

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC LAND CASE NO E292 OF 2025.**

**FERDOS SULTANA COCKAR ..... 1<sup>ST</sup>**  
**PLAINTIFF**

**RAHAT BEGUM KHAN ..... 2<sup>ND</sup>**  
**PLAINTIFF**

**VERSUS**

**HUSSEIN BANO ..... 1<sup>ST</sup>**  
**DEFENDANT**

**NEW MARKET MEAT**

**SUPPLY COMPANY LIMITED ..... 2<sup>ND</sup>**  
**DEFENDANT**

**RASIA MOHAMMED SHABBIR SHARIFF ..... 3<sup>RD</sup>**  
**DEFENDANT**

**AASIYA NERINE MOHAMED**

**SHABBIR SHARRIF ..... 4<sup>TH</sup>**  
**DEFENDANT**

**TANZIM MOHAMED SHABBIR SHARIFF ..... 5<sup>TH</sup>**  
**DEFENDANT**

**SHAZIA MOHAMMED SHABBIR SHARIFF ..... 6<sup>TH</sup>**  
**DEFENDANT**

**THE REGISTRAR OF COMPANIES ..... 7<sup>TH</sup>**  
**DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 8<sup>TH</sup>**  
**DEFENDANT**

## RULING

### Background

1. Before the court are three applications, the Plaintiffs' applications dated 10<sup>th</sup> June, 2025 and 28<sup>th</sup> July, 2025, and the application by the 1<sup>st</sup>-6<sup>th</sup> Defendants dated 6<sup>th</sup> October, 2025.
2. At the outset, it is noted that the application dated 28<sup>th</sup> July, 2025 filed by the Plaintiffs principally sought that this court issues temporary orders as prayed in the application dated 17<sup>th</sup> (sic) June, 2025 pending the hearing and determination of that application and the suit. The reference to 17<sup>th</sup> (sic) June, 2025 is clearly a misdescription, the substantive motion being the one dated 10<sup>th</sup> June, 2025 which is presently under determination. Consequently, the motion dated 28<sup>th</sup> July, 2025 is rendered spent.
3. The Plaintiffs' Notice of Motion application dated 10<sup>th</sup> June, 2025 has been brought pursuant to the provisions of **Section 1A & 3A of the Civil Procedure Act, Section 45 of the Law of Succession Act, Section 73 of the Land Registration Act, and Order 40 & Order 51 of the Civil Procedure Rules, 2010** seeking the following reliefs:
  - i. That pending the hearing and determination of this application and suit, this Honourable Court do and hereby issues a temporary injunction, restraining the Respondents whether by*

*themselves, their agents, workers, assigns, employees or anybody else acting on their behest, employment and/or direction from interfering with registration and/or physical integrity of NAIROBI /BLOCK 38/110.*

- ii. That preservatory Orders do and hereby issue restraining the Respondents either by themselves, their servants, or any other person acting from their authorization or control from intermeddling with NAIROBI/BLOCK/38/110 by constructing any structures, selling the property, developing, leasing out, undertaking and/or continuing to carry out any further dealings pending the hearing and determination of this application and the suit.*
- iii. That pending hearing and determination of the application and suit, an Order do and is hereby issued to the Nairobi County Chief Land Registrar stopping any dealings with the register of NAIROBI/BLOCK 38/110.*
- iv. That pending hearing and determination of this application and the suit, an Order do and is hereby issued to the Nairobi County Chief Land Registrar to provide a comprehensive and/or Green Card extract of all that property known as NAIROBI/BLOCK 38/110 from 1994 to date.*

- v. ***That pending hearing and determination of this application and the suit, an Order do and is hereby issued to the Registrar of Companies compelling him to provide historical records of the New Market Company Limited since its incorporation.***
  - vi. ***That this Honourable Court do and hereby issues an Order directing the Chief Land Registrar, Nairobi to register a restriction over L.R NAIROBI/BLOCK 38/110, pending hearing and determination of this application and suit.***
  - vii. ***That this Honourable Court be pleased to grant any other Orders that it may deem necessary in the interest of justice.***
  - viii. ***That the cost of this application be in the cause.***
4. The application is based on the grounds on the face thereof and supported by the affidavit of Ferdos Sultana Cockar sworn on her own behalf and on behalf of the 2<sup>nd</sup> Plaintiff herein, being the beneficiaries of the Estate of Feroz Bibi Mohammed Shariff (deceased) who died on 11<sup>th</sup> March 1994.
5. She deponed that the High Court of Kenya at Nairobi, in Succession Cause No. 2924 of 2003, issued a Grant of Letters of Administration Intestate in respect of the estate of Feroz Bibi Mohammed Shariff (deceased), who passed away sometime in 1994; that the grant was issued to Hussein Bano

Mohamed Shabbir Shariff on 31<sup>st</sup> December 2003 and that the grant was subsequently confirmed on 2<sup>nd</sup> November, 2005, following which a Certificate of Confirmation of Grant was duly issued.

