



REPUBLIC OF KENYA



**in re Estate of Hoseah Njuguna Mukuru (Deceased) (Succession Cause E156 of 2024) [2026] KEHC 6376 (KLR) (11 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6376 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE E156 OF 2024**

**JM NANG'EA, J**

**MAY 11, 2026**

**IN THE MATTER OF THE ESTATE OF THE LATE  
HOSEAH NJUGUNA MUKURU (DECEASED)**

**BETWEEN**

**PETER KIPKURUI KOSKEI ..... APPLICANT**

**AND**

**AGNES WANGUI NJUGUNA ..... 1<sup>ST</sup> RESPONDENT**

**JOHN KAHARU NJUGUNA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By Summons dated 15/2/2025 the Applicant prays for the following reliefs;-

1. Spent.
2. That the Respondents and/or their agents whosoever be restrained from collecting rent on and/or intermeddling and/or otherwise interfering with management of the deceased's property known as Njoro/Ngata Block 1/302 or any other property comprising the deceased's Estate pending hearing of this Application and the suit.
3. That the court does order that rent from the said property known as Njoro/Ngata Block 1/302 farm comprising the deceased's Estate be collected by an independent agent and deposited into the deceased's bank account for proper management and administration for the benefit of all beneficiaries.
4. That the Respondent do produce in court a full and accurate inventory and render accounts of all rent collected on the above stated property (Njoro/Ngata Block 1/302 from 26<sup>th</sup> June 2024 to the time of bringing this Application.



5. That the Respondents do remit the full rent collected from 26<sup>th</sup> June 2024 and deposit the same in the deceased's bank account.
  6. That the court does declare that the Respondents have intermeddled with the Estate contrary to Section 45 of the Law of Succession Act, hence liable for conviction and sentencing accordingly.
  7. That any other order deemed fit and just be granted.
  8. That the costs of the Application be provided for.
2. In his affidavit in support of the Summons, the Applicant avers that he is the deceased's son and Administrator of his Estate vide Grant of Letters of Administration Intestate annexed to the Application. He tells the court that his deceased father died on 26/6/2024 and left behind 15 beneficiaries of his Estate as per the local chief's letter exhibited. He accuses the Respondents of unilaterally collecting rent from the above described property (Njoro/Ngata Block 1/302) after the deceased's death and converting it to their own use.
  3. The Applicant continues to contend that the Respondents have no authority to collect rent on the Estate property, having not filed appropriate Succession proceedings and obtain Grant of Legal representation over the Estate. For these reasons inter alia intervention of this court is craved in the interest of the Estate and all the beneficiaries thereof.
  4. The 1<sup>st</sup> Respondent swore an affidavit in reply to the Application. She attacks the Application and this Petition for Letters of Administration, as fatally defective and ought to be struck out. The Applicant is said to have obtained the Grant issued in his favour, clandestinely since consent of all beneficiaries of the Estate was not given.
  5. While stating that they are all children of the deceased albeit by different mothers, the 1<sup>st</sup> Respondent contends that the Applicant fraudulently obtained the Grant. Apparently upon advice of her Counsel, the 1<sup>st</sup> Respondent claims that this Application is sub judice for the reason that the Applicant has also filed Succession Cause Number 426 of 2024 over the same Estate in the Chief Magistrate's Court at Nakuru. She further protests that no citation had been taken out against them requiring them to take out Letters of Administration in respect of their deceased's father's Estate before the Applicant filed this Cause.
  6. The 1<sup>st</sup> Respondent appears to contend that the referenced parcel of land (Njoro/Ngata Block 1/302) was actually owned by her deceased mother. She complains that the Applicant in concert with land officials fraudulently transferred the land into the name of their deceased father (Hosea Njuguna Mukuru) without undertaking lawful transmission of the property through necessary succession proceedings. The court is told that the Applicant is now attempting to sanitize the fraudulent title by listing the property in this Succession Case as forming part of their deceased's father's Estate.
  7. The court is in the premises urged to dismiss the Application, the Applicant not having come before it with clean hands.
  8. Among annexures to the 1<sup>st</sup> Respondent's affidavit are copies of an authority of her co-respondent to swear the replying affidavit on his behalf as well, and a certificate of lease over the disputed property purporting to be in the name of the Respondents' deceased mother (Lydia Wanjiru Njuguna). The lease is shown to be for a term of 99 years from 1.4.85.
  9. The Respondents also rely on Grounds of Opposition dated 27<sup>th</sup> May 2025 amended on 7/8/2025. The grounds are:-



1. That the present petition being High Court of Kenya at Nakuru Succession No. E156 of 2024 is sub judge Nakuru Chief Magistrate's court Succession Cause No. 426 of 2024 and as such ought to be struck out with costs to the Respondents.
  2. That the subject matter of Succession Cause herein being property known as title number Njoro/Ngata Block 1/302 is the subject matter of Nakuru High Court Succession Cause No. 116 of 2024, Estate of Lydia Wanjiru Njuguna (deceased).
  3. That this court lacks jurisdiction to determine the dispute involving land ownership and transfer which is the exclusive jurisdiction of the Environment and Land Court pursuant to Article 162(2) (b) and Article 165 (5) (b) of *the Constitution* as read with Section 26(3) and (4) of the *Environment and Land Court Act*.
10. The Applicant retorts through a further affidavit that the Application is not sub judge as Nakuru Chief Magistrate's Succession Cause No. 426 of 2024 alluded to was withdrawn on 26/9/2024 before this Cause was filed. He exhibited the Order retrieved from the court's e-filing portal in proof this claim. According to the Applicant, the Respondents dishonestly deny collecting rent on the deceased's property without authority, which conduct is intermeddling with the Estate in law. All beneficiaries including surviving widows of the deceased are entitled to rent on the property, adds the Applicant.
  11. Learned Counsel for the parties filed written submissions. The Applicant's submissions are dated 25<sup>th</sup> July 2025. He also put in further submissions dated 27<sup>th</sup> November 2025 on the Respondents' amended Preliminary Objection dated 7/8/2025.
  12. The Applicant's Advocates submit that a Prima facie case of intermeddling by the Respondents has been established. The court is referred to the definition of intermeddling with a deceased person's Estate as per Section 45 *Law of Succession Act* which enacts;
 

“Except so far as expressly authorized by this Act or by any other written law, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.”
  13. In Re Estate of Ernest Kimaiyo (Deceased) Succession Cause E150 of 2023) [2024] KEHC 9227 (KLR) (31 July 2024 (Ruling) also relied upon by the Applicant, acts such as allegedly committed by the Respondents are said to constitute intermeddling with the deceased's Estate herein.
  14. The Applicant stresses that as Nakuru Chief Magistrates Succession Cause No. 426 of 2024 was withdrawn before this Cause was filed, the question of these proceedings being sub judge does not arise. Instead, the court is told that the Respondents are the ones tainted with malafides.
  15. Counsel insist that the Applicant is not questioning title, ownership, boundary or any other interest over the land in issue but only seeks protection and preservation of the Estate.
  16. The Applicant's Advocates impress upon the court that acts as allegedly perpetrated by the Respondents can be enjoined in law by dint Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules.
  17. The Preliminary Objection is therefore said not pure point of law as relevant facts are contested.
  18. The Respondents' Advocates maintain that their Preliminary Objection is based on a pure point of law. The disputed property is said to be the subject of other proceedings in the High Court (Succession Cause No. E116 of 2024, Estate of Lydia Wanjiru Njuguna & Chief Magistrate's Succession 426 of 2024).



19. According to Counsel, the Application argues that land ownership issues that are the preserve of the Environment and Land Court (see Case law in *Thiba Min. Hydro Company Limited v Josphat Karu Ndwiga* (2013) eKLR referred to by Counsel). It is therefore the Respondents' case that a Probate/ Succession Court cannot adjudicate questions touching on sale and/or transfer of land.
20. It is further contended that the Application breaches the sub judice rule embodied in Section 6 of the *Civil Procedure Act* which prohibits hearing of a claim when a similar suit involving the same parties or substantially the same parties litigating over the same issues is pending in another court.
21. The Respondents in the premises plead that the Preliminary Objection be sustained.
22. Two issues arise for determination in this Application;
  - a. Whether the court has no jurisdiction to entertain the Application and Petition.
  - b. Whether the Applicant is entitled to the orders sought on the merits of the Application.
23. Jurisdiction is central to the court's authority to determine a dispute before it (see the popular case *Owners of Motor Vessel ("Lillian S" v Caltex Oil Kenya) Limited* (1989) KLR 1. It is also trite law that a Preliminary Point can only be properly taken up if relevant facts are not in dispute. If certain facts can only be established by adduction of further evidence then what is raised is not a pure point of law that may dispose of a matter at once (also see the famous decision in *Mukisa Biscuits Manufacturing Co. v West End Distributors case*).
24. It is common ground that a Succession Cause (Nakuru Chief Magistrate's Succession Cause E426 of 2024) was filed over the Estate of the same deceased person. There is evidence that the matter was withdrawn and this Succession Cause was lodged in this court. To this extent, this matter is not sub judice.
25. The Respondents contend that disputes relating to land ownership and/or transfer are the preserve of the Environment and Land Court created by Articles 162 and 165 of *the Constitution* as well as the *Environment and Land Court Act*. The Applicant's position is that the disputed land is registered in the name of the deceased and is therefore part of this Estate. The Respondents on the other hand claim that the land belonged to their deceased mother and that the Applicant fraudulently changed the title into the name of the deceased. Indeed, a Certificate of Lease tending to show that the Respondents' deceased mother (Lydia Wanjiru Njuguna) leased the land for 99 years from 1/4/85 has been exhibited. The Applicant has not commented on and/or rebutted this claim in his further affidavit.
26. The above observation notwithstanding, I think it is the Respondents who ought to challenge the title in the name of the deceased in the Environment and Land Court. It is doubtful that this court sitting as a Succession Court has the power to cancel title to land. Needless to say, allegations of fraud are very serious and should be litigated in a proper forum for the interests of justice and the parties involved.
27. The Respondents in their submissions allude to pendency in this court of a Succession Cause Number E116 of 2024 in respect of the Estate of their deceased mother and the parcel of land in contention herein is part of that Estate. The Applicant has not commented on this claim. It is noted that this claim is not in the Respondents' Affidavit evidence and the proceedings of that Succession Cause are not exhibited in the proof of the claim. It is trite law that submissions are not evidence in proof of a fact in issue in litigation.
28. If there is any other Succession Cause in respect of which the disputed land forms part of the Estate therein, then this cause is potentially sub judice and the court would have no jurisdiction. On the material before the court, however, I find that the court has jurisdiction to conduct the matter.



29. On the merits of the Application, I am unable to grant the Applicant the reliefs he seeks. There are serious allegations of fraud levelled against him with respect to transfer of the subject land into the name of the deceased. He has not stated whether or not a certificate of title over the land was also issued to the Respondents' deceased mother. In the circumstances I am reluctant to find that the Respondents are intermeddling with the property, or grant the other orders sought in the Application given the circumstances.
30. The upshot is that the Application is dismissed. As the parties are relatives, no order is made as to the costs of the Application.

**J.M. NANG'EA - JUDGE.**

**RULING DELIVERED VIRTUALLY THIS 11<sup>TH</sup> DAY OF MAY, 2026.**

In the presence of:

Applicant's Advocate, Absent

Respondents' Advocate, Mr. Bore

Court Assistant (Jeniffer)

**J.M. NANG'EA - JUDGE.**

