



In re Estate of Jonathan Katimba Nthwao (Deceased) (Succession Cause 3203 of 2014) [2025] KEHC 5754 (KLR) (Family) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5754 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 3203 OF 2014

CJ KENDAGOR, J

APRIL 30, 2025

IN THE MATTER OF THE ESTATE OF JONATHAN KATIMBA NTHWAO (DECEASED)

IN THE MATTER OF

RICHARD MUTUKU KATIMBA PROTESTOR

AND

EMMANUEL MUCHANGA PETITIONER

RULING

1. The Deceased died intestate in September, 2008. The Petitioner, Emmanuel Sifuna Muchanga, filed citations to the family of the Deceased to accept or refuse the Letters of Administration intestate. He filed the citations on his behalf and on behalf of other persons who claimed to have purchased a part of the Deceased's estate. They described themselves as Creditors to the estate. The family members did not act, and he petitioned for Grant of Letters of Administration for the estate of the Deceased. The Court issued him with a Grant of Letters of Administration on 15th March, 2016. He subsequently filed Summons for Confirmation of Grant on 10th October, 2016 and sought the grant issued on 15th March, 2016 be confirmed.
2. In his affidavit in support of the Summons, the Petitioner stated that the Deceased had, before his death, sold a part of his estate known as LR No 12715/127 to them. He stated that each of the purchasers bought a part of the said property from the Deceased but the Deceased died before transferring the parcels to them. He also stated that the Deceased sold the parcels through his agent, Mbukoni Holdings Limited. He also produced the share certificates issued to them by the Deceased's agents Mbukoni Holdings Limited. He also filed Consent to the Mode of Distribution of the estate dated 10th October, 2016. He listed the purchasers against their respective parcels purchased from the Deceased.
3. They are as follows;



- a. Penina Wanza Ndambuki & Joseph Mulwa Masila - 0.0456 Ha.
 - b. Penina Wanza Ndambuki & Joseph Mulwa Masila - 0.0466 Ha.
 - c. Glorious Mutindi Maingi - 0.0926 Ha.
 - d. Emily Achieng Kitoto & Michael Jacks Odiyo - 0.0458 Ha.
 - e. Joseph Thingithu Mailutha & Agneszka Maria Thingithu - 0.045 Ha
 - f. Caleb Gechanga Obongo Ndege - 0.045 Ha.
 - g. Herman Odhiambo Oduor - 0.0458 Ha.
 - h. Jane Wairimu Kanguchu - 0.0464 Ha.
 - i. Jane Wairimu Kanguchu - 0.0464 Ha.
 - j. Susan Muthoni Kariuki - 0.0464 Ha.
 - k. Seran Nyakio Waihumbu - 0.0455 Ha.
 - l. Aggrey Indiavo Ndagala - 0.0455 Ha.
 - m. Job Kibyegon Wamiti - 0.0464 Ha.
 - n. Peter Gathungu Njuguna - 0.0464 Ha.
 - o. David Gathongo Gakure - 0.0464 Ha.
 - p. David Kiplagat Ruto - 0.0458 Ha.
 - q. Magdaline Chepkirwok - 0.045 Ha.
 - r. Rukia Koshene Mohamed - 0.045 Ha.
 - s. Simon Gachure Mwangi - 0.045 Ha.
 - t. Ismail Okioga Mecha - 0.0916 Ha.
 - u. Beatrice Chemutai Ngetich - 0.0464 Ha.
 - v. Job Onditi Nyangweso - 0.0464 Ha
 - w. Benjamin Nzioka Muindi & Judith Wanza David - 0.928 Ha
 - x. Joseph Mwanzial Malonza - 0.1838 Ha
 - y. Mathew Kioko Musau - 0.045 Ha
 - z. Charles Ksingwa Otieno - 0.0455 Ha
 - aa. Sarah Katumbi Kiilu - 0.0464 Ha
 - ab. Rosalind Wanjugu Kariuki - 0.0464 Ha
 - ac. Leah Wanjiku Kariuki - 0.0464 Ha
 - ad. Emmanuel Sifuna Muchanga - 0.0458 Ha
4. The Protestor (a son of the Deceased) lodged a protest on 28th February, 2017, through an Affidavit of Protest against Confirmation of Grant dated 27th February, 2017. He swore the affidavit on behalf



of the family and beneficiaries of the Deceased's estate. In the affidavit, he stated that the Deceased was the absolute owner of the Land Parcel LR No 12715/127 and that he did not hold it in trust for anybody. He stated that they had no knowledge that the Deceased had sold the parcel to Mbukoni Holdings Limited through a sale agreement dated 20th January, 2004. He stated that in his later years, the Deceased was ill and the illness affected his memory and he would have temporary memory loss.

5. He stated that the purported sale agreement dated 20th August, 2004 was a forgery because the Deceased could not have executed the same, understood its contents nor receive proceeds from the purported sale. He stated that at the purported date of execution of the alleged sale agreement, the Deceased was not capable of executing a sale agreement and could not have executed the same. He stated that it is not possible that the Deceased received proceeds from the alleged sale of the said parcel because there was no change in lifestyle. He stated that the Deceased did not appoint Francis Musembi Nthwao as his agent or trustee and that the latter had no authority to do so or receive money on his behalf.

Petitioner's Case

6. The matter went for hearing and witnesses testified. Two witnesses testified. PW1 was the Petitioner, who testified on behalf of the creditors. He testified that they bought the respective parcels from a land buying company - Mbukoni Holdings Limited. They were issued with payment receipts and certificates upon completion of the payments. He stated that most of the 36 plots are developed and the creditors live there. He testified that he bought his plot in 2004 and moved in in 2006. He stated that the family of the Deceased knew them. He testified that they filed citations to the family after Deceased died in 2008 and the family failed to file succession.
7. He testified that the owner of the land was the Deceased and that the director of the company showed them the Agreement between the company and Jonathan. He testified that the director of the company told them that he bought the land from the family of the Deceased and was selling plots after subdividing. He also testified that the company bought the land from Jonathan which they subdivided and was selling to them as plots. He stated that after completion of their payments, the company told them it had no money to process the title. He also testified that the company told them that the Deceased died before surrendering the title to them.
8. On cross-examination, he stated that their agreement was with the company. He also stated that the company was not their agent and that the sale agreement did not indicate that the company was buying on behalf of other people. He testified that he had no agreement with the company to take up administration of the estate, and that the company is still in operation. He stated that they did not get authority from the company to come to Court. He stated that they did not buy land from the Deceased and that they had no agreement with the Deceased over the plots. He stated that the family of the Deceased was willing to help them process the titles but later said they had no money for administration.
9. He testified that when buying the plots, the company did not tell them the land belonged to the Deceased. He testified that they bought the land knowing it belonged to the company. He stated that when buying the plots he did a search which showed that the land belonged to the Deceased. He stated that they saw the sale agreement between the company and the Deceased long after they had bought the plots. The company gave them a copy of the original title deed and the sale agreement much later when they were asking for titles. He stated that each of them paid for a plot or plots and has a certificate from the company to show completion of payment.



Protestor's Case

10. DW1 was Richard Mutuku Katimba, the 1st born of the Deceased. He testified for the estate of the Deceased. He adopted his affidavit as his evidence. He testified that the land in question belonged to the Deceased and it is in his name. He stated that he did not know about the land agreement in question and that the Deceased never gave anything to anyone to transact in the land. He stated he kept the title deed to the parcel. He stated that his brother, Francis Muia Katimba had no authority to act on behalf of the Deceased. He testified that he knew people live on the land on claims that they bought the land. He stated that he has never reported the matter to the police.
11. He testified that the chief called him to his office but he refused to go. He stated that he is not aware if Francis Musembi, a brother to the Deceased, was paid. On cross-examination, he stated that Mbukoni Holdings Limited said they had given money to Francis Musembi. The same agreement between the Deceased and Mbukoni indicated that the sale price was Kshs 2.5 million and the deposit is Kshs 100,000/=. He testified that Francis Musembi was given Kshs 1.5 million and that Kshs 1 million was the balance. He stated he was not aware about the payments to Francis Musembi and that they never received any money from Mbukoni Holdings Limited.

Petitioner's Written Submissions

12. The Petitioner submitted that the Protest should not be allowed. He argued that the protest lacks legal basis and there was no denial that the sale agreement was signed by the Deceased. In addition, he argued that the Interested Party confirmed purchasing LR No 12715/127 and thereafter subdividing and selling the same to the purchasers. He argued that evidence was tendered to the effect that some of the purchasers have been in occupation of the said plots for uninterrupted period of more than 20 years. He submitted that developments on the said property could not have happened without the consent of the Deceased. He argued that all the transactions took place prior to the demise of the Deceased with his full knowledge.
13. He prayed that the court finds that the petitioners have an interest to the Deceased's property as purchasers and beneficial owners. Further, he asked the Court to find that they have interest in the said estate as legal occupiers and developers thereon. He requested the court to dismiss the Protest and proceed and distribute LR No 12715/127 as proposed in summons for conformation of grant dated 10th October, 2016 and filed in Court on 11th October, 2016.

Protestor's Written Submissions

14. The Protestor submitted that the court should not confirm the grant. He argued that the purported agreement between the Deceased and Mbukoni Holdings Limited was a forgery. He argued that part of the purchase price was allegedly paid to the Deceased's brother and not the Deceased. In addition, he submitted that there was no authority or power of attorney presented to show the alleged Deceased' brother Francis Musembi Nthwao was authorized to transact on behalf of the Deceased. He submitted that if the Petitioners had any claim, it was against the company and not against the Deceased. He argued that the petitioners did not produce any sale agreements to show they purchased any land from Mbukoni Holdings Limited in any event.
15. He also submitted that this Court does not have jurisdiction to determine the petitioner's claim. He argued that the issue before the court is not one of succession but an ownership dispute which this Court has no jurisdiction to determine. He argued that the duty of the succession Court is to distribute the net estate of a deceased to rightful beneficiaries and does not determine the issue of ownership or title. He submitted that the Court cannot determine the ownership issue without taking witnesses on



whether the Deceased sold the land, whether agreement was genuine, whether monies were paid. He argued that the Court with jurisdiction to determine the same is Environment and Land Court.

16. In addition, he submitted that the petitioners do not fit the description of creditors and their claim is misplaced. He argued that Section 66 of the *Law of Succession Act* recognizes creditors but that claim must have been crystalized during the lifetime of the Deceased. He argued that the petitioners should not be described as creditors because they did not buy any land from the deceased or even the personal representative of the Deceased. He argued that the Petitioners have no claim over the estate because they have no debt with the Deceased. He maintained that their claim lies to a third party, Mbukoni Holdings Limited.
17. Lastly, he submitted that the Court should revoke the grant issued to the petitioners and the same be issued to him. He argued that the grant should be deemed null and void because it was issued by misrepresentation of facts.

Issues for Determination

18. I have considered the submissions of the parties and I opine that there are two issues for determination.
 - a. Whether this court has jurisdiction to determine the issues raised in the Protest.
 - b. Whether the Grant should be revoked and awarded to the Protestor.

Whether this Court has jurisdiction to determine the issues raised in the Protest

19. The locus classicus on jurisdiction is the celebrated case of *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1 where Justice Nyarangi of the Court of Appeal held as follows:-

“I think that is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 its stools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

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20. Similarly, the Supreme Court of Kenya in *Samuel Kamau Macharia v KCB & 2 others*, Civil Application No 2 of 2011 underscored the centrality of determining the question of jurisdiction. It held that the issue of jurisdiction is not one of mere procedural technicality and it goes to the very heart of the matter. The Court observed 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 to itself jurisdiction exceeding that which is conferred upon it by law.

We agree with Counsel 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. This court dealt with the question of jurisdiction extensively in the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application No 2 of 2011. 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.”

21. I have relooked at the facts and evidence to ascertain the nature of dispute before me. The Petitioners are occupants of property known as LR No 12715/127, but the property is in the name of the Deceased. They claimed they have beneficial interest on the said property and want the said property to be distributed to them. They claimed they bought the land from Mbukoni Holdings Limited which had purchased the same from the Deceased, and maintained that they are creditors of the Estate. On the other hand, the protestors disputed the purported sale agreement between the Deceased and Mbukoni Holdings Limited. They claimed that the Deceased never sold the land as alleged by the Petitioners and that the Petitioners are not Creditors to the estate.
22. In my view, the dispute between the parties revolves around ownership and occupation of the property known as LR No 12715/127. The central question is whether the Petitioners have proprietary interest on the said property. The determination of this question will need the Court to make a finding on whether there was a valid sale of land between the Deceased and Mbukoni Holdings Limited. The Court will also be required to make a determination on whether there was a valid transfer of ownership of land from Mbukoni Holdings Limited to the respective petitioners. Lastly, the court will be required to determine whether the Petitioners are Creditors to the estate of the Deceased.
23. This Court is being invited to determine whether it has jurisdiction to determine the above issues. In resolving the question, the Court sought guidance from judicial pronouncements on similar issues. The Court in *Re Estate of Mbai Wainaina (Deceased)* [2015] eKLR, faced a similar question and held as follows;

“The mandate of the probate court under the *Law of Succession Act* is limited. It does not extend to determining issues of ownership of property and declaration of trusts. It is not a matter of the probate court being incompetent to deal with such issues but rather the provisions of the *Law of Succession Act* and the relevant subsidiary legislation do not provide a convenient mechanism for determination of such issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land Court.

Consequently, and for the reasons above stated, I must find and hold that this court has no jurisdiction to resolve the proprietary interest on land based on the alleged trust. In this case therefore, the only path legally open to the applicants is to institute separate proceedings to articulate their claim/rights in the right forum and which is the Environment and Land Court.”



24. Similarly, the Court in *In re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR, encountered a comparable question and held as follows;

“It may be argued that the subject land is estate property and by dint of that fact the probate court would have jurisdiction thereon. The position is not as simple. The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, 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. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

Disputes of course do arise in the process. The provisions of the *Law of Succession Act* and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the *Law of Succession Act* and the Probate and Administration Rules.”

25. The Court in *In re Estate of Atibu Oronje Asioma (Deceased)* (Succession Cause 312 of 2008) [2022] KEHC 11046 (KLR) (22 July 2022) (Ruling) held as follows;

“There is ample case law to the effect that succession proceedings are not appropriate for determining disputes between the estate and third parties over title to or ownership of assets placed before the court for distribution. One such case is *In Re Estate of Kimani Kimitbia* [2008] eKLR (Ibrahim J) where it was stated that succession proceedings were not the appropriate way to challenge the title of the deceased to assets said to comprise his estate, on claims that such assets were subject to a trust in favour of the claimant. It was stated that such claims ought to be subjected to separate proceedings, where the claimants have to prove the trust, and thereafter seek revocation of the title or partition, which requires declaratory orders on the existence of the trust. It was asserted that that was not the function of the succession cause, where the claimant was neither a beneficiary nor dependant of the deceased, and that succession proceedings were not appropriate for resolution of seriously contested claims against the estate by third parties. The court then held that it had no jurisdiction to determine the claim of trust or to grant relief related to it.”

26. Lastly, the Court in *In re Estate of Njagi Njeru (Deceased)* [2018] eKLR faced a similar question and held as follows;

“31. The issue as to this Court’s jurisdiction can therefore only be determined by first answering the question whether this Court can effectively determine the nature of the applicant and Interested Party’s claim over the deceased’s property within the framework provided by the *Law of Succession Act*. The question of the legal effect of the sale agreement entered into between the Intended Interested Party and 1st Respondent, and particularly on the requirement of Land Control Board consent thereto, will need to be answered first, before this court as a probate Court can make a determination at the Intended Interested Party’s interest in the deceased’s property.



32. This resolution of that question will in addition involve application of the law on title to land, and the applicant's summons therefore goes beyond being merely a claim of succession to the deceased property. It is notable in this regard that disputes primarily concerning ownership of land title to land fall within the jurisdiction of the Environment and Land Court as provided by Article 162 (2)(b) of the *Constitution*, and Section 13(1) and (2) of the *Environmental and Land Court Act*. I appreciate that there is a pending suit seeking to settle the issues above specifically Embu ELC No 1 of 2015.”
27. Based on the above authorities, I find that the Court does not have jurisdiction to determine the issues at hand. This Court has no jurisdiction to resolve the proprietary interest on land based on the alleged sale of land between the Deceased and Mbukoni Holdings Limited. In this case therefore, the only path legally open to the petitioners is to institute separate proceedings to articulate their claim/rights in the Environment and Land Court.

Whether the Grant should be revoked and awarded to the Protestor

28. The Protestor submitted that the Court should revoke the grant issued to the petitioners and the same be issued to him. He argued that the grant issued to the Petitioners on 15th March, 2016 should be deemed null and void because it was issued by misrepresentation of facts.
29. Revocation of grant is provided for under Section 76 of the *Law of Succession Act*. The section provides as follows;

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) That the proceedings to obtain the grant were defective in substance;
- (b) That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) To proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) That the grant has become useless and inoperative through subsequent circumstances.



30. In Court in *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR interpreted the above section in the following term;

“ 11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

31. It is a prerequisite that for a Court to revoke a grant, the applicant must prove/establish at least one of the grounds listed under the Section. In *In re Estate of Amos Kiteria Madedda-Deceased* (Probate & Administration E004 of 2021) [2022] KEHC 12950 (KLR) (21 September 2022) (Ruling), the court held as follows;

“The section also lays down and explains what would be just cause within its meaning and enumerates the circumstances which would make out a just cause under the section or, in other words, the grounds for revocation admissible in law. It is almost beyond controversy now that such enumeration is exhaustive and not merely illustrative. I, accordingly, proceed upon that view.

27. In the above view the applicant for revocation must, in order to succeed, bring his case within one or other of the different clauses of section 76. Otherwise, his application would fail. It is clear, however, on a reading of the section, that, even if just cause be established, the applicant would not be entitled to an order for revocation as matter of course. The matter seems to be pretty clear. The section says that the grant may be revoked which prima facie leaves a discretion to the court.”

32. I have looked at the Court proceedings to determine whether there are grounds to revoke the grant. During the application for the grant, the Petitioners described themselves as creditors to the estate of the Deceased. The Court issued them with the grant on understanding that the petitioners were indeed creditors to the estate. The Court’s understanding could not be faulted because, at that time, there was no dispute on whether the petitioners were creditors. This is more so because, there was evidence that the family of the Deceased had been served with citations but had failed to file for letters of administration.

33. However, this position has since changed. The protestors later responded to the proceedings and have contested the claims that the petitioners are creditors of the estate. This Court cannot make a determination on whether the petitioners are creditors or whether they should be deemed creditors of the Estate. I leave that question for determination by the proper Court once the same has been properly moved by the petitioners.

34. In my view, the ground applicable for revoking this grant is Ground 76 (e). I opine that the grant issued to the Petitioners has become useless and inoperative through subsequent circumstances. The subsequent circumstances in this case being the fact that, the issue of the petitioners being creditors is now contested. I appreciate that the Court issued the grant on the understanding that the Petitioners were undisputed creditors. Given that this is no longer factual, and awaits determination, the grant



should not be allowed to stand. I thus revoke the grant issued to the petitioners on 15th March, 2016 and award the same to the Protestor.

35. The dispute has been in Court since 2014. The Petitioners are occupants of property known as LR No 12715/127, which is in the name of the Deceased. They have a legitimate expectation on the filing and determination of succession cause of the Deceased's estate and that informs the reasons why they petitioned the Court for the grant.
36. A perusal of the Court record and documents shows that the Protestors were reluctant to take out letters of administration. The Protestors and the family of the Deceased were served with citation notices to accept or refuse letters of administration. There is an affidavit of service on record dated 30th April, 2015 and sworn by Elijah Onchuru Onsume, a process server. The affidavit shows that the Protestor was served the citation notices physically and that he accepted service. The affidavit also shows that the protestor stated that he had authority to receive the notices on behalf of the other family members. Out of abundance of caution, petitioners went further to physically serve the citation notices on other siblings of the Protestor, namely, Benjamin Wambua Katimba, Francis Muia Katimba, and Harrison Ndeti Katimba.
37. This Court on 21st November, 2016 made a factual determination that the petitioners had filed and served the family of the Deceased with citations to accept or refuse the letters of administration. The Court confirmed that service for the said notices had been established. That factual finding is binding and a final determination on the question of whether the family members were served with the citation notices. This Court cannot re-open the same.
38. Having established the same, I find that the family of the Deceased, who are represented by the Protestor herein, deliberately failed to take out Letters of Administration, despite service of citation notice. The record shows that they sat on the documents and only showed interest in the proceedings when the matter came for Confirmation of the Grant. In my view, it was for their reluctance that the petitioners filed the current suit. In the interest of justice, I shall condemn the Protestor to pay the costs of this application.

Disposition

39. These are the final orders of the Court;
 - a. The Protest dated 27th February, 2017 and filed on 28th February, 2017 is hereby allowed.
 - b. The Grant of Letters of Administration intestate made to Emmanuel Sifuna Muchanga (the Petitioner) on 16th March, 2016 is hereby revoked.
 - c. A Grant of Letters of Administration intestate is hereby issued to the Protestor, Richard Mutuku Katimba.
 - d. In the interest of justice and considering that the dispute has been in Court for more than 10 years, the petitioners are granted time to file separate proceedings at the ELC within 90 days of this ruling to determine the disputed issues identified earlier in this ruling.
 - e. This Succession Cause is hereby stayed for 3 months from the date of this ruling, and it will be mentioned on 4th August, 2025 to confirm whether the Petitioners will have filed separate proceedings at the ELC, and for parties to report the progress of the ELC case.



- f. If the Petitioners will not have instituted any proceedings at the ELC within 90 days of this ruling, the Protestor will be at liberty to proceed with this Succession Cause at the first mention date.
- g. A Prohibition is hereby issued on the property known as LR No 12715/127 preventing the Administrators/Personal Representatives of the Deceased or their agents from dealing with the said property pending the hearing and determination of this Succession Cause.
- h. The Petitioners are awarded the costs of this application, which are to be borne by the Protester.

40. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 30TH DAY OF APRIL, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr Olonde, Advocate for the Petitioner/Creditors