6. It was deposed that Feroz Bibi Mohammed Shariff (deceased) was the proprietor of (Nairobi /Block 38/110) Land Reference No. 209/15366 (Original No.209/118/09) Grant No. IR 97458 (*the suit property*) now registered under the New Market Meat Supply Company Limited, the 2<sup>nd</sup> Defendant.
7. Ms. Ferdos Sultana Cockar explained that the 1<sup>st</sup> Defendant was substituted as the administrator of the Estate of Feroz Bibi Mohammed Shariff (deceased) upon the demise of Feroze Begum her mother, owing to the fact that all the children of the deceased were at the time residing abroad.
8. Following the confirmation of the Grant, it is alleged that the 1<sup>st</sup> Defendant fraudulently procured the registration of the entire suit property in her name, thereby depriving the rightful beneficiaries, some of whom have since passed away of the beneficial interests vested in them thereunder.
9. According to Ferdos Sultana Cockar, the authority of the 1<sup>st</sup> Defendant to deal with the estate was vested in her on the basis of trust and utmost good faith and that she was under a legal obligation to administer the deceased's estate strictly in

accordance with the confirmed grant, a reflection of her testamentary intentions.

- 10.** It is further alleged that, without the knowledge or consent of the beneficiaries of the Estate of Feroz Bibi Mohammed Shariff (deceased), and in direct contravention of the confirmed grant, the 1<sup>st</sup> Defendant proceeded to transfer the property known as Nairobi/Block 38/110 from New Market Meat Supply Company Limited, the 2<sup>nd</sup> Defendant, into her own name and those of her four daughters, namely Rasia Mohammed Shabbir Shariff, Aasiya Nerine Mohamed Shabbir Shariff, Tanzim Mohamed Shabbir Shariff, and Shazia Mohammed Shabbir Shariff (the 3<sup>rd</sup> - 6<sup>th</sup> Defendants).
- 11.** She urged that the instrument of transfer dated 23<sup>rd</sup> April, 2007 goes contrary to the certificate of confirmed grant as it shows Husein Bano Mohammed Shabbir Shariff Chaduhry, Rasia Mohammed Shabbir Shariff, Aasiya Nerine Mohamed Shabbir Shariff, Tanzim Mohamed Shabbir Shariff, and Shazia Mohammed Shabbir Shariff as common tenants in equal shares of NAIROBI /BLOCK 38/110 which is not true.
- 12.** The 1<sup>st</sup> Plaintiff maintained that there is no proof that the 1<sup>st</sup> Defendant took any necessary or legal steps to ensure that the suit property was transferred to her by the rightful beneficiaries and that the 1<sup>st</sup> Respondent has disposed of a substantial portion of the deceased's estate, with the exception of the above-mentioned property, which is

presently registered in the name of New Market Meat Supply Company Limited.

13. Mrs. Ferdos Sultana Cockar, the 1<sup>st</sup> Plaintiff further states that it has come to her attention that the 1<sup>st</sup> Defendant has advertised the suit property for sale by erecting a signboard on the property and that she and her surviving sibling, Rahat Khan, dispute the intended imminent sale of the parcel and wish to apply for registration of a caution/caveat to prevent any further dealings pending the hearing and determination of this matter.
14. According to the 1<sup>st</sup> Plaintiff, they have also made attempts to obtain information relating to the historical records, ownership, transactions, and other relevant details concerning the suit property from the 7<sup>th</sup> and 8<sup>th</sup> Respondents, through letters dated 27<sup>th</sup> November, 2023 and 5<sup>th</sup> December, 2023; that the same has proved futile and that their efforts to have the 8<sup>th</sup> Respondent register a caution against the suit property have been unsuccessful. She urged that the interests of justice dictate that the orders sought are granted.
15. In response, the 1<sup>st</sup>-6<sup>th</sup> Defendants filed a Notice of Preliminary Objection dated 30<sup>th</sup> June, 2025 seeking to have the Plaintiff's application dated 10<sup>th</sup> June, 2025 struck out, or dismissed with costs for reasons that:

***i. This Honourable Court lacks jurisdiction to hear and determine the Application herein, as the***

**issues raised concern the administration and distribution of the estate of Feroz Bibi Mohamed Shariff (deceased) in Succession Cause No. 2924 of 2003, which are matters reserved exclusively for the Family Division of the High Court as provided under the Law of Succession Act (Cap. 160, Laws of Kenya).**

- ii. Further, whether or not Nairobi /Block 38/110 (the suit property) formed part of the estate of the deceased is a succession issue, which falls exclusively within the jurisdiction of the High Court in Succession Cause No. 2924 of 2003 which matter is already in issue in the said court and as such the instant matter is Re- Sub judice.**
- iii. The suit and Application herein are time-barred under Section 7 of the Limitation of Actions Act (Cap. 22, Laws of Kenya), which limits actions to recover land to a period of twelve (12) years. The events complained of allegedly occurred in 2007 (over 17 years ago) and no exception under Sections 26-28 of the Act has been invoked or established.**
- iv. The Plaintiffs/Applicants lack the legal capacity to institute these proceedings, having not obtained Letters of Administration or a Limited**

***Grant ad litem authorizing them to act on behalf of the deceased's estate or its beneficiaries.***

**v. *The Law of Succession Act, the Probate and Administration Rules and Civil Procedure Rules provide specific procedures for beneficiaries who seek to challenge the actions of an administrator/personal representative of the estate of a deceased person. The Applicants have failed to utilize these procedures and instead improperly invoked this Honourable Court's jurisdiction.***

**vi. *The Application, filed nearly two decades too late, by individuals with no legal authority to represent the estate and in a court that has no business entertaining probate and administration matters, is not only just an abuse of the court process but also an audacious attempt to rewrite the law by sheer misplacement. Needless to say, it is wholly unsustainable in law and ought to be dismissed.***

**16.** The 1<sup>st</sup>-6<sup>th</sup> Defendants also filed grounds of opposition dated 30<sup>th</sup> June, 2025 premised on grounds similar to the Preliminary Objection, *to wit*, this court lacks jurisdiction to hear and determine the present Motion as it challenges the dictates of the confirmed grant issued by the High Court on

2<sup>nd</sup> November 2005 in Succession Cause No. 2924 of 2003. The same, it was argued, is the preserve of the High Court.

17. Further, it is contended that both the suit and the present application are statute-barred. According to the Respondent, the alleged cause of action arises from dealings concerning the suit property that occurred in 2007 and that under **Section 7 of the Limitation of Actions Act**, actions for recovery of land must be instituted within twelve years from the date the cause of action accrues.
18. It is argued that more than seventeen years have since elapsed and no basis for extension of time under **Sections 26, 27, or 28 of the Act** has been pleaded or demonstrated. On that account, the suit is legally untenable.
19. The Defendants further contend that the Plaintiffs lack the requisite *locus standi* to institute the present suit and the accompanying application as they are neither the legal representatives of the deceased's estate nor holders of a Limited Grant of Letters of Administration ad litem or any other lawful authority enabling them to act on behalf of the estate or its beneficiaries.
20. It was also asserted vide the grounds that if the Plaintiffs, as beneficiaries, have grievances regarding the administration of the estate, the appropriate recourse lies within the succession framework, including an application for revocation or annulment of the grant under **Section 76** of

the **Law of Succession Act**, or applications brought pursuant to **Rules 49** and **73** of the **Probate and Administration Rules**.

- 21.** Also, it was urged, the suit property did not form part of the estate of Feroz Bibi Mohamed Sharriff as purported herein and as reflected in the proceedings in **Succession Cause No. 2924 of 2003** and any allegations that the property was omitted or wrongfully excluded from the estate fall squarely within the exclusive jurisdiction of the **High Court in Succession Cause No. 2924 of 2003**.
- 22.** Finally, the Defendants argue that the Plaintiffs have no legal or equitable interest in the property capable of supporting the registration of a caution under the Land Registration Act, and that the reliefs sought are matters ancillary to the succession proceedings and outside the jurisdiction of this court.
- 23.** The 1<sup>st</sup> Defendant, Ms. Hassan Bano in a replying affidavit dated 7<sup>th</sup> October 2025, reiterated the objections previously raised, contending that the issues in dispute concern the administration, distribution, and alleged mismanagement of the estate of Feroze Bibi Mohamed Sharrif, matters that fall within the jurisdiction of the Family Division of the High Court.
- 24.** She argued that the present proceedings are an attempt to circumvent the succession court and seek reliefs similar to

those already pending before the High Court being **Succession Cause 2924 of 2003**, thereby occasioning a multiplicity of suits over the same subject matter violating the doctrine of *res sub judice*.

