

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
MISC. SUCCESSION CAUSE NO. E010 OF 2023

IN THE MATTER OF THE ESTATE OF M'MBOROKI M'MURUGU
alias STEPHEN MBOROKI MBURUGU
.....DECEASED

JOYCE NAITO MURITHI.....1ST
APPLICANT

PENINA NKIROTE.....2ND
APPLICANT

LEA MUGURE.....3RD
APPLICANT

CATHERINE MBOROKI.....4TH
APPLICANT

ASENATH KAGWIRIA MBOROKI.....5TH
APPLICANT

VERSUS

JOHN GIKUNDA MBOROKI.....ADMINISTRATOR/1ST
RESPONDENT

ISAAC KIRIMI MBOROKI.....ADMINISTRATOR/2ND
RESPONDENT

RULING

1. For determination is the summons dated 20/1/2025 under **Section 47 of the Law of Succession Act, Rule 73 of the Probate & Administration Rules, and Section 70 (D) of the Land Registration Act**, seeking that:

1. The Honourable Court be pleased to lift and vacate the Order of inhibition issued on 29/6/2023 against LR NO. NYAKI/KITHOKA/1674.

2. Costs of the application be in the cause.

2. The application is premised on the grounds that vide a Judgment delivered on 25/1/2023, in Meru ELC Case No. 44/2019, the court determined that L.R No. Nyaki/Kithoka/1674 **(henceforth called the suit property)** was owned by John Gikunda Mboroki and Isaac Kirimi Mboroki, the Respondents herein, in equal shares. There exists a Judgment of a Court of equal status to this court, which Judgment is final since an attempt by the 2nd Respondent to appeal against it was thwarted by the Court of Appeal. The order of inhibition ought to be lifted and

vacated, to allow for the full implementation of the decree issued in Meru ELC Case No. 44/2019. The 2nd Applicant herein testified on behalf of her siblings in Meru ELC Case No. 44/2019 as Dw2, and the Advocate for the Applicants herein, is the same Advocate who acted for the 2nd Respondent in Meru ELC Case No. 44/2019 and also in Nyeri Court of Appeal Civil Application Nos. E022/2023 and E043/2023. The inhibition order sought herein, through the same law firm that acted for the 2nd Respondent herein, is intended to frustrate the implementation of the decree in Meru ELC 44/2019.

3. The 2nd Applicant swore a replying affidavit on 24/9/2025 in opposition to the application. She denied any collusion with the 2nd Respondent and maintained that they were all entitled to an equal share of the estate.

4. The 4th Applicant swore a replying affidavit on 24/9/2025 in opposition to the application. They sought, and were granted

orders transferring the primary cause from Meru C.M.'s court to this court, plus an inhibition, to preserve all the subject parcels of land herein, pending hearing and determination of the main Succession Cause No. 14/2023. What is pending for hearing and determination in that cause is their summons for revocation of the grant so that they can provide for daughters of the deceased. In her view, the subsisting inhibition order has not served the purpose for which it was granted as averred, and they were neither parties in Meru E.L.C. No. 44/2019 nor the two subsequent applications filed in the Court of Appeal. The issue of the inheritance of the suit property is still pending and cannot be said to have been concluded by the E.L.C. court as alleged or at all. At the moment, it is Mr. Mwirigi, Advocate, who farms on half of that land, and that is why he is pushing to alienate it before the summons for revocation of the grant is heard, to defeat their interest therein.

5. Mr. Carlpeters Mbaabu, the Applicants' Advocate, equally swore a replying affidavit on 24/9/2025.

6. The 1st Respondent swore a supplementary affidavit on 15/10/2025 in support of the application.
7. The 4th Applicant swore a further affidavit on 14/11/2025 in opposition to the application.
8. The application was canvassed by way of written submissions, which were duly filed by Counsel.

Disposition

9. Having considered the application, the responses thereto and the submissions filed together with the authorities relied on, I find the singular issue for determination to be whether the inhibition subsisting on L.R No. Nyaki/Kithoka/1674 should be lifted and/or vacated.
10. The undisputed facts herein are that the Environment and Land Court in its judgment dated 25/1/2023 found that

the suit property did not form part of the estate of the deceased as it was owned exclusively by the Respondents. That decision still stands as the 2nd Respondent unsuccessfully tried to appeal against it to the Court of Appeal.

11. It is trite law that this court lacks the jurisdiction to set aside, review and/or vary a decision of a court of competent concurrent jurisdiction.

12. In **Republic v Chengo & 2 others** **[2017] KESC 15 (KLR)**, cited by the 1st Respondent, the Supreme Court held that;

“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. Concurring with this view, the learned Judges of the Court of Appeal in the present matter observed that both the specialised Courts are of “equal rank

and none has the jurisdiction to superintend, supervise, direct, shepherd and/or review the mistake, real or perceived, of the other". Thus, a decision of the ELC or the ELRC cannot be the subject of appeal to the High Court; and none of these courts is subject to supervision or direction from another. In their words: "By being of equal status, the High Court therefore does not have the jurisdiction to superintend, supervise, direct, guide, shepherd and/or review the mistakes, real or perceived, of the ELRC and ELC administratively or judiciously as was the case in the past. The converse equally applies. At the end of the day however, ELRC and ELC are not the High Court and vice versa. However, it needs to be emphasized that status is not the same thing as jurisdiction. The Constitution though does not define the word 'status'. The intentions of the framers of the Constitution in that regard are obvious given the choice of...words they used; that the three Courts (High Court, ELRC and ELC) are of the same juridical hierarchy and therefore are of equal footing and standing. To us it simply means that the ELRC and ELC exercise the same powers as the High Court in performance of its judicial function, in its specialised jurisdiction but they are not the High Court."

13. I find that the inhibition placed on the suit property constitutes an impediment to the Respondents' enjoyment of the fruits of their lawful judgment, and the same ought to be vacated.
14. I note that the suit property was inadvertently included among the assets due for distribution to the beneficiaries, yet it did not form part of the estate of the deceased.
15. Consequently, I find that the application dated 20/1/2025 is merited and it is hereby allowed in its entirety.
16. The certificate of confirmation of grant dated 30/3/2025 is hereby rectified to reflect the said changes.

DATED AND DELIVERED AT MERU THIS 14TH DAY OF MAY, 2026.

S.M. GITHINJI -JUDGE
14/5/2026

In the presence of:-

Mr. Otieno Opiyo holding brief for Mr. Mwirigi Kaburu for the 1st Respondent.

Mr. Makomere holding brief for Mr. Carlpeter for the Applicant.

Mention on 19/10/2026 to confirm distribution and closure of the file.

S.M. GITHINJI -JUDGE
14/5/2026