



**In re Estate of Edward Mutuku Mwando alias Mutuku Mwando (Deceased)
(Succession Cause 372 of 2012) [2025] KEHC 2021 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2021 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 372 OF 2012**

FR OLEL, J

FEBRUARY 6, 2025

**IN THE MATTER OF THE ESTATE OF EDWARD MUTUKU
MWANDO ALIAS MUTUKU MWANDO (DECEASED)**

BETWEEN

PATRICK MUASYA MUTUKU 1ST PETITIONER

BONFACE MUTALU MUTUKU 2ND PETITIONER

AND

**AGNES NDANU MUSEMBI (SUING AS LEGAL REPRESENTATIVE OF THE
ESTATE OF THE LATE DANIEL MUSEMBI MUTUA) INTERMEDDLER**

AND

DANIEL MUTUNGA MUTUKU INTERESTED PARTY

RULING

1. The application before this court is the Notice of Motion dated 6th November 2023. The applicant seeks for orders that;
 - a. That this honourable court be pleased to substitute the intermeddler herein one David Musembi Mutua with the intermeddler/Applicant herein Agnes Ndanu Musembi.
 - b. That costs of the Application be in the cause.
2. The application is supported by the grounds on the face of the said Application and the supporting Affidavit of the Applicant, Agnes Ndanu Musembi dated 6th November 2023, where she depones that her husband, the late David Musembi Mutua was a party to this suit but had unfortunately died on 05.08.2023 as a result of Kidney failure.



3. Her deceased husband had an interest in the estate herein, as he had purchased land, which constituted part of the said estate from the petitioner's father, (the deceased herein). That cause of action survived the deceased/ intermeddler and It was therefore in the interest of justice to allow this application, to enable her protect her families interest.
4. This application is opposed by the respondents, who filed a replying affidavit sworn by the 1st respondent Patrick Muasya Mutuku. He averred that this Application was made without basis, was frivolous, vexatious, scandalous and was an abuse of the process of the court for reason that the grant of letters of administration had been confirmed and the estate subsequently distributed.
5. It was their contention that the Applicant husband claim was a claim over use and ownership of land, which claim could only be determined by the Environment and land court.
6. The petitioners therefore urged the court to dismiss the said Application with costs.

Analysis & Determination

7. I have carefully considered the Notice of motion, its Supporting Affidavit, and the Respondent's replying affidavit and find that the only issue for determination is whether the court should exercise its discretion to substitute the deceased/intermeddler, with his wife.
8. Though, the applicant did annexure a letter from the chief confirming that she was wife of the deceased David Musembi Mutua and consent of her children allowing her to follow up his matter, legally she still lacks locus standi to represent her husband's estate until she is legally appointed the administrator of the said estate, through getting letter of administration ad litem or grant of letters of administration.
9. Secondly, the record confirms that, what is in dispute between the applicant's deceased husband and the petitioner's/respondents is a land claim. The intermeddler's case was that he bought part of the deceased estate before 2010 and settled thereon. He was therefore entitled to the portion bought.
10. As an "obiter", the court observes that it can only deal with matters statutorily conferred and where issues arise outside the jurisdiction of the law of succession Act, Cap 160, the same must be determined by the proper court.
11. In Re; Estate of Atibu Oronje Asioma (Deceased) (Succession Cause 312 of 2008) [2022] KEHC 11046 (KLR) (22 July 2022) (Ruling), the Court stated:

“The design of the Law of Succession Act was that the mandate of the probate court was limited to distribution of the assets, and where a dispute arose on