25. Further, she deponed, as advised by Counsel, the current suit is statutory barred pursuant to the provisions of **Section 7** of the **Limitation of Actions Act** which provides that a cause of action relating to recovery of land should be filed with 7 (seven) years from when the cause of action arose.
26. The deponent stated that the suit and application should be struck out for having been filed in bad faith and as part of a pattern of abusive litigation by the 1<sup>st</sup> Plaintiff, who files applications and withdraws them after responses are filed, only to re-file fresh applications on similar grounds.
27. In particular, it was deposed, the 1<sup>st</sup> Plaintiff filed and withdrew **ELCLC/E209/2025- Ferdos Sultana Cockar vs New Market Meat Supply Company Limited & 6 Others**, and despite being ordered to pay costs of the withdrawn suit, has failed to comply with that order.
28. She further stated that the affidavits relied on by the Plaintiffs are incurably defective having been commissioned by a Kenyan Commissioner for Oaths while the deponents were physically outside Kenya, contrary to the Oaths and Statutory Declarations Act rendering them fatally defective and liable to be struck out.

- 29.** The deponent also denied allegations of fraud and mismanagement of the estate of Feroze Bibi Mohamed Sharriff, stating that the Plaintiffs have produced no credible evidence or specific transactions to substantiate such claims, and maintained that issues relating to the administration of a deceased's estate fall within the jurisdiction of the Succession Court.
- 30.** According to Ms. Bano, the Plaintiffs have failed to demonstrate any proprietary, legal, or beneficial interest in the suit property and have not established any lawful entitlement to the property, which she asserts did not form part of the estate of the late Feroze Bibi Mohamed Sharriff.
- 31.** She contends that the request to register a caution over the property is therefore legally baseless, noting that at the time of the deceased's death the property was already registered in the name of New Meat Market Meat Supply Company Limited.
- 32.** She denied allegations that estate property was improperly sold, describing them as speculative and unsupported by evidence, and maintains that she has acted within the powers conferred to her under **Section 82** of the **Law of Succession Act** and the confirmed grant issued on 2<sup>nd</sup> November 2005.
- 33.** Ms. Bano also argued that any challenge to her conduct as administrator falls within the jurisdiction of the Succession

Court, and that the Plaintiffs are guilty of laches, having waited nearly two decades after confirmation of the grant before bringing the present proceedings. Lastly, it was argued that the Motion contravenes **Order 51 Rule 10** of the **Civil Procedure Rules** citing inapplicable provisions.

**34.** The 1<sup>st</sup> - 6<sup>th</sup> Defendants' Notice of Motion Application dated 6<sup>th</sup> October, 2025 was filed pursuant to the provisions of **Section 1A, 1B, 3A & 6** of the **Civil Procedure Act, Order 2 Rule 15(1)(a), (b), (c) and (d)** and **Order 51 Rule 1** of the **Civil Procedure Rules** seeks the following reliefs:

- i. That the Plaint dated 10<sup>th</sup> June 2025, together with all pleadings and proceedings arising therefrom, be struck out in their entirety for being fatally defective in law, frivolous, vexatious, and an abuse of the court process;*
- ii. That the Notice of Motion Application dated 10<sup>th</sup> June 2025, together with the Supporting Affidavit sworn on even date, be struck out in limine for want of merit and for failing to disclose any reasonable cause of action;*
- iii. That the Notice of Motion Application dated 28<sup>th</sup> July 2025 and the Supporting Affidavit sworn on the same date be struck out for being incompetent, misconceived, and an abuse of the court's process; and*

*iv. That the costs of this Application and all incidental proceedings be borne by the Plaintiffs/Respondents.*

- 35.** The Motion is premised on the grounds on the face thereof and supported by the affidavit of Ms. Hussein Bano, a resident of Melbourne, Victoria in the Republic of Australia, the administrator of the Estate of the late Feroz Bibi Mohammed Shariff.
- 36.** She explained that as advised by Counsel, this court lacks jurisdiction to hear, and determine the Motion and the suit as the issues raised therein revolve around the administration, distribution, and alleged mismanagement of the estate of Feroze Bibi Mohamed, matters which by virtue of the Law of Succession Act, can only be adjudicated upon by the High Court of Kenya and not this court.
- 37.** The Plaintiffs have consciously failed to invoke and exhaust the clear statutory mechanisms expressly provided under **Sections 47 and 76 of the Law Succession Act (Cap. 160, Laws of Kenya)**, as read together with **Rules 49, 63, and 73 of the Probate and Administration Rules**.
- 38.** It was argued by the 1<sup>st</sup> - 6<sup>th</sup> Defendants the suit is statute-barred under **Section 7 of the Limitation of Actions Act**, arguing that the alleged cause of action arose from land transfer transactions said to have occurred in 2007 and that as more than seventeen years have elapsed without the

institution of proceedings within the prescribed limitation period, and the Plaintiffs having not demonstrated any basis for extension of time under **Sections 26, 27, or 28** of the **Act**, the suit is fatally defective and should be dismissed.

- 39.** Further, it was contended that the Plaintiffs lack the requisite *locus standi* to institute this suit and Motion not being duly appointed legal representatives of the estate nor having taken out a limited grant ad litem to institute a suit on behalf of the estate.
- 40.** More still, it was asserted, this suit constitutes an abuse of the process of this court as they all seek reliefs that are substantially similar to those that are pending before the High Court family division in related proceedings, thereby subjecting the court and the Respondents to a multiplicity of proceedings over the same subject matter *to wit* **High Court in Succession Cause No. 2924 of 2003**.
- 41.** It was deposed that the only difference between the pleadings filed in this suit, and **Succession Cause No. 2924 of 2003** is the calculated and deliberate inclusion of the 3<sup>rd</sup> to 6<sup>th</sup> Defendants in the present suit.
- 42.** According to Ms Bano, the Plaintiffs have established a pattern of litigating in instalments, wherein Motions are filed and withdrawn after responses, only for them to be re-filed on the same or substantially similar grounds, which conduct amounts to abuse of the process of this court.

- 43.** By way of example, it was stated that the 1<sup>st</sup> Plaintiff previously filed and withdrew a similar suit, **ELCLC/E209/2025 Ferdos Sultana Cockar vs New Market Meat Supply Company Limited and 6 Others** and that she was ordered to pay costs of Kshs 10,000 for the withdrawn suit which she has yet to do and that the court ought not give them audience.
- 44.** She further deponed that the affidavits filed in support of the Plaint and the accompanying Motion is defective in law. According to her, the affidavits were commissioned by a Kenyan Commissioner for Oaths while the deponents were physically outside the jurisdiction of Kenya, contrary to the requirements of the Oaths and Statutory Declarations Act, thereby rendering the said affidavits irregular and incapable of sustaining the pleadings founded upon them.
- 45.** Ms. Bano further contended that the Plaintiffs have failed to demonstrate any proprietary, legal, or beneficial interest in the suit property. In her view, the property did not form part of the estate of the late Feroze Bibi Mohamed Shariff, as it was already registered in the name of New Meat Market Meat Supply Company Limited at the time of the deceased's demise.
- 46.** Consequently, it was deposed, the assertion that the property constituted part of the deceased's estate is, according to her,

legally untenable and amounts to an abuse of the court process.

- 47.** Ms. Bano also denied the allegations that the estate property was improperly sold to the detriment of beneficiaries, describing such claims as speculative and wholly unsupported by evidence. She maintained that no specific asset has been identified as having been wrongfully disposed of and that the administrator has at all times acted within the powers conferred under **Section 82** of the **Law of Succession Act**, and in accordance with the confirmed grant issued on 2<sup>nd</sup> November 2005.
- 48.** It was her position that there has been no misappropriation, wastage, or unauthorized disposal of the estate assets, and that any dispute regarding the administration of the estate properly falls within the jurisdiction of the Succession Court.
- 49.** Further, she urged, the Plaintiffs are guilty of laches and inordinate delay, having remained inactive for nearly two decades following confirmation of the grant before instituting the present proceedings. It was also argued that the Motion offends **Order 51 Rule 10** of the **Civil Procedure Rules** by citing inapplicable provisions of law, thereby rendering it procedurally defective.

### **Submissions**

- 50.** The Plaintiffs filed their submissions on 2<sup>nd</sup> February 2026, contending that this court is properly seized of jurisdiction to

determine the present dispute. Counsel submitted that the issues raised in the suit relate to the ownership of the suit property, the alleged fraudulent transfer thereof, and the need for its preservation, all of which fall squarely within the mandate of this court. In support, Counsel cited **Omollo vs Ongoro (Succession Cause No. 366 of 2001) [2023] KEHC 18999 (KLR)**, and **In re Estate of Andrea Ooko Tianga (Deceased) [2019] eKLR**.

51. Counsel further submitted that the Defendants cannot rely on the law of succession to shield themselves because they do not qualify as dependants or beneficiaries within the meaning of **Section 29** of the **Law of Succession Act**. It was argued that the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> to 6<sup>th</sup> Defendants claim an interest in the suit property not as beneficiaries but as alleged purchasers through a disputed transfer instrument.
52. Counsel argued that the Plaintiffs, as beneficiaries, have *locus standi* to seek court intervention to prevent waste, intermeddling, or unlawful alienation of property in which they claim a beneficial interest and do not need to obtain letters of administration when seeking preservatory orders, particularly where the suit does not concern administration or distribution of the estate but the protection of estate property. Reliance was placed on **In re Estate of Benson Mainji Mulwa (Deceased) [2021] eKLR**.

