



REPUBLIC OF KENYA



In re Estate of Chepkosiom Arap Bwale (Deceased) (Succession Cause E024 of 2024) [2026] KEHC 5510 (KLR) (29 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE E024 OF 2024
JK NG'ARNG'AR, J
APRIL 29, 2026**

IN THE MATTER OF THE ESTATE OF CHEPKOSIOM ARAP BWALE (DECEASED)

BETWEEN

KIPKORIR LANGAT PETITIONER

AND

HELLEN CHEPNGENO TERER PROTESTOR

RULING

1. In this matter, a Grant was issued to the Petitioner on 22nd January 2025.

Protest

2. Through an Affidavit of Protest dated 23rd June 2025, the Protestor stated that she was a liability to the deceased's estate by virtue of being a purchaser. That she bought 0.3 acres of the deceased's estate on 23rd August 2014 from Richard Kipyegon Chepkwony who had initially purchased the same from the deceased. The Protestor further stated that the Petitioner was a witness in the transaction.
3. It was the Protestor's case that she purchased 0.1 acres of the deceased's estate from Rebecca Chepkemoi Mosonik on 9th September 2014 and that she had a total ownership of 0.4 acres of the deceased's estate. That she had lived there for the last 11 years. It was the Protestor's further case that she had been excluded from the list of liabilities of the deceased's estate.
4. The Protestor stated that the Petitioner had threatened to chase her from the land and destroy the house she had constructed.
5. Through her written submissions dated 15th January 2026, the Objector submitted that the Preliminary Objection did not raise a pure point of law uncontested by facts. That the issues the Objector raised of whether or not she was a purchaser of the deceased's estate were matters of fact which



required evidence. She relied on *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969] EZ 696.

6. It was the Objector's submission that she had the locus standi to file the Protest as she was a liability to the deceased's estate. She relied on section 66 and 82 of the *Law of Succession Act* and further in *Estate of M'Marete M'Mbijiwe (Deceased)* (2017) eKLR. It was the Objector's further submission that she was not listed among the deceased's estate's liabilities and that Article 159(2) (d) of the *Constitution* of Kenya mandated courts to administer justice without undue regard to procedural technicalities. That her claim was anchored on occupation and recognition as a liability and further on protection against intermeddling.
7. The Objector submitted that she was not asking this court to determine the ownership of the subject land but her claim was limited to protection from intermeddling and preservation of the estate. She relied on section 45 of the *Law of Succession Act*, *Estate of Veronica Njoki Wakagoto (Deceased)* (2013) eKLR et.al. The Objector further submitted that she had occupied the subject land for over 11 years and developed it.
8. It was the Objector's submission that her Protest was timely as she sought to preserve the deceased's estate. She relied on *Estate of M'Ngarithi M'Miriti (Deceased)* (2017) eKLR.

Response

9. The Petitioner filed a Preliminary Objection dated 16th July 2025 seeking striking out of the Protest on the following grounds: -
 - I. That the Protest herein is premature, misconceived and therefore bad in law as no summons for confirmation of Grant had been filed as required in section 71 of the *Law of Succession Act* and Rule 40 of the Probate and Administration Rules.
 - II. That the Protestor is not a creditor in the estate of the deceased as stated in section 66 (c) of the *Law of Succession Act* as she did not purchase the alleged piece of land from the deceased.
 - III. That the Honourable Court sitting as a Probate Court lacks jurisdiction to determine matters touching on sale and/or ownership of land, the same was taken away vide Article 162(2) and 165(5) of the *Constitution*.
10. Through his written submissions dated 9th December 2025, the Petitioner submitted that the Protest was premature and ill conceived. That the Petitioner was in the process of filing his Summons for Confirmation of Grant when the Protest was filed. That the Protest offended Rule 40(6) of the Probate and Administration Rules which provided that an Affidavit of Protest could only be filed to object the confirmation of Grant.
11. It was the Petitioner's submission that the Protestor was not a creditor to the deceased's estate. That she lacked locus standi to file the Protest. It was the Petitioner's further submission that this court lacked jurisdiction to determine the Protest as issues that dealt with sale, use and occupation of land were dealt with the Environmental and Land Court as contemplated in Article 162(2) of the *Constitution* of Kenya.
12. I have gone through the entire record, the Protest dated 23rd June 2025, the Preliminary Objection dated 16th July 2025, the Protestor's written submissions dated 15th January 2026 and the Petitioner's written submissions dated 9th December 2025. The only issue for my determination was whether the Preliminary Objection was sustainable.



13. What constitutes a Preliminary Objection was set out in the oft cited case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696, where it was held that: -

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.” (Emphasis mine)

14. The Court of Appeal in Attorney General & Ministry of State for Immigration & Registrar of Persons v Andrew Maina Githinji & Zachary Mugo Kamunjiga [2016] KECA 817 (KLR) held: -

“The test to be applied in determining whether the appellants’ Preliminary Objection met the threshold or not is what Sir Charles Newbold set out above in the Mukisa Case (supra). That is first, that the Preliminary Objection raises a pure point of law, second, that there is demonstration that all the facts pleaded by the other side are correct; and third, that there is no fact that needs to be ascertained.”

15. The Petitioner stated that this court lacked jurisdiction to determine the Protest dated 23rd June 2025 as the Protest was anchored on ownership of part of the deceased’s estate. On the other hand, the Protestor stated that her claim was not pegged on ownership of part of the deceased’s estate but rather sought the preservation of the deceased’s estate.

16. Jurisdiction is defined in the Black’s Law Dictionary, 10th Edition as: -

A court’s power to decide a case or issue a decree.

17. The Court of Appeal in Public Service Commission & 4 others v Cheruiyot & 20 others (Civil Appeal 119 & 139 of 2017 (Consolidated)) [2022] KECA 15 (KLR) (8 February 2022) (Judgment) discussed the issue of jurisdiction to wit: -

“Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in “Words and Phrases Legally Defined”, Volume 3 at Page 113 defines court jurisdiction as follows:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the 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 the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power



to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

The locus classicus on jurisdiction is the celebrated case of Owners of the Motor Vessel “Lillian S’ v Caltex Oil (Kenya) Ltd [1989] KLR 1. Nyarangi, JA relying, inter alia, on the above cited treatise by John Beecroft Saunders held as follows:

“...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

A decision made by a court of law without proper jurisdiction amounts to a nullity ab initio, and such a decision is amenable to setting aside ex debito justitiae.

The Supreme Court In the Matter of Interim Independent Electoral Commission [2011] eKLR, Constitutional Application No 2 of 2011 held that jurisdiction of courts in Kenya is regulated by the Constitution, statute, and principles laid out in judicial precedent. The Supreme Court at paragraph 30 of its decision held in part as follows:

“...a court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of Legislation is clear and there is no ambiguity.”

In Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, Application No 2 of 2011, the Supreme Court reiterated its holding on a court’s jurisdiction. In the matter of the Interim Independent Electoral Commission (supra) at paragraph 68 of its ruling, the Supreme Court held as follows:

“ 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 itself jurisdiction exceeding that which is conferred upon it by law.”

18. I have looked at the Protest dated 23rd June 2025 and I have noted that the Protestor stated that she was not listed as a beneficiary of the deceased’s estate. She further stated that she purchased 0.3 acres and 0.1 acres of the deceased’s estate from Richard Kipyegon Chepkwony and Rebecca Chepkemai Mosonik respectively. The Protestor attached the respective Sale Agreements as evidence of her purchases. From the above, it was clear that the Protestor’s claim was anchored on the alleged purchase and ownership of part of the deceased’s estate.
19. I agree with the Petitioner that this court is not clothed with the requisite jurisdiction to determine the Protest as the same dealt with alleged sale and purchase of the said land. Article 162 (2) (b) of the Constitution of Kenya provides : -

Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.
20. The Environment and Land Court Act is defined as an Act of Parliament to give effect to Article 162(2) (b) of the Constitution; to establish a superior court to hear and determine disputes relating to the



environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes Section 13 of the Act stipulates the jurisdiction of the Environment and Land Court as follows:-

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of the *Constitution*, the Court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.....

21. The Supreme Court in *Albert Chaurembo Mumba & 7 others as registered Trustees of Kenya Ports Authority Pensions Scheme vs. Maurice Munyao & 148 others* [2019] eKLR stated: -

“It is clear to us that Article 165(5) of the *Constitution* ousts certain questions from the jurisdiction of the High Court on matters of employment and labour relations, and matters of environment, use, occupation and title to land by providing thus:

- “(5) The High Court shall not have jurisdiction in respect of matters—
 - (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
 - (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).”

The clear wording of the debarment of the High Court by the *Constitution* is that “shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts under Article 162(2)

22. Similarly, the Supreme Court in *Republic vs Karisa Chengo & 2 others (Petition 5 of 2015)* [2017] KESC 15 (KLR) (26 May 2017) (Judgment) addressed itself on the issue of distinct jurisdiction of the High Court and the specialized courts established under Article 162(2)(3) of the *Constitution*. It stated: -

“It is against the above background, that Article 162(1) categorises the ELC and ELRC among the superior Courts and it may be inferred, then, that the drafters of the *Constitution* intended to delineate the roles of ELC and ELRC, for the purpose of achieving specialization, and conferring equality of the status of the High Court and the new category of Courts.



Flowing from the above, it is obvious to us that status and jurisdiction are different concepts. Status denotes hierarchy while jurisdiction covers the sphere of the Court's operation. Courts can therefore be of the same status, but exercise different jurisdictions. That is why this Court has reaffirmed its position that the jurisdiction of Courts is derived from the Constitution, or legislation (see *In Re the Matter of the Interim Independent Electoral Commission*, at paras. 29 and 30; and *Samuel Kamau Macharia and Another v. Kenya Commercial Bank and Two Others*, Sup.Ct. Civil Application No. 2 of 2011 [para. 68]). In this instance, the jurisdiction of the specialized Courts is prescribed by Parliament, through the said enactment of legislation relating, respectively, to the ELC and the ELRC.

In addition to the above, we note that pursuant to Article 162(3) of the Constitution, Parliament enacted the Environment and Land Court Act and the Employment and Labour Relations Act and respectively outlined the separate jurisdictions of the ELC and the ELRC as stated above. From a reading of the Constitution and these Acts of Parliament, it is clear that a special cadre of Courts, with *suis generis* jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal's decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous Courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court."

23. This being a Probate Court, my primary duty is to distribute the free estate of a deceased. In the case of re Estate of Julius Ndubi Javan (Deceased) [2018] KEHC 8523 (KLR) Gikonyo J. held: -

"The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are *prima facie* valid should be determined before confirmation."

24. I am in total alignment with re Estate of Stone Kathuli Muinde (Deceased) [2016] KEHC 3725 (KLR) where the court held that: -

"With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.

Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the Civil Procedure Act and the Civil Procedure Rules. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained



in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it". (Emphasis mine)

25. Flowing from the above, it is my finding that this court has no jurisdiction to determine the Protest dated 23rd June 2025 and I must down my tools. In the circumstances thereof, I make the following orders: -

- I. The Preliminary Objection dated 16th July 2025 has merit and is upheld.
- II. The Protest dated 23rd June 2025 is struck out.
- III. Each Party to bear their own costs.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 29TH DAY OF APRIL, 2026.

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HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling Delivered in the presence of;

Susan/Siele Court Assistant

Petitioner – present

Protestor – present

