



REPUBLIC OF KENYA



KENYA LAW
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**Wangamati & 3 others v Khisa & 2 others (Environment and Land
Case E006 of 2025) [2025] KEELC 5664 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5664 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND CASE E006 OF 2025**

EC CHERONO, J

JULY 24, 2025

BETWEEN

**JOHNSON WANGAMATI 1ST PLAINTIFF
MOURICE WANYAMA WEKESA T/A FAITH BIBLE BAPTIST
CHURCH 2ND PLAINTIFF
IMELDA ADHIAMBO EDEWA 3RD PLAINTIFF
BILIA LUNJALU KAMBARA 4TH PLAINTIFF**

AND

**NELSON SANYANDA KHISA 1ST DEFENDANT
GAUNT SANYANDA NASONGO 2ND DEFENDANT
GLARION MAINA NASONGO 3RD DEFENDANT**

RULING

1. Before me for determination is the Notice of preliminary objection filed by the Defendant/ Respondents herein dated 23/04/2025 challenging this court's jurisdiction and the Plaintiff/ Applicants Notice of Motion application dated 12/03/2025.
2. When the said Preliminary Objection came for directions, the parties agreed that both the Notice of Preliminary objection and the said Notice of Motion be canvassed by way of written submissions.
3. The Defendant/Respondents filed written submissions dated 26/05/2025 in which they relied in the cases of; Owners of Motor Vessel Lillian 'S' vs. Caltex Oil Kenya Ltd (1989) KLR and Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others. They further referred to the provisions of Section 13 of the [Environment and Land Court Act](#) and submitted that the succession court legally dealt with the issues raised by the Applicant herein. It was argued that the said court is the



- correct forum to deal with issues on the estate of a deceased. It was their submission that the allegations by the Applicants that they are purchasers of the subject land amount to intermeddling of the estate of a deceased person pursuant to Section 45 of the Law of Succession Act. Reliance was placed in the case of Santuzzabilioti alias Mei Santuzza (dcd) vs. Giancarlo Falasconi (2014) eKLR. They contend that a succession court can order for the cancellation of a title and direct that it reverts back to the name of a deceased person. They argued that according to the ruling of the succession court, the existing court record indicates that land parcel no. E.Bukusu/ S.Kanduyi/862 Measuring 15.98ha and the land sought by the applicants herein are non-existent and therefore, the orders sought cannot be issued.
4. The Plaintiff/Applicants filed submissions dated 30/05/2025 and submitted that Article 162 (2)(b) of the Constitution and Section 13 of the Environment and Land Court clothes this court with the jurisdiction to determine the dispute before the court. It was argued that the subject matter of the suit is land which they hold. Reliance was placed in the case of Republic v. County Government of Kiambu & 3 Others Gitutu (ex-parte Applicant) (Environment and Land Judicial Review Case 1B OF 2023) [2024] KEELC 793(KLR). They argued that the preliminary objection did not raise any pure and arguable point of law.
 5. The application dated 12/03/2025 seeks the following orders;
 - a. That this Application be certified urgent and service of therefore be dispensed with in the first instance. That there be a temporary stay of execution of the Ruling delivered on 28th October,2024 in High Court Succession Cause No. 24 of 2002 pending hearing and determination of this application inter-parties. That there be a stay of execution of the Ruling delivered on 28th October, 2024 in High Court Succession Cause No. 24 of 2002 pending hearing and determination of the main suit.
 - b. That there be a stay of proceedings in High Court Succession Cause No. 24 of 2002 pending the hearing and determination of the suit herein.
 - c. Cost of this application be provided for.
 6. The application is premised on the grounds on the face of the application supported by the affidavit of the 1st Applicant sworn on 12/03/2025.
 7. The Applicants deposed that on diverse dates, they purchased various portions of land from the Respondents comprised in title number E.Bukusu/S.Kanduyi/862 registered in the name of Charles Nakitare alias Charles Nasongo (deceased). That some of the said agreements were entered into during the pendency of the Succession Cause, with the understanding that upon its conclusion, the administrator of the estate would facilitate the transfer and registration of titles in their favour. That a grant was issued to Pritty Daktary Sanyanda on 05/02/2013 and confirmed on 19/03/2013. Pursuant thereto, the relevant transfer documents were executed in favour of the 1st and 2nd Applicants, while the 3rd and 4th Applicants received direct transfers from the 2nd Respondent.
 8. The Applicants were registered as proprietors of the following parcels of land: the 1st Applicant as the owner of Title Number E.Bukusu/S.Kanduyi/17338 measuring approximately 0.93 hectares; the 2nd Applicant as the owner of Title Numbers E.Bukusu/S.Kanduyi/17369 and 17359 measuring approximately 0.02 hectares and 0.15 hectares respectively; while the 3rd and 4th Applicants were jointly registered as proprietors of Title Number E.Bukusu/S.Kanduyi/20680 measuring approximately 0.10 hectares. The Applicants took possession and settled on their respective parcels in the year 1999 and have since developed the same. That unknown to them, the Respondents filed an application for



revocation of the grant claiming the same was obtained in secrecy and the shares allocated do not exist on the ground thus, sought to have the titles issued to them cancelled. That the said grant was consequently revoked on 28/10/2024 and thereafter their titles were cancelled. They argued that they stand to lose their properties if the orders sought were not issued.

9. In opposition to the application, the Respondents filed a replying affidavit sworn by the 1st Respondent on 23rd April 2025, wherein he stated that he was one of the objectors in High Court Succession Cause No. 24 of 2002, which resulted in the revocation of a grant that had initially been issued. That the succession court ordered for the cancellation of all titles emanating from the deceased's land and for the title to revert back in the name of the deceased. That the succession cause was still ongoing and that if at all the Applicants had any claim, they ought to await the outcome of the succession cause and direct their claim to the respective beneficiaries.
10. The Applicants further filed a supplementary Affidavit sworn by the 1st Applicant on 23/05/2025 in further support of claim.
11. At the time this court withdrew to prepare this ruling, neither of the parties had filed submissions to the application dated 12/03/2025.

Analysis and Determination

12. I have considered the Notice of Preliminary Objection dated 23/4/2025, the Notice of Motion application dated 12/3/2025 as well as the submissions by the parties and the relevant law and find that the issues that commend for determination are as follows;
 - i. Whether the Preliminary objection dated 23/04/2025 is merited?
 - ii. Whether the Notice of Motion application dated 12/03/2025 is merited?
 - iii. What are the appropriate orders to issue?

Whether the Preliminary objection is merited?

13. The essence of a Preliminary Objection was succinctly set out by the Court of Appeal in the locus classicus case of Mukisa Biscuits Manufacturing Co. Ltd. vs. West End Distributors (1969) EA 696 at 700 where Law, JA stated as follows:

“...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.”

14. The Supreme Court addressed its mind on this issue in the case of Aviation & Allied Workers Union Kenya vs Kenya Airways Ltd & 3 Others [2015] eKLR wherein it stated:

“Thus a preliminary objection may only be raised on a ‘pure question of law’. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts.”

15. From the foregoing, it is apparent that a Preliminary Objection can only be raised on pure a point of law on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or if the court is called upon to exercise judicial discretion. Further, a preliminary objection if upheld should be capable of disposing off the suit. The



Respondents have challenged this court's jurisdiction to determine the issues before it. It is trite that jurisdiction is everything and once a court finds that it lacks jurisdiction, it should down its tools. The centrality of jurisdiction was succinctly captured by Nyarangi, J.A. in *Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Limited* [1989] KLR I.

16. Further, the Supreme Court in *Kalpana H Rawal & 2 others vs Judicial Service Commission & 2 others* [2016] eKLR cited with approval the decision in Supreme Court of Nigeria Supreme Case No. 11 of 2012 *Ocheja Emmanuel Dangana vs Hon. Atai Aidoko Aliusman & 4 Others* where Walter Samuel Nkanu Onnoghien, JSC expressed himself as follows: -

“...It is settled that jurisdiction is the life blood of any adjudication because a court or tribunal without jurisdiction is like an animal without blood, which means it is dead. A decision by a court or tribunal without requisite jurisdiction is a nullity - dead - and of no legal effect whatsoever, that is why an issue of jurisdiction is crucial and fundamental in adjudication and has to be dealt with first and foremost...”

17. The Supreme Court in *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR held that the jurisdiction of a court flows from either *the Constitution* or statute or both. The Respondents in their preliminary objection contend that the matter before the Court constitutes a succession dispute, rather than a land dispute and therefore, falls outside the jurisdiction of this Court.

18. The mandate of this court is as established under Article 162(2) (b) of *the Constitution* which provides that 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. To give effect to Article 162 (2) (b) of *the Constitution*, Parliament enacted the Environment & Land Court Act. Section 13(2) of the said Act provides as follows:-

“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 inland; and
- (e) any other dispute relating to environment and land.”

19. The *Law of Succession Act* in section 47 provides for the jurisdiction of the High Court in respect of matters falling under the Act as follows:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”



20. In *Mbula Muoki Ndolo & Another vs Kenya Power and Lighting Company Limited* [2017] eKLR Nyamweya J, while making reference to the case of *Salome Wambui Njau (suing as Administratrix of the Estate of Peter Kiguru Njuguna (Deceased) v Caroline Wangui Kiguru, ELC (2013) eKLR* stated as follows:

“I held that in matters of succession disputes touching on land, Environment and Land Court Pursuant to Article 162(2) of *the Constitution* and the High Court as the Succession Court under Section 47 of the *Law of Succession Act* would appear to have a concurrent jurisdiction. It would thus depend on the circumstances of each case which court is best suited to hear and determine the dispute.”

21. The current application was filed contemporaneously with the plaint dated 17/02/2025 in which the Applicants are seeking orders for inter alia a declaration that they are the bona fide purchasers and owners of land parcels no. East Bukusu/South Kanduyi/17338, 17369, 17359 and 20680 and a permanent injunction be issued against the Respondents from dealing with the said parcels. In their pleadings, the Plaintiff/Applicants averred that they purchased the parcels of the suit land from beneficiaries of the estate of Charles Nakitare alias Charles Nasongo-dcd and that they obtained titles and have been in occupation of various parcels of land for an extended period of time.
22. Having carefully considered the pleadings, it is abundantly clear to me that the main point of contention is the ownership of the suit property. The Plaintiff/Applicants in my understanding are claiming the suit property as bona fide purchasers. They averred that the original title being land parcel no. E.Bukusu/S.Kanduyi/862 was registered in the name of Charles Nakitare alias Charles Nasongo-dcd and that they purchased their claimed portions from beneficiaries of the estate of the said deceased person and now seek to legitimize their purchases for the purposes of obtaining their titles which from the pleadings, have now been cancelled by the succession court after it revoked a grant previously issued.
23. As was held in the cases of *Pricilla Ndubi and Zipporah Mutiga vs. Gerishon Gatobu Mbui, Meru Succession Cause No. 720 of 2013, Estate of M’Murianki M’Mugwika (Deceased)*[2019]eKLR and *In Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR, the *Law of Succession Act* and the Rules confer jurisdiction to the probate court with respect to determining the assets of a deceased person, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested in the estate of the deceased. The Plaintiff/Applicants have not asked this court to do any of those functions. Furthermore, and in passing, the succession court properly directed itself by finding that it cannot interrogate the legality of the agreements which the Plaintiff/Applicants base their claim on.
24. It is trite that disputes between the estate of a deceased person and third parties are not necessarily adjudicated within the succession cause. The law provides that such disputes be resolved in the ordinary civil courts vested with jurisdiction and once a determination is rendered by a civil court of competent jurisdiction, any resultant decree or order may, where necessary, be presented to the probate court for purposes of implementation. That being the case, it is my finding that this court is vested with jurisdiction to determine this suit and I therefore find that the Preliminary objection as raised is devoid of merit.

Whether the application is merited?

25. Having established the mandate of this court as stated in the forgoing paragraphs, I wish to restate that the jurisdiction of this court is established under article 162 (2) of *the constitution* as well as section 13 of the *environment and land court Act*. On the other hand, the mandate of the succession court is as I have stated in the preceding paragraphs. The roles of these two courts are therefore separate and



distinct and this court cannot interfere with the jurisdiction of the succession court as sought by the Applicant, more so, because the two courts are of equal standing. In *Isaac Kinyua & 3 others V Hellen Kaigongi* [2018] eKLR, the court held that;

“Succession matters do not fall under the ambit of the jurisdiction of the ELC court. If this court was to grant stay orders in respect of the succession cause, it would in essence amount to straying in a field where the court has no jurisdiction”.

26. For the foregoing reasons, I decline to grant the orders sought in the application dated 12/03/2025.
27. The upshot of my finding is that both the notice of preliminary objection dated 23/04/2025 and the notice of motion dated 12/03/2025 is hereby overruled and dismissed accordingly. Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT BUNGOMA THIS 24TH DAY OF JULY, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Maloba H/B for M/S Masengeli for plaintiff/Applicant.
2. 1st Defendant-present
3. Bett C/A.

