



REPUBLIC OF KENYA



**In re Estate of Edward Tale Nabangi (Deceased) (Miscellaneous Application
E002 of 2025) [2025] KEHC 9055 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9055 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS APPLICATION E002 OF 2025**

MS SHARIFF, J

JUNE 27, 2025

**IN THE MATTER OF ESTATE OF EDWARD TALE NABANGI
(DECEASED)**

BETWEEN

NEDDY NAFULA MUTEKHELE OBJECTOR

AND

NOBERT SIMIYU WATTANGAH 1ST RESPONDENT

CATHERINE NEKESA MALABA 2ND RESPONDENT

RULING

1. Vide a Motion application dated 28th January 2025, pursuant to Section 45(1), 47, 48, 55 & 76 of the Succession Act CAP 160 Laws of Kenya, Rules 59, 40(8) & 73 of the Probate and Administration Rules of 2010, Section 3 and 3(A) of the Civil Procedure Rules and all other enabling provisions of the Laws, the Objector/Applicant herein seeks the following orders:
 - a. That the application be certified as urgent and service be dispensed with in the 1st instance in respect of prayer A & B.
 - b. That pending the hearing of the application interpartes preservative orders do issue restraining the Respondent by themselves their agents or servants, employees or any other assignees or representatives from intermeddling in any way with the estate of the deceased.
 - c. That Grant of Letters of Administration with will annexed issued to the Respondents and confirmed on 12th August 2021 be revoked.



- d. That upon interpartes hearing and determination of this application all rent emanating from any property of the estate of the deceased, be deposited in common account to be opened by the Applicant and Respondents.
 - e. That upon hearing and determination of the application, the Chief Magistrate's Bungoma Succession Cause No. 288 of 2020 in the estate of Edward Tale Nabangi- deceased be transferred to this Honourable Court for hearing and final disposal.
 - f. That pending the hearing and determination of this application, all income accruing from the companies mentioned from the alleged will, be deposited in the joint account to be opened by the Applicant and Respondent.
 - g. That this Honourable Court be pleased to issue an order compelling the Respondents by themselves, their agents, servants, personal representatives, assignees and any other person to render a just and true statement of account of the estate of the deceased from December 2020 to date.
 - h. That upon determination of this application, the 1st and 2nd Respondents, their agents, servants, personal representatives, assignees and any other person to show cause why they should not be committed to jail for intermeddling with the deceased's estate.
2. The application was founded on the following grounds:
- a. That the Bungoma Chief Magistrate's Court lacks pecuniary Jurisdiction to Grant Letters of Administration, as correct estimated value of the estate to exceed Ksh. 20,000,000/= thus the proceedings are in breach of Section 48 and 49 of the Succession Act.
 - b. That the 1st and 2nd Respondents have sold several vehicles and assets forming part of the deceased's estate and drawn rent of an unknown amount for their own use.
 - c. That the Grant was obtained fraudulently and in breach of the laws as the Applicant herein and other beneficiaries did not execute the consent to the making of the said Grant in favour of the Petitioner, the 1st Respondent herein.
 - d. That the original will was never produced in Court hence the proceedings were founded on an invalid will.
 - e. That the parties were not called to Court at the confirmation of the Grant hence it was done secretly without the knowledge of the Applicant and other beneficiaries.
 - f. That the application for the Letters of Administration was filed clandestinely without some beneficiaries and the Applicant's knowledge.
 - g. That the estimated value of the deceased's estate at the time of his death was more than Kshs. 20,000,000/=
 - h. That the Applicant herein was left out during the application for Letters of Administration and confirmation thereof.
 - i. That it is therefore in the interest of justice that the orders sought in the first instance be granted.
3. In support of the Motion application, the Applicant herein swore and Affidavit on 28th January 2025, wherein she averred that she was the second wife of the deceased herein, Edward Tale Nabangi, and



that during their union they sired two children namely, Martin Nabangi and Peter Nabangi who were born in 2023 and 2010 respectively.

4. According to her, she used to reside with the deceased herein in Nairobi and upon his demise she was staying with the deceased in Nairobi with their children and that the deceased had bought her a piece of land at Njata near Magemo Dam where she has her matrimonial home. She averred that upon the demise of the deceased herein, she attended his burial at Bwake in Kabuchai Sub-County and after the burial, the 2nd Respondent herein, her co-wife, became hostile to everybody and took over everything to herself including the 13 motor vehicles to her exclusive use and control. Further the 2nd Respondent has since then kept possession of all the properties of the deceased herein to the exclusion, loss and detriment of the applicant and her children.
5. The applicant averred breach of fiduciary duty to the estate of the deceased on the part of the 1st and 2nd Respondents due to their sole possession, management and use of the assets of the estate of the deceased to her exclusion and the failure by the Respondents to account to all beneficiaries the collection, distribution and utilization of funds received from all the businesses or assets of the estate of the deceased from July 2020 to date.
6. It was further averred that the Respondents have perpetrated fraud on the said estate by using a will whose authenticity is questionable as to when it was prepared and executed. Further they have filed the succession proceedings in the lower Court with the full knowledge of the fact that the value of the assets of the estate of the deceased Edward Tale Nabangi, exceeds the pecuniary jurisdiction of the Chief Magistrate's Court at Bungoma.
7. Opposing the Applicant's Motion Application, the Respondents filed their Grounds of Opposition dated 3rd February 2025, wherein they preferred the following grounds:
 - a. The application is incompetent, fatally defective and an abuse of the Court process.
 - b. That the Applicant lacks locus.
 - c. That the application is misplaced and lacks merit.
 - d. That this Court lacks jurisdiction to entertain the application.
 - e. The applicant's Misc. Application be dismissed with costs.
8. Vide Court directions issued on 20th February 2025, this Court ordered that the Motion application be dispensed with by way of written submissions. On my perusal of the Court record only the Respondents herein complied with the Court directives.
9. The 1st and 2nd Respondents vide the law firm of Wattangah & Co. Advocates submitted on the issues as captured in the Grounds of Opposition. Mr. Wattangah submitted that the Applicant moved this Court vide a Misc. Application yet there is no substantive suit before this Court making the same fatally defective. He submitted that the Applicant herein seeks prayers of revocation of a Grant of Letters of Administration but failed to avail said Grant and that she lacks the authority to file any claim of behalf of the estate of the deceased thus has no locus.
10. On the issue of transfer of suit, he submits that the Applicant failed to attach the alleged grant issued in Bungoma CMC Succession Cause No. 288 of 2020, and insisted that the chief Magistrate's Court has the requisite jurisdiction to proceed with the Succession cause. He submits that if the Applicant had an issue with the Grant of Letters of Administration by the subordinate court, he ought to have filed summons of revocation in the lower Court but not the contentious motion application before this Court.



11. On jurisdiction, counsel submits that this Court lacks jurisdiction as per Section 48 and 50 of the *Law of Succession Act*. He insists the motion herein seeks to operate as an appeal to the decision of the Magistrate’s Court and that if the Applicant was dissatisfied with the decision of the lower Court, then he ought to have sought leave to lodge an appeal. He urged this Court to dismiss this application.
12. A perusal of the record of appeal reveals that a Grant of Representation was issued to the 2nd Respondent herein on 12th August 2021 and the same was subsequently confirmed on 15th August 2021.
13. The main issue that arises for determination is whether this Court can order the transfer of Bungoma Chief Magistrate’s Court Succession Cause No. 288 of 2020 to this Court for hearing and determination, and if so, whether it should so order.
14. Before I venture into that, it has to be noted from the outset that jurisdiction is the starting point on every judicial determination; for a Court of law to entertain a matter when not seized of jurisdiction is an exercise in futility. Neither can the Court arrogate unto itself jurisdiction that it does not have. In the case of *The Owners of Motor Vessel “Lilian S” v Caltex Oil (K) Limited* [1989] KLR, Nyarangi JA (as he then was) had the following to say on jurisdiction:

“Jurisdiction is everything. Without it, a court has no power to make one more step. A court of Law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
15. The jurisdiction of each court flows from either *the Constitution* or legislation. In *Samuel Kamau Macharia & another v Kenya Commercial Bank & 2 others* [2012] eKLR Supreme Court held that:

“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 a matter of mere 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 Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of Law, the court must operate within *the Constitution* 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.”
16. It is not in doubt that though the High Court has discretionary powers to order transfer of a matter from the subordinate Court to the High Court, a matter can only be transferred if the Court from which the Applicant is seeking to have the matter transferred from had jurisdiction over the said matter and the Applicant has satisfied the Court that the transfer is necessary.
17. The general powers of the Court to transfer suits under Section 18 of the *Civil Procedure Act* cannot be exercised in a matter where the suit was filed in a court without jurisdiction.



18. The High Court has reaffirmed this position in numerous decisions including *Gaikia Kimani Kiarie v Peter Kimani Kiramba* [2020] eKLR and where the Court held that:

“The law relating to transfer of suits from subordinate Courts to the High Court or any transfer for that matter is very clear. In *Kagenyi vs. Musiramo* (supra), Sir Udo Udoma, CJ made it clear that an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it. In *Ali Sheikh vs. Edward Nderitu Wainaina & Others* (supra), Koome, J (as she then was) found that since the plaintiff had filed a suit in respect of a claim to land whose value exceeded Kshs. 500,000.00 in the subordinate court the suit could not be transferred since the general powers of the court to transfer suits under section 18 of the *Civil Procedure Act* cannot be exercised in a matter where the was filed in a court without jurisdiction. A similar view was taken by the same Judge in *Rainbow Manufacturers Limited vs. National Bank of Kenya* (supra).”

19. It is not in dispute that the subject of the succession before the magistrate’s Court in Bungoma Chief Magistrate’s Court Succession Cause No. 288 of 2020 is the estate of the late Edward Tale Nabangi and the parties are not in agreement with the value of the said estate. The Applicant alleges that the value of the said estate exceeds Kshs. 20,000,000/=.

20. It is trite law that he who alleges must prove. Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya, provides that:-

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

21. In *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that:-

“As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is cast upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

22. It is noted that the Applicant’s allegation that the estate of the deceased exceeds Kshs. 20,000,000/= was not supported by any valuation report wherefore this court is not able to make a decision whether the value of the assets of the estate of the deceased exceeds Kshs 20 million. This court has perused the copy of the Will exhibited as NNM1 and a copy of the certificate of confirmation of grant annexed as annexure NNM6i-iii in the supporting affidavit of the applicant and has noted that the estate of the deceased is comprised of several assets and there is a high probability that the value thereof could as well exceed Kshs 20 million. This observation notwithstanding, this court makes decisions based on tangible evidence rather than presumptions. In any event had the applicant adduced a valuation report that would have placed the pecuniary value of the assets of the estate of the deceased at a figure above Kshs 20 million, this court would have found that Bungoma Succession Cause No 288 of 2020 was filed before a court without jurisdiction and I would not have acceded to the prayer for a transfer.



23. As regards the issue of locus of the applicant, it is trite law that pleadings filed in Court by persons with no locus standi are void ab initio and the Court would have no jurisdiction in such actions. In *Ibrahim V Hassan & Charles Kimenyi Macharia*, [2019] eKLR the Court observed as follows:-

“Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, he means that party cannot be heard, despite whether or not he has a case worth listening. The issue herein is whether the Applicant lacks the requisite locus standi to seek relief from the court to revoke the grant in question issued to the Respondent. In my view, issues as regards locus standi are critical preliminary issues which must be dealt with and settled before dwelling into other substantive issues”.

24. The position in law as regards “locus standi” in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession. In the Court of Appeal in *Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama* [2014] eKLR when discussing the issue of locus standi in succession causes stated as follows:

“.....the position in law as regards locus standi in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession.

It is the grant of full or limited letters of administration in intestate succession or grant of probate in testate succession that gives a litigant locus standi to deal with all affairs related to the Estate of a deceased person. This must be why Section 82 of the *Law of Succession Act* (the Act) lists powers of personal representatives to include the power to enforce by suit or otherwise, all causes of action which by virtue of any law survives the deceased or arise out of his death for his estate.”

25. In this case, it is not disputed that the Applicant was not the appointed executor of the contested will nor did she petition or obtain either a full grant or a limited grant to the Estate of the deceased. Secondly, it is also not disputed that she did not file an objection to the Respondent’s petition for grant of probate and her application for joinder of the alleged excluded Objectors/Beneficiaries was dismissed by the trial Court.

26. Under Section 2 of the Probate & Administration (P&A) Rules, an objector is defined as follows :-

“ a person who has lodged an objection under Rule 17 to the issue of a grant.”

27. It is crystal clear from the above definition that a person only qualifies to be an objector if he /she files an objection under Rule 17 of the P & A Rules. The Applicant had not complied with the provisions of Rule 17 of the said Rules.

28. Flowing from the foregoing, it is my finding that the Applicant has no locus standi to move this court and her recourse would have been to comply with Rule 17 in the subordinate court or in the absence of that, to approach this court under it’s appellat jurisdiction.

29. I do agree with the respondent that the application herein has no substratum more so given that the applicant has not invoked the supervisory jurisdiction of this court.



Conclusion

30. On the balance I do find that the applicant's application by way of motion dated 28th January 2025 is devoid of merit wherefore the same is hereby dismissed.
31. Given that this is a family matter each party will shoulder it's own costs.
32. This file is marked as closed.
33. It is hereby so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 27TH DAY OF JUNE 2025.

M.S.SHARIFF

JUDGE

