



**In re Estate of the Late Richard Gathigi Muiga (Deceased) (Succession Cause 202 of 2005) [2025] KEHC 1651 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1651 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 202 OF 2005  
HI ONG'UDI, J  
FEBRUARY 18, 2025  
IN THE MATTER OF THE ESTATE OF THE  
LATE RICHARD GATHIGI MUIGA (DECEASED)**

**BETWEEN**

**BENARD KABOCHI ..... APPLICANT**

**AND**

**MIRIAM MUTHONI GATHIGI ..... 1<sup>ST</sup> ADMINISTRATOR**

**RUTH WAMBUI GATHIGI ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

1. This ruling is in respect of the Notice Motion dated 10<sup>th</sup> November, 2023 where the applicant seeks the following orders;
  - i. That this honourable court be pleased to review its orders dated 12<sup>th</sup> July 2012 and subsequent rectified certificate of confirmation of grant herein.
  - ii. That this honourable court be pleased to reconsider that title deed number Nyandarua/Turasha/104 is 23.0 hectares yet a grant was issued for 12. 518 hectares and issue further orders.
  - iii. That this honourable court be pleased to reconsider that parties have been unable to settle on the ground because a settlement sketch map was not filed and despite there being a confirmed certificate of grant and issue further orders.
  - iv. That costs of this application be provided for.
2. The said application is premised on the grounds on its face as well as the affidavit of the applicant sworn on even date. He deponed that the orders of this court and subsequent grant issued on 12<sup>th</sup> July 2012 was erroneous and insufficient. Further, that the grant obtained from this court is not being complied



with because the title deeds were obtained to the contrary. That he had never received his title deed nor asked for his documents for title processing.

3. He further deponed that there were omissions and some of the beneficiaries of the estate had been unable to benefit from the estate of their deceased kin. That the administrators had taken advantage of the confusion to benefit themselves and have refused to properly act. He added that no prejudice would be occasioned if the court re-looked their file and gave them a way forward.
4. In response to the application, the 1<sup>st</sup> administrator filed a replying affidavit dated 11<sup>th</sup> January 2024 sworn by the 1<sup>st</sup> respondent. She urged the Court to dismiss the applicant's application with costs since it lacked merit and the same was a repetition of yet a similar application whose fate was decided by Justice H.K. Chemitei J on 20<sup>th</sup> July 2023.
5. The application was to be canvassed by way of written submissions. I however note that submissions in the court records are those of the 1<sup>st</sup> administrator only. The applicant's counsel on 28<sup>th</sup> November 2024 informed the court of having her submissions filed but the same are not in the court file or the CTS portal.
6. The 1<sup>st</sup> administrator's submissions were filed by the firm of Karanja-Mbugua & Company Advocates on 17<sup>th</sup> October 2024. Counsel submitted that no notice of change of advocates was filed by the firm of Maobe Kerubo & Associates Advocates in place of M/s J.A. Simiyu & Co. Advocates. Thus, the present application having been filed by an advocate who was not properly on record was incompetent motion and ought to be struck out. Further, that this Court lacked jurisdiction to entertain the said application whose results would affect Justice H.K, Chemitei's finding of 20<sup>th</sup> July 2023. That no application for review of such orders was made on that day.
7. He further submitted that the said application was *res judicata* pursuant to the provisions of section 7 of the [Civil Procedure Act](#). He placed reliance on several decisions among them *Mwangi Njangu v Meshack Mbogo Wambugu and Esther Mumbi* Nairobi HCC No 2340 of 1991(unreported) where the court held as follows;  

“If a litigant were allowed to go on forever re - litigating the same issue with the same opponent before Courts of competent jurisdiction, merely because he gives his case some cosmetic face-lift on every occasion he comes to a Court, then I do not see what use the doctrine of *res judicata* plays”
8. He thus urged the court to dismiss the applicant's application with costs in the 1<sup>st</sup> administrator's favour.

### **Analysis and Determination**

9. I have considered the application, the affidavits and the submissions by the 1<sup>st</sup> administrator/respondent. I find two issues falling for determination namely;
  - i. Whether the application dated 10<sup>th</sup> November, 2023 is properly before this court.
  - ii. Whether the application dated 10<sup>th</sup> November, 2023 is merited.
10. Regarding the first issue, the 1<sup>st</sup> administrator's counsel argued in his submissions that no notice of change of advocates was filed by the firm of Maobe Kerubo & Associates Advocates in place of M/s J.A. Simiyu & Co. Advocates. Thus, the present application having been filed by an advocate who was not properly on record was incompetent and ought to be struck out.



11. Having perused the court file, I note that there is a notice of appointment of advocate for the applicant dated 13<sup>th</sup> July 2021, and filed by the firm of M/s J.A. Simiyu & company advocates. To date no notice of change of advocates has been filed introducing the firm of M/s Maobe Kerubo & company advocates despite the said firm that having filed the present application for review.
12. In *Tobias M. Wafubwa v Ben Butali* [2017] eKLR it was held as thus;

“Once a judgment is entered, save for matters such as applications for review or execution or stay of execution inter alia, an appeal to an appellate court is not a continuation of proceedings in the lower court, but a commencement of new proceedings in another court, ... Parties should therefore have the right to choose whether to remain with the same counsel or to engage other counsel on appeal without being required to file a Notice of Change of Advocates or to obtain leave from the concerned court to be placed on record in substitution of the previous advocate”. (Emphasis mine).
13. An application for review or stay of execution is a continuation of proceedings as was held in the above cited decision. Thus, the party filing an application such as the one before this court ought to file notice of change of advocates or to obtain leave of court to bring on record a new advocate in substitution of the previous advocate. No such notice was filed in this case nor leave sought for substitution of the former counsel. I therefore find that the law firm of M/s Maobe Kerubo & Company Advocates are not properly on record for the applicant and had no capacity to file the current application on behalf of the applicant. It is therefore not surprising that the said law firm never filed any submissions to the application.
14. Having found as above this court shall not proceed to determine the second issue as the same has been caught up in drag net of the first issue. The applicant should put his house in order by following the right procedure.
15. The above being the position, I hereby strike out the application dated 10<sup>th</sup> November 2023 with no orders as to costs.
16. Orders accordingly.

**DELIVERED, VIRTUALLY DATED AND SIGNED THIS 18<sup>TH</sup> DAY OF FEBRUARY, 2025 IN OPEN COURT AT NAKURU**

**H. I. ONG’UDI**

**JUDGE**