53. Counsel also addressed the Defendants' arguments on limitation and sub judice. It was submitted that the Plaintiffs have pleaded fraud, and under **Section 26 of the Limitation of Actions Act**, time does not begin to run until the fraud is discovered or could reasonably have been discovered and that the question of when the alleged fraud was discovered is a factual issue that can only be determined upon hearing evidence at trial and cannot properly be resolved at the interlocutory stage.
54. With regard to the doctrine of *sub judice*, Counsel contended that the existence of proceedings in the Succession Cause does not bar this court from issuing preservative orders over the suit property, since the causes of action, reliefs sought, and jurisdiction invoked are distinct. It was stated that the application filed in the succession cause sought orders compelling the administrator to account for the estate, whereas the present suit concerns the fraudulent transfer and preservation of the land parcel in question.
55. Counsel argued that even if the affidavits were defective, the defect would be procedural rather than substantive and would not invalidate the suit. Reliance was placed on **Order 19 Rule 7 of the Civil Procedure Rules**, which allows courts to admit affidavits despite defects in form, and on **Stephen Bernard Oduor vs Afro Freight Forwarders [2002] KEHC 748 (KLR)**, where the court held that

procedural defects should not defeat substantive justice. Also invoked was **Article 159(2)(d) of the Constitution**.

56. Ultimately, it was urged that striking out a suit is a draconian remedy only resorted to in the clearest of cases and not as herein and that this matter warrants full determination on merits.
57. The 1<sup>st</sup> to 6<sup>th</sup> Defendants filed submissions on 16<sup>th</sup> January, 2025. Counsel submitted that jurisdiction is fundamental and that a court must down its tools where it lacks it, relying on **Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] KESC 8 (KLR)**.
58. Counsel further argued that this court lacks the authority to interpret, vary, or review a Certificate of Confirmation of Grant issued under the Law of Succession Act. According to counsel, disputes relating to the administration, distribution, or alleged mismanagement of a deceased person's estate fall exclusively within the jurisdiction of the High Court exercising probate jurisdiction pursuant to **Section 47** of the **Law of Succession Act**.
59. In that regard, Counsel urged the court to be guided by the decision in **Omollo vs Ongoro [2023] KEHC 18999 (KLR)**, which cited with approval **Floriz Piezzo & Another vs Giancarlo Falasconi [2014] eKLR**. In those decisions, the courts affirmed that the Succession Court, by virtue of

**Section 47** of the **Law of Succession Act** read together with **Rule 73** of the **Probate and Administration Rules**, is vested with wide and comprehensive powers to safeguard the estate of a deceased person, including the authority to issue injunctive orders where necessary for the protection and preservation of the estate.

- 60.** It was urged that the Plaintiffs lack *locus standi* to institute the suit on behalf of the estate since they are neither appointed legal representatives nor holders of a limited grant *ad litem*. In support, reference was made to **Ndua (Suing as Beneficiary of the Estate of David Ndua Thuo) vs Waithera & 3 Others [2025] KEELC 700 (KLR)**.
- 61.** Counsel further contended that the Plaintiffs have not demonstrated any proprietary, legal, or beneficial interest in Nairobi/Block 38/110, making their claim and request for a caution untenable and that the suit property was already registered in the name of New Meat Market Meat Supply Company Limited at the time of the deceased's death, meaning it could not have formed part of the estate.
- 62.** According to Counsel, the suit and related applications are *sub judice*, abusive, and time-barred and that similar proceedings are already pending in Succession Cause No. 2924 of 2003 and ELCLC/E209/2025, involving the same parties, facts, and reliefs, thereby offending **Section 6** of the **Civil Procedure Act**. Reliance was placed on **Yator & Another vs Kenya Judicial Staff Association (KJSA) &**

**Another [2025] KEHC 1165 (KLR)**, which discourages multiplicity of suits over the same subject matter.

**63.** Further, it was submitted, the Plaintiffs are guilty of laches, having waited nearly two decades after confirmation of the grant to file the suit. Additionally, the claim was said to be statute-barred under **Section 7** of the **Limitation of Actions Act**, since the impugned land transaction occurred around 2007 and no action was filed within the twelve-year limitation period, as affirmed in **Oraro vs Oraro [2023] KEELC 20981 (KLR)**.

**64.** Counsel challenged the validity of the Plaintiffs' supporting and verifying affidavits, arguing that they were commissioned by a Kenyan Commissioner for Oaths while the deponents were outside Kenya, contrary to the Oaths and Statutory Declarations Act, rendering them invalid. Reliance was placed on **Dardanelli & 6 Others vs Tilito & 3 Others [2025] KEELC 392 (KLR)**.

#### **Analysis and Determination**

**65.** Having considered the Motions, and responses thereto, the issues that arise for determination are:

- i. Whether the suit and motion dated 10<sup>th</sup> June, 2025 are competent and if so?*
- ii. Whether injunctive orders should issue restraining interference with the suit property and direct registration of a registration thereof caution thereof?*

iii. Whether the court should compel the Registrar of Companies to furnish historical records of New Meat Market Meat Supply Company Limited to assist the Court in determining the ownership and dealings relating to the suit property?

**Whether the suit and motion dated the 10<sup>th</sup> June, 2025 are competent?**

- 66.** The competence of the suit and the Motion dated 10<sup>th</sup> June, 2025 is vigorously contested by the 1<sup>st</sup>-6<sup>th</sup> Defendants, both through their responses to that motion and through their own motion dated 6<sup>th</sup> October 2025.
- 67.** In essence, the Defendants contend that this court lacks jurisdiction to entertain the dispute on the ground that the issues raised pertain to the administration and distribution of the estate of the late Feroz Bibi Mohamed Shariff, and therefore fall within the exclusive province of the High Court sitting as a Succession Court.
- 68.** They further argue that the suit is statute-barred and offends the doctrine of *sub judice* in light of the pending proceedings in the succession cause and an earlier ELC suit.
- 69.** The Defendants also maintain that the Plaintiffs lack the requisite *locus standi* to institute the present proceedings, not being the legal representatives of the estate or holders of a limited grant *ad litem*. In addition, they challenge the validity of the supporting and verifying affidavits on the basis

that they were commissioned in alleged contravention of the **Oaths and Statutory Declarations Act.**

70. The Plaintiffs, for their part, dispute those objections and maintain that the present dispute falls within the jurisdiction of this court because it concerns the ownership of the suit property, its alleged fraudulent transfer, and the need for preservatory relief, rather than the administration or distribution of the estate *per se*.
71. They further contend that, as beneficiaries claiming a beneficial interest in the property, they are entitled to approach the court for protective orders; that the plea of limitation cannot be conclusively determined at this stage in view of the allegations of fraud; that the present proceedings are not *sub judice*; and that any defects in the affidavits, if at all, are procedural in nature and do not render the suit incompetent.
72. It is a well settled principle that jurisdiction is fundamental to the exercise of judicial authority. Indeed, as expressed in Nyarangi, J.A. in **Owners of Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Limited [1989] KLR 1**, once a tribunal determines that it lacks jurisdiction, it must immediately down its tools, since any proceedings undertaken without jurisdiction are a nullity.

73. The broad jurisdiction of the Environment and Land Court is donated by **Article 162(2)** of the **Constitution of Kenya** which provides that:

***“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to- (b) the environment and the use and occupation of, and title to, land...”***

74. Pursuant to the constitutional mandate above, Parliament enacted the **Environment and Land Court Act. Section 13(2)** thereof grants this court jurisdiction over disputes relating to land and the environment, including matters of land use, title, tenure, land administration, compulsory acquisition, and other enforceable interests in land.

75. The court is also empowered to determine claims involving violations of the right to a clean and healthy environment and to hear appeals from subordinate courts and tribunals on matters within its mandate.

76. In **Republic vs Chengo & 2 Others [2017] KESC 15 (KLR)**, the Supreme Court through an in-depth exposition affirmed that the Environment and Land Court and the Employment and Labour Relations Court are specialized courts of equal status with the High Court but exercise distinct and autonomous jurisdictions, and none may assume jurisdiction reserved for the other.

77. It is not uncommon for disputes relating to land to intersect with matters of succession, thereby raising questions as to the appropriate forum for their determination. In such circumstances, the court must examine the true character of the dispute before it. Guided by the Court of Appeal's decision in **Joel Kyatha Mbaluka t/a Mbaluka & Associates Advocates v Daniel Ochieng Ogola t/a Ogola Okello & Co. Advocates [2019] eKLR**, the determinative inquiry is the predominant issue presented by the pleadings.
78. Addressing the delicate interface between succession proceedings and disputes over property, the court in **In Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR** observed as follows:

***“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.*

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

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*‘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 ...’*

*29. 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 distributing 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 that court are limited to what I have stated above."***

79. Vide the present suit, the Plaintiffs seek *inter-alia*, a permanent injunction restraining interference with the registration and physical integrity of the suit property, orders restraining the Defendants from intermeddling with what they describe as the deceased's estate, and directions compelling the Chief Land Registrar and the Registrar of Companies to produce historical records relating to the property and the company in whose name it is presently registered.
80. They further pray that the original title be deposited in court and that a caution be registered over the property pending

rectification of the grant to incorporate it within the distribution scheme of the estate.

- 81.** The Plaintiffs describe themselves as beneficiaries of the estate of the late Feroz Bibi Mohammed Shariff and contend that the 1<sup>st</sup> Defendant, who serves as the administrator of the estate, fraudulently dealt with the suit property, which they assert formed part of the deceased's estate.
- 82.** They allege that the property was unlawfully transferred to the 1<sup>st</sup> Defendant and her daughters and that steps are underway to dispose of it, an action they contend will prejudice them and other beneficiaries.
- 83.** Upon a careful analysis of the pleadings, it is clear that that the core allegations revolve around the conduct of the 1<sup>st</sup> Defendant as administrator, the alleged intermeddling with estate assets, the omission of the suit property from the schedule of assets during the petition for grant, and the need to safeguard the estate for the benefit of the beneficiaries.
- 84.** Indeed, the particulars of fraud pleaded in the Plaint include allegations that the 1<sup>st</sup> Defendant has proceeded to source for a buyer of the suit property to the detriment of the other beneficiaries; that the property was omitted from the list of the deceased's assets during the petition for the grant of letters of administration intestate; and that the 1<sup>st</sup> Defendant has since been intermeddling with the suit property.

- 85.** Flowing from those pleadings, the questions that inevitably arise are whether the suit property properly forms part of the deceased's estate, whether the administrator acted in a manner inconsistent with the confirmed grant, and whether the estate has been mismanaged or unlawfully intermeddled with. These issues go to the very core of the administration and management of a deceased's estate.
- 86.** In essence, therefore, the dispute presented before the court transcends a simple contest over title to land. Rather, it raises questions concerning the identification of estate assets and the propriety of the administrator's conduct in dealing with property alleged to belong to the deceased.
- 87.** Such matters are regulated under the **Law of Succession Act**, which vests the succession court with the mandate to ascertain the assets of the estate, oversee the actions of personal representatives, and resolve grievances raised by beneficiaries regarding the administration and distribution of the estate.
- 88.** The scope of that mandate was underscored by the Court of Appeal in ***Floris Piezzo & Another vs Giancarlo Falasconi [2014] eKLR***, where it was observed that the Law of Succession Act confers broad and comprehensive authority upon the succession court to determine disputes arising in the course of estate administration and, where necessary, to

grant appropriate preservative relief in order to protect the assets of the estate.

- 89.** Indeed, the material placed before this court further demonstrates that the Plaintiffs have already invoked the jurisdiction of the succession court in **Succession Cause No. 2924 of 2003**. In the Motion dated 25<sup>th</sup> January, 2025, the Plaintiffs sought orders restraining any dealings with Land Reference No. 209/15366 (Nairobi/Block 38/110), together with ancillary orders for the production of the Green Card, company records, and the registration of a restriction against the title.
- 90.** In addition, through the Summons dated 10<sup>th</sup> April 2025, the Plaintiffs seek orders compelling the administrator to render accounts of the administration of the estate, while alleging that the suit property herein was fraudulently transferred in contravention of the confirmed grant. There is also an affidavit in support of a Motion seeking the registration of a caution over the property.
- 91.** It is evident that the central issues raised in the present suit, particularly the status of the suit property as part of the estate and the alleged impropriety in the administrator's dealings with it are matters that have already been placed before the succession court, which remains seized of the administration of the deceased's estate.

- 92.** The institution of parallel proceedings before this court, raising substantially the same grievances, carries the real risk of fragmenting the dispute and exposing the judicial process to the possibility of inconsistent determinations concerning the same estate property.
- 93.** The proper course, in keeping with the principles of jurisdiction and orderly administration of justice, is for such grievances to be addressed within the succession proceedings where the estate is already under the supervision of the probate court, which possesses the statutory authority to determine the status of the estate assets and to issue appropriate supervisory or preservatory orders.
- 94.** In the premises, this court finds that it lacks jurisdiction to entertain the present suit and must as such down its tools. As a consequence, the entirety of this suit, including the application dated 10<sup>th</sup> June, 2025 are hereby dismissed with costs.

**Dated, signed and delivered virtually in Nairobi this 19<sup>th</sup> day of March, 2026.**

**O. A. Angote**  
**Judge**

**In the presence of:**

Mrs Nambande for 1<sup>st</sup> and 2<sup>nd</sup> Applicants

Ms Njuguna for 7<sup>th</sup> and 8<sup>th</sup> Defendants

Mr Kamanju for 1<sup>st</sup> – 6<sup>th</sup> Defendants

Court Assistant: Tracy

ORIGINAL