

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO. 118 OF 2015**  
**IN THE MATTER OF THE ESTATE OF DISMAS KUNYA FIBANDA**  
**(DECEASED)**

**BETWEEN**

**JOSEPHINA ARUSI**

**OBONYO.....PETITIONER**

**AND**

**NYONGESA KUNYA WERE.....OBJECTOR**

**HABIL WAMBASIOMWITAKHO.....INTERESTED  
PARTY**

**RULING**

1. This matter concerns the estate of the late Dismas Kunya Fibanda, revolving primarily around land parcel N/Wanga/Indangalasia/341, measuring approximately 6.0 Ha. The cause is anchored on a contested grant of letters of administration issued to the Petitioner, Josephina Arusi Obonyo. A critical preliminary issue for determination is whether this court possesses the requisite jurisdiction to adjudicate the core dispute, given the nature of the claims advanced.
2. The Petitioner initiated this cause by obtaining a chief's letter dated 28<sup>th</sup> October 2014, stating the deceased died on 5<sup>th</sup> October 1990 and left her as the sole beneficiary.
3. Relying on a death certificate, no. 0209433, showing the same date of death, she was issued with a grant of letters of administration on 10<sup>th</sup> March 2016, which was confirmed on 20<sup>th</sup> September 2016.

4. Following objections, the petitioner fundamentally shifted her claim. Through an affidavit by her husband, Alexander Obonyo Rakama, and her own submissions dated 12<sup>th</sup> March 2025, she asserts that:
  - a. She is not the daughter of Dismas Kunya Fibanda.
  - b. She is the only child of one Onuni Wanzetse, who she claims was the original and rightful proprietor of the land.
  - c. She produced a death certificate showing Onuni Wanzetse died on 24<sup>th</sup> September 1981.
  - d. She produced a certified copy of the land register showing Onuni Wanzetse was registered as proprietor on 27<sup>th</sup> December 1967. The register further indicates that the title was transferred to Dismas Kunya Fibanda on 21<sup>st</sup> February 1986 under the description administrator of the estate of the deceased, presumably Onuni Wanzetse.
5. She alleges that Dismas Kunya Fibanda fraudulently facilitated this transfer without a lawful succession process, taking advantage of her absence. She states she had previously sought and obtained orders for the revocation and annulment of a grant in a related matter.
6. The objectors, claiming to be the children and wife of the deceased Dismas Kunya Fibanda, applied for the revocation of the grant.
7. They contend the petitioner is a stranger to the family. They adduce a chief's letter dated 11<sup>th</sup> May 2018, a burial permit, serial no. 996103,

and a death certificate, no. 751583, all stating the deceased died on 26<sup>th</sup> March 1999.

8. They name the deceased's three wives and five children as the rightful beneficiaries.
9. They presented a sale agreement dated 1997, where the deceased sold one acre of the land to Habil Wambusi Omwitakho, who is the interested party
10. The agreement was witnessed by the deceased, his wife Selpha Kunya, and his son Nyongesa Kunya. The interested party filed an affidavit supporting this claim and stating the subdivision process had begun.
11. Witness statements from a village elder and family members corroborate the 26<sup>th</sup> March 1999 date of death and deny the petitioner's familial link to the deceased.

### **Analysis**

12. In **Words and Phrases Legally Defined Vol. 3**, John Beecroft Saunders defines jurisdiction as follows:

***“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission***

***under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognisance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics.... Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”***

13. On the source of a court’s jurisdiction, the Supreme Court of Kenya in **Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR** stated as follows:

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***“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction,***

***the Court cannot entertain any proceedings ... where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."***

14. The court's jurisdiction is a threshold issue that must be resolved before any substantive merit can be considered.
15. The petitioner's final and definitive case is not simply a dispute over entitlement to share in the estate of Dismas Kunya Fibanda. Her core assertion is that the very asset constituting the estate does not lawfully belong to Dismas Kunya Fibanda at all. She claims the title was procured through fraud and forgery by Dismas from her late father, Onuni Wanzetse. Her quest, therefore, is to recover land she claims was stolen from her father's estate.
16. **Article 162(2)(b) of the Constitution of Kenya**, 2010, and the Environment and Land Court Act establish the Environment and Land Court as a superior court of equal status to the High Court with exclusive original jurisdiction to hear and determine disputes relating

to environment and land, including title to land and contracts, choses in action or instruments granting any enforceable interests in land.

