESTATE OF PETER
MWIKYA KATHIMA ALIAS WAMBUA (DECEASED)**

BETWEEN

**MARK MWIKYA 1ST APPLICANT
MARIA MWIKYA 2ND APPLICANT
SOLOMON MWIKYA 3RD APPLICANT
HUGO MWIKYA 4TH APPLICANT**

AND

JENNIFER NTHENYA RESPONDENT

RULING

1. This matter is a protracted and complex family dispute that has spans nearly 4 decades. At the centre of this controversy is the estate of Deceased, who died on February 24, 1988. The Applicants are the biological children of the Deceased from his first house with the late Eunice Katile Mwikya. The Respondent is the widow of the Deceased and the current Administrator of his estate.
2. The Applicants moved this Court by way of a Summons for Revocation of Grant dated May 17 2024, brought under sections 47 and 76 of the *Law of Succession Act* and various rules of the Probate and Administration Rules. They seek to annul the Certificate of Confirmation of Grant issued to the Respondent on 9 December 2013, which purportedly vested the entire estate in her absolutely. The Applicants allege that the Respondent obtained this Grant by fraudulently concealing their existence, misrepresenting the nature of the estate's assets, and failing to obtain their consent despite them being of age at the time of confirmation.



3. The primary asset in contention is Land Reference No. 209/3850, a prime 2.6-acre property situated along Processional Way, Nairobi. The Applicants contend that while the property is registered to Greenview Lodge Limited, the Respondent misdescribed the asset in the succession cause as a mere "Hotel Business" to facilitate its illegal disposal without the knowledge or consent of the Beneficiaries.
4. The Respondent has raised a Notice of Preliminary Objection dated 4 June 2025, seeking to strike out the Applicants' Summons in limine. The Respondent grounds her objection on four major limbs. First, that the matter is sub judice due to parallel proceedings in the Environment and Land Court (ELC); second, that this Court lacks jurisdiction to determine land ownership issues which belong to the ELC; third, that the property belongs to a distinct corporate entity; and fourth, that the Applicants have failed to disclose material facts.
5. The threshold for a valid preliminary objection in Kenyan law is remarkably high, necessitating that the point raised be a pure point of law. As established in the seminal decision of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributor Ltd EA 696*, a preliminary objection is analogous to a demurrer; it must be argued on the assumption that the facts pleaded by the opposing side are correct. The judicial logic behind this requirement is that if the objection is successful, it should dispose of the entire suit without the need for the court to hear evidence.
6. This Court is also guided by the Supreme Court's observations in *Independent Electoral and Boundaries Commission v Jane Cheperenger and others [2018] KESC 46 (KLR)*, where it was clarified that a preliminary objection should not be used as a sword to bypass the merits of a case that requires judicial determination, but rather as a shield against unmeritorious and resource-draining litigation. In the current context, the court must discern whether the Respondent's challenges to jurisdiction and the application of the sub judice rule are determinable on the face of the record or if they involve mixed questions of law and fact that require an evidentiary hearing.
7. The Applicants argue that the Respondent's objection is legally flawed because it requires the Court to ascertain facts regarding the alleged fraud and concealment. Conversely, the Respondent maintains that even if the fraud allegations are true, this Court is constitutionally barred from hearing the matter because of the nature of the property and the existence of other suits. Following the principle in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd KLR 1*, jurisdiction is a threshold issue, and the court must down its tools if it finds it lacks the authority to proceed.
8. The Respondent asserts that because the dispute involves L.R. No. 209/3850, it falls squarely under Article 162(2)(b) of *the Constitution*, which grants the Environment and Land Court exclusive jurisdiction over disputes relating to the environment and the use and occupation of, and title to, land. Furthermore, Article 165(5) explicitly prohibits the High Court from exercising jurisdiction over matters reserved for the specialized courts.
9. The Respondent relies on cases such as *In re Estate of Julius Ndubi Javan (Deceased) eKLR* and *Estate of Atibu Oronje Asioma (Deceased) KEHC 11046 (KLR)* to argue that succession courts have consistently declined jurisdiction when ownership of land is the primary issue. The Respondent's position is that since the Applicants are challenging the title to a parcel of land, they have filed their application in the wrong forum.
10. The Applicants' rebuttal is two-fold: first, they argue that as biological children and heirs, they are not third parties and thus the dispute is internal to the succession process; second, they contend that the application is for the revocation of a grant under section 76 of the *Law of Succession Act*, which is the exclusive mandate of the probate court.



11. The Court must distinguish between a suit seeking a declaration of land title and a summons seeking the revocation of a Grant based on the concealment of property that belongs to the estate. In *Re Estate of Benson Ng'ang'a Ndirangu* KEHC 11374, the Court held that while the probate Court does not determine title, it has the inherent power to revoke grants obtained through concealment, even if those assets are land or shares in a company. This distinction is critical: the probate Court does not declare ownership against the world, but it determines which assets form the free property of the deceased for the purpose of distribution among beneficiaries.
12. The Respondent's third limb of objection relies on the doctrine of corporate personality established in *Salomon v A Salomon & Co Ltd* AC 22. The Respondent argues that because L.R. No. 209/3850 is registered to Greenview Lodge Limited, the property does not form part of the free property of the Deceased and cannot be the subject of a succession cause. She further asserts that the Applicants' attempt to include the company's assets is an improper attempt to pierce the corporate veil within a probate forum.
13. However, the Applicants' evidence shows that the Deceased was a director and shareholder of Greenview Lodge Limited, holding substantial shares. Under the law, shares in a limited liability company are movable assets that vest in the Administrator upon the death of the shareholder. The free property of the Deceased includes his shareholding in the company, which the Respondent was under a statutory duty to inventory and distribute correctly.
14. The Court notes a significant inconsistency in the Respondent's own documents. The Certificate of Confirmation of Grant dated 9 December 2013, lists "Greenview & Hotel Business" as a distributed asset. If, as the Respondent now argues, the company is a separate legal persona whose assets are not part of the estate, then her inclusion of Greenview in the distribution schedule is a contradiction. If she intended to distribute the Deceased's shares, she should have described them as such. By describing the asset as a "Hotel Business," the Respondent arguably blurred the line between the Deceased's personal property and the company's corporate assets, potentially misleading the Court into confirming a Grant that ignored the true nature of the corporate structure.
15. In *Pacific Frontier Seas Ltd v Kyengo*, Civil Appeal No. 32 of 2018 eKLR, and more recently in *In re Estate of Benson Ng'ang'a Ndirangu*, it was clarified that while a succession court cannot settle disputes over the internal affairs of a company, it is mandated to oversee the transmission of the deceased's shares to the heirs. If the Respondent used the confirmation of Grant to transfer all the shares to herself without the consent of the Applicants, who are biological children of the Deceased, this would provide grounds for revocation under Section 76(b) of the Act for concealment and fraud.

The Doctrine of Sub-Judice and its Applicability

16. The Respondent forcefully argues that the present application is sub judice because the proprietorship of L.R. No. 209/3850 is being litigated in ELC Case No. E017 of 2023 (*Ashok Doshi & 2 Others v DPP & 6 Others*). Section 6 of the *Civil Procedure Act* provides that no court shall proceed with the trial of a suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or those litigating under the same title.
17. The Court finds that the Respondent's reliance on the sub judice rule is misplaced. The petitioners in ELC E017 of 2023 are Ashok Doshi and Magnum Properties Limited, who are purchasers of the property. The Applicants herein—the Mwikya children—are not parties to that suit. While the property is the same, the status being litigated is entirely different. One case concerns the validity of a third-party purchase from the company, while the other concerns the Respondent's fitness to continue as an administrator in light of alleged fraud against the deceased's children.



18. Furthermore, the Respondent's argument that there might be a conflict of orders ignores the structured interaction between different courts. If the ELC eventually finds that Ashok Doshi is the owner, that decree would simply be presented to the probate Court to exclude the asset from distribution. The outcome of the ELC case does not determine whether the Respondent lied about the existence of the Applicants in 2013. Consequently, the sub judice rule does not apply to stay the revocation application.

Material Non-Disclosure and the Duty of Uberrimae Fidei

19. The Respondent further argues that the Applicants are guilty of material non-disclosure by failing to inform this Court of the ongoing ELC proceedings. In judicial proceedings, particularly those involving equity or the administration of estates, parties must act with utmost good faith. The Respondent cites the reasoning of Justice Gikonyo in *Re Estate of Julius Ndubi Javan* [2018] eKLR, where it was stated that non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice.
20. However, the Applicants' Replying Affidavit turns this argument on its head. They contend that the Respondent is the one who initially poisoned the streams of justice by failing to disclose that they were the biological children of the Deceased and by misdescribing the estate's primary assets. The Applicants point out that the Respondent obtained a Grant in 1988 when they were minors and confirmed it in 2013 without notifying them, even though they were adults by then.
21. In *In re Estate of Moses Wachira Kimotho (Deceased)* eKLR, the Court emphasized that a respondent who knows of the interests of other beneficiaries yet chooses to ignore them in a Petition for Grant or confirmation is acting fraudulently. The Applicants have produced Birth Certificates showing they are the Deceased's children. If they were indeed excluded from the confirmation process in 2013, the Respondent's own failure of disclosure is far more fundamental than the Applicants' failure to mention a parallel land suit to which they are not even parties.
22. The power to revoke or annul a Grant is a discretionary one that must be exercised judiciously, balancing the interests of all beneficiaries and ensuring the administration of justice is not compromised. Section 76 of the Act provides that a Grant may be revoked if the proceedings were defective in substance, if it was obtained through fraud or concealment, or if it has become useless and inoperative.
23. The Applicants' case for revocation is grounded in the allegation that the Respondent sold the matrimonial house and clandestinely hurtled the applicants away, leaving them to feed on their own as destitute minors. They claim that the 2013 confirmation gave the Respondent everything absolutely without their consent. This, if proven, represents a grave injustice. Section 66 of the Act establishes a hierarchy for administrators, favouring spouses and children. The exclusion of adult children from the administration of their father's estate is a substantive defect that goes to the heart of the Grant's validity.
24. The Respondent's preliminary objection effectively asks the Court to shut its eyes to these allegations on the basis of procedural technicalities. However, the Court must remain mindful that a succession cause is intended to be an administrative and equitable process for the just transmission of wealth. To allow an Administrator to use a corporate shell or a parallel land suit by a third party as a shield to avoid accounting to the Deceased's children would be a travesty of the overriding objective of the law.
25. The Respondent cites *BMM v MK* eKLR and *Alexander Mbaka v Royford Muriuki Rauni* to support her claim that jurisdiction to proclaim ownership rights belongs to the ELC. While these precedents



are sound, they are often misapplied to succession causes where the inquiry is not about who owns the land against the world, but who is entitled to inherit the deceased's interest in that land.

26. The Respondent's argument that she is not the registered owner of the property and thus cannot be sued is legally thin. As the Administrator, she is the legal representative of the Deceased's interest in the company that owns the property. If she mismanaged that interest or concealed it, she is the only person the Applicants can sue within the succession cause.
27. This Court has analysed the submissions of both parties and the extensive case law governing the boundary between succession jurisdiction and specialized land jurisdiction. The Respondent's preliminary objection is an attempt to characterize a classic succession dispute—the alleged disinheritance of biological children through a fraudulent grant—as a complex land title dispute that should be heard elsewhere.
28. The Applicants are not third parties or purchasers. They are the progeny of the Deceased, whose rights under the *Law of Succession Act* are inalienable unless legally extinguished through a fair process. The allegation that the Respondent misdescribed Greenview Lodge Limited to conceal the estate's primary wealth is a matter that goes to the heart of the Court's integrity in issuing the 2013 Grant.
29. Regarding the sub judice objection, this Court notes that the litigation in the ELC involves a third-party purchaser challenging the state's cancellation of his title. That case will determine if the sale to the third party was valid. It will not, and cannot, determine if the Respondent was the rightful heir to 100% of the deceased's interest in Greenview Lodge Limited. The two inquiries are legally distinct. One is a question of property law, the other is a question of succession law.
30. The Respondent's attempt to hide behind the corporate veil of Greenview Lodge Limited is equally unpersuasive in a preliminary objection. While the company's assets belong to the company, the shares belonged to the Deceased. If those shares were the primary mechanism of wealth for the Deceased, their disposal and distribution are the legitimate concern of this court. To down tools now would be to tell these biological children that the probate Court is powerless when an administrator uses a corporate structure to effect a disinheritance. That is not the law.
31. The preliminary objection is, therefore, unsustainable as a total bar to the Applicants' case. It raises mixed questions of fact and law that cannot be resolved without a full hearing of the Summons for Revocation. A preliminary objection should dispose of a case only when the point of law is pure and uncontested.
32. The Respondent's Preliminary Objection dated 4 June 2025, is hereby overruled and dismissed.
33. The parties are directed to proceed with the inter-partes hearing of the Summons for Revocation on its merits. The Respondent is directed to file and serve any additional response to the Summons for Revocation within 14 days from the date of this Ruling.
34. Costs of this Preliminary Objection shall be costs in the cause.

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: Mr. Chege Kamau

for the Respondent: Mr Githinji



Court Assistant: Lucy Mwangi

