



REPUBLIC OF KENYA



**In re Estate of Henry Masinde Muliro (Deceased) (Succession Cause E023 of 2023) [2025] KEHC 2360 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2360 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E023 OF 2023  
RN NYAKUNDI, J  
FEBRUARY 20, 2025**

**IN THE MATER OF THE ESTATE OF HENRY MASINDE MULIRO (DECEASED)**

**BETWEEN**

**MUSOKE NABUKURU MULIRO ..... 1<sup>ST</sup> PETITIONER**

**ANGELA MUKHWANA MULIRO ..... 2<sup>ND</sup> PETITIONER**

**AND**

**MUKASA MWAMBU MULIRO ..... 1<sup>ST</sup> PROTESTOR**

**REGINA ROSALIND WANDERA ..... 2<sup>ND</sup> PROTESTOR**

**RULING**

1. I have before me summons for determination dated 22<sup>nd</sup> January, 2025 expressed to be brought under the provisions of Section 47 of the Succession Act and Rule 73 of the Probate & Administration. The applicants seek order as follows:
  - a. Spent
  - b. That this honourable court do transfer this succession cause to High Court of Kenya at Kitale for hearing and determination.
  - c. Costs of this application be in the cause.
2. The summons is predicated on grounds that most of the properties of the late Henry Masinde Muliro are in Trans-nzoia County within the jurisdiction of Kitale High Court. That the deceased died and was buried in Trans-nzoia within the jurisdiction of the High Court of Kenya at Kitale and that it is in the interest of justice that the instant application is allowed.



3. In response to the application, the Petitioners through learned Counsel Ms. Isiaho vehemently opposed the summons through a replying affidavit sworn by Musoke Nabukuru Muliro in which he deposed as follows:
- a. That I confirm that all the parties herein are beneficiaries to the estate of the deceased herein; the late Henry Masinde Muliro by virtue of being his children from the 2<sup>nd</sup> and 1<sup>st</sup> houses respectively.
  - b. That I confirm that our late father was polygamous having married two wives in his lifetime namely the late Mercia Muliro who was the mother to the 3<sup>rd</sup> and 4<sup>th</sup> Administrators and the late Redempta Nekesa Muliro who was the mother to the 2<sup>nd</sup> Administrator and I.
  - c. That I am aware that my step mother, Mercia Muliro instituted Eldoret High Court Probate and Administration number 125 of 1993 with respect to our late father's estate.
  - d. That I know of my own knowledge that my step-mother was issued with Grant of letters of Administration which were later confirmed on 29<sup>th</sup> November, 2004.
  - e. That it is also within my personal knowledge that our step-mother failed to include the beneficiaries of the 2<sup>nd</sup> house from which the 2nd Administrator and I come from.
  - f. That the above non-disclosure of facts informed my sister, the 2nd Administrator/Respondent to move this court in Eldoret High Court Probate and Administration number 125 of 1993 seeking the revocation and annulment of the Grant issued to the 3rd and 4th Administrators' mother, the late Mercia Muliro.
  - g. That it is within my personal knowledge that Hon. Justice E. Ogolla, as he then was, found in our favour in the above objection proceedings vide the ruling delivered on 18th July, 2022.
  - h. That my sister and I opted to move this court vide the current cause in tandem with the directions of the ruling as stated above.
  - i. That in the foregoing, I believe that the application now before court is an afterthought calculated at delaying the conclusion of this matter at the expense of the other beneficiaries especially from the 2<sup>nd</sup> house since the 3<sup>rd</sup> and 4<sup>th</sup> Administrators control the lion's share of our late father's estate.
  - j. That I believe that the application as present being a ploy to further delay justice at our expense is devoid of merit, malicious hence a candidate of dismissal.
  - k. That the Applicant has not stated the prejudice they stand to suffer should this matter be concluded before this court especially since the beneficiaries of the 2<sup>nd</sup> house are agreeable to the list of purchasers furnished by the Applicants in line with paragraph 3 of their further affidavit dated 15<sup>th</sup> November, 2024 and filed in court on even date.
  - l. That the liability having been agreed upon as stated above, the only issue that remains determination is the distribution of our late father's estate so that this long outstanding matter be brought to conclusion.
  - m. That since our late father was polygamous, the 2<sup>nd</sup> house proposes that his estate be distributed equally to his two houses as provided by section 40 of Cap. 160 of the Laws of Kenya.
  - n. That I believe that justice delayed is indeed justice denied.



- o. The High Court of Kenya at Eldoret has unlimited original jurisdiction to hear and determine these proceedings to their conclusion.
  - p. Consequently, this court is properly seized of the jurisdiction to hear and determine this succession cause to conclusion, regardless of the location of the deceased's domicile or properties.
  - q. The issue of jurisdiction was never raised when the objection proceedings were filed and determined before this court hence rendering the application an afterthought.
  - r. Transferring the matter to the High court at Kitale at this late stage will result in unnecessary delays and increased costs, thereby frustrating the just and efficient resolution of this cause as provided by the Overriding objective of the expeditious disposal of cases as provided by Sections 1A and 1B of Cap. 21 of the Laws of Kenya.
  - s. This court is further clothed with the inherent powers to determine this matter as provided by section 47 of Cap. 160 and Rule 73 of the Probate and Administration Rules.
  - t. That the convenience of the Applicants cannot override the best interest of justice, which require the expeditious conclusion of these proceedings for the benefit of all parties concerned.
  - u. That it is in the best interest of justice and fairness that the application be disallowed and the cause set down for confirmation the liabilities having been agreed on as stated above.
  - v. That the court is properly seized of the matter, having handled the same from inception to the stage of confirmation.
  - w. That the 3rd Administrator has been the sole beneficiary of all the proceeds from the estate of the deceased for the last 32 years since the demise of our father, and wants so to continue benefiting at our expense by causing more delays in concluding this matter.
  - x. That in the best interest of the other beneficiaries and the creditors of the estate, the instant application should be dismissed with costs to us.
  - y. That the Applicants have consistently and passionately endeavoured to delay the conclusion of this matter process, and this application is yet another gimmick/stunt they are employing to achieve their unjust ends.
4. Having considered the application and the response thereto, it is evident that the central issue requiring determination is whether this succession cause should be transferred to the High Court at Kitale. The applicants have predicated their request on jurisdictional grounds related to the location of properties and the deceased's place of burial, while the respondents oppose the transfer citing judicial economy, the court's existing jurisdiction, and concerns regarding potential delay tactics. Before proceeding to analyse the merits of these competing arguments and determining whether the application meets the threshold requirements under Section 47 of the Succession Act and Rule 73 of the Probate & Administration Rules, it is necessary to carefully examine the legal principles governing succession jurisdiction and the circumstances that would warrant transfer of proceedings at this stage of the matter.
5. The jurisdiction of the High Court to transfer suits from one Court to another is provided under Section 18 of the [Civil Procedure Act](#) which states as follows-



1. On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—
  - a. transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
  - b. withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
    - i. try or dispose of the same; or
    - ii. transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
    - iii. retransfer the same for trial or disposal to the court from which it was withdrawn.
  
2. Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”
  
6. In the case of *David Kabungu v Zikarenga & 4 others* Kampala HCCS No. 36 of 1995, the Court had the following to say on the circumstances under which the order to transfer suits may be granted-
 

“Section 18(1) of the *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. The burden lies on the Applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice or the suit has been filed in a particular court for the purposes of working injustice. What the court has to consider is whether the Applicant has made a case to justify it in closing doors of the court on which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction ..... It is a well-established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are balance of convenience, questions of expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication must be refused. Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court from which transfer is sought has no jurisdiction to try the case, transfer could be refused.....”
  
7. Upon careful consideration of the application, the response, and the applicable legal provisions, I find that the transfer of this matter is warranted under Section 47 of the Succession Act and Rule 73 of the Probate & Administration Rules. The territorial connection to Trans-Nzoia County is substantial, as evidenced by the location of the deceased's properties and his place of burial, thereby creating sufficient nexus to the High Court at Kitale as the appropriate forum for these proceedings.



8. The court has wide discretion under Section 18 of the *Civil Procedure Act* to transfer proceedings when circumstances justify such action. In exercising this discretion, I am guided by the principle that succession matters are optimally adjudicated in the jurisdiction most closely connected to the deceased's estate and final domicile. The preponderance of estate assets within Trans-Nzoia County constitutes a compelling jurisdictional consideration that outweighs procedural concerns regarding the stage of proceedings.
9. While noting the respondents' objections regarding potential delay, this Court finds that the fundamental interests of justice, efficient estate administration, and judicial economy are best served by having this matter determined by the High Court at Kitale. The transfer at this juncture will ensure proper oversight of the estate distribution process by the court with the most substantial connection to the subject properties.
10. Consequently, I make the following orders:
  - a. The application dated 22<sup>nd</sup> January, 2025 is hereby allowed.
  - b. This succession cause is transferred to the High Court of Kenya at Kitale for hearing and determination.
  - c. Status Conference on 27.2.2025
  - d. The costs of this application shall be in the cause.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025**

**R. NYAKUNDI**

**JUDGE**

In the Presence of:

M/s R.E Nyamu & Co. Advocates

M/s Isiaho Sawe & Co. Advocates