**“(2) 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.”**

17. The dispute as crystallized by the petitioner's latest evidence falls squarely within this exclusive domain. The questions raised are fundamentally questions relating to title to land and allegations of fraud in its acquisition and not a mere succession questions. They include:

- a. Whether the transfer from Onuni Wanzetse to Dismas Kunya Fibanda on 21<sup>st</sup> February 1986 was fraudulent,
- b. Whether the petitioner is the rightful heir to Onuni Wanzetse, and
- c. Whether the land should be removed from the estate of Dismas and vested in the petitioner,

18. The high court's jurisdiction in succession matters under the Law of Succession Act Cap 160 is unquestionable. However, this jurisdiction does not extend to entertaining a collateral attack on the very root of the title of the purported deceased. Where the essence of a dispute in a succession cause transforms into a claim of ownership adverse to the estate, the proper forum is the Environment and Land Court. This position maintains the constitutional and statutory scheme for

specialized jurisdiction. This is also reiterated in **Mbuki v Waweru & 3 others [2025] KEELC 2932 (KLR)**, where the court held that:

***“To this end, Parliament, in its wisdom, enacted the Environment and Land Court Act, which establishes the Environment and Land Court (ELC) as the specialized forum for the adjudication of land-related disputes. Complementing this statutory framework is the Land Act, whose Section 150 unequivocally stipulates that the ELC:....shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”***

### **Findings**

19. The petitioner, having anchored her right to the estate on a foundational claim that the deceased's title was obtained fraudulently from her father, has introduced a substantive land dispute that transcends the scope of a pure succession cause.
20. This court lacks the jurisdiction to determine the validity of the title to land parcel N/Wanga/Indangalasia/341 or allegations of fraud in its historical transfer. Those are matters reserved for the Environment and Land Court.
21. Consequently, the grant of letters of administration issued to Josephina Arusi Obonyo on 10<sup>th</sup> March 2016 and confirmed on 20<sup>th</sup> September 2016 cannot stand, as it was obtained on a false premise

that Dismas Kunya Fibanda was the rightful owner of the property. Its confirmation was predicated on this same erroneous basis.

### **Orders**

22. The grant of letters of administration issued to Josephina Arusi Obonyo on 10<sup>th</sup> March 2016, and the subsequent certificate of confirmation of grant issued on 20<sup>th</sup> September 2016, are hereby revoked and annulled in their entirety.
23. For the avoidance of doubt, the revocation is not a determination on the merits of the petitioner's claim of ownership or the objectors' counterclaims. It is solely based on the lack of jurisdiction of this court to determine the central land title dispute now at the heart of the case.
24. The parties are at liberty to pursue their respective claims of ownership and entitlement to land parcel N/Wanga/Indangalasia/341 before the Environment and Land Court at Kakamega, which has the requisite jurisdiction to make definitive findings on issues of title, fraud, and ownership.
25. Upon the determination of the land ownership dispute by the Environment and Land Court, any aggrieved party may, if necessary, institute fresh succession proceedings in the appropriate court based on the outcome of that determination.
26. Right of Appeal 30 days.
27. Each party shall bear its own costs.
28. This file is closed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA 23<sup>rd</sup>  
DAY OF APRIL, 2025.**

**S.MBUNGI**

**JUDGE**

**In the presence of:-**

**CA:** Angong'a/Velma

Parties present.