

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELCLC NO. E169 OF 2025**

**PAULINE** **MARY**  
**MAKOKHA.....PLAINTIFF/RESPONDENT**

**VERSUS**

**HESBON** **OMONDI.....1<sup>ST</sup>**  
**DEFENDANT**

**ZILPAH** **CHEPKEMOI** **BETT.....2<sup>ND</sup>**  
**DEFENDANT/APPLICANT**

**THE CHIEF LAND REGISTRAR.....3<sup>RD</sup>**  
**DEFENDANT**

**RULING**

1. Before this court is the notice of motion dated 25<sup>th</sup> June, 2025 filed by the 2<sup>nd</sup> defendant/applicant, and it is expressed to be brought under **Sections 3 and 3A** of the **Civil Procedure Act**, and **Sections 79 and 82** of the **Law of Succession Act** seeking the following orders:

*i. That the honourable court be pleased to strike out the entire suit for being defective and the plaintiff lacks the capacity to sue.*

*ii. That costs of the application to be provided for.*

2. The application is premised on the grounds *inter alia* that the 2<sup>nd</sup> defendant/applicant and the plaintiff/respondent are joint administrators of the estate of the late Raphael Charles Makhoha. The application is further supported by the affidavit of the 2<sup>nd</sup>

defendant/applicant sworn on even date. The 2<sup>nd</sup> defendant/applicant deposed that the plaintiff/respondent has instituted the present proceedings on behalf of the estate of the late Raphael Charles Makokha without her consent as a co-administrator. Further, the plaintiff/respondent is attempting to litigate the interests of the deceased's estate in her absence thus lacks capacity to do so. She contended that as a result, the suit is fatally defective to that extent.

3. It was deposed that one administrator out of the others lacks the capacity to bind the estate or any of the administrators or file a suit alone on behalf of the estate.
4. The plaintiff/respondent did not file her response to the instant application. This court directed that the application be canvassed by way of written submissions. The 2<sup>nd</sup> defendant/ applicant filed the written submissions dated 10<sup>th</sup> July, 2025.
5. I have considered the application and the written submissions filed by the 2<sup>nd</sup> defendant/ applicant. The issue for determination is *whether the suit ought to be struck out for lack of consent of the co-administrator of the estate of the deceased.*

6. The plaintiff/respondent instituted this suit on behalf of the estate of the deceased on account of being one of the personal representatives of the estate of the deceased alongside the 2<sup>nd</sup> defendant/applicant. This fact was disclosed in the plaint as admitted by the 2<sup>nd</sup> defendant/applicant. While relying on the case of **Republic v Nairobi City Council & 3 others Exparte Christine Wangari Gachege suing on behalf of the estate of Rahab Wanjiru Evans [2014] eKLR**, the 2<sup>nd</sup> defendant/applicant submitted that this court lacks jurisdiction to resolve a dispute among joint administrators of the an estate of a deceased, and that the same can only be resolved by the court that issued the grant. To buttress further on this issue, the 2<sup>nd</sup> defendant/applicant relied on the cases of **Theresa Wanjiru (Suing as the administrator of the estate of Joseph Gichuki Riunge v Andrew Kimata Gachanga & another; George Mwai Mburu (3<sup>rd</sup> Party) [2021] eKLR** and **Migwi (suing on his own behalf and on behalf of the estate of Migwi Mariga-deceased) v Ngunjiri & another (Environment & Land Case E044 of 2023) [2024] KEELC 476 (KLR)(6 February 2024) (Ruling)**.

7. While the 2<sup>nd</sup> defendant/applicant argued that the suit is defective for lacking her consent, I am of the view that the suit is not entirely defeated on this ground. The plaintiff/respondent has all the right to institute proceedings in a court of law where she feels

aggrieved by the actions or inactions of another party. In the undated plaint, the plaintiff/respondent contends the registration and transfer of the suit property in 2016 in the name of the 1<sup>st</sup> defendant by the 3<sup>rd</sup> defendant after the death of the deceased and prior to the confirmation of grant. The plaintiff/respondent contends that the entries made on 26<sup>th</sup> August, 2016 were effected illegally, unprocedurally and fraudulently by the defendants.

8. The issues raised by the plaintiff/respondent in her plaint can only be determined by this court. Now that the consent of the 2<sup>nd</sup> defendant/applicant was not sought, does this mean that the plaintiff/respondent has no remedy in court? I do also note that the 2<sup>nd</sup> defendant/applicant argued that this court lacks the jurisdiction to determine a suit which concerns a dispute between joint administrators.

9. **In re Estate of Raphael Charles Makokha (Deceased)** [2025] KEHC 10502 (KLR), Musyoka, J in a ruling delivered on 18<sup>th</sup> July 2025 stated as follows:-

***“I postponed confirmation of LR No. 2/2X1 Gitanga Road, to enable the administratrices sort out the issue of its ownership, in whichever way, even if it included litigation. I see that Pauline Mary Makokha has taken the initiative,***

*to sue regarding that property. The determination of that matter will resolve the issue of ownership of the property. That being the case, no precipitate action should be taken in this matter, in terms of discharging the interested party and the property, before that suit is heard and determined.*

*6. Consequently, I find that there is no merit in the application, dated 16<sup>th</sup> February, 2025. I hereby dismiss it, but with no orders as to costs. The matter shall be mentioned on 10<sup>th</sup> December, 2025 for updates on progress in the suit, in Milimani ELC No. E169 of 2025. Orders accordingly.”*

- 10.** While referring to the suit property in this matter, Musyoka, J noted that the issue of ownership of the suit property could only be determined by this court. This just confirms that the argument that this court lacks jurisdiction cannot be sustained. I am persuaded to rely on the authority in the case of **Koinange & 2 others (Suing as Administrators of the Estate of the Late Charles Karuga Koinange) v Mitithiru Company Limited [2024] KEELC 1414 (KLR)**, where Angote, J stated:-

*“Further, this court should, as a matter of fair hearing, give the 1<sup>st</sup> Plaintiff a chance to be heard on the issues he has raised in so far as the suit property is concerned and make a determination, after trial, on whether he had a*

***justification in bringing the suit in the first place.”***

- 11.** By virtue of **Section 82** of the **Law of Succession Act**, and as a co-administrator of the estate of the deceased, it is the primary duty of the personal representatives to protect the said estate. What the plaintiff/respondent has done in this case is to take this step. In view of this, I am satisfied that the plaintiff/respondent is justified in filing this suit.
- 12.** From the above, I find that the notice of motion dated 25<sup>th</sup> June, 2025 lacks merit, and it is hereby dismissed. Costs in the cause.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 9<sup>TH</sup> DAY OF APRIL, 2026.**

**HON. MBOGO C.G.  
JUDGE  
09/04/2026.**

***In the presence of:***

*Ms. Benson Arunga - Court assistant  
Mr. Benson Odiwuor for the Plaintiff  
Mr. Fwaya for the 2<sup>nd</sup> Defendant  
Mr. Boaz Agutu for the 1<sup>st</sup> Defendant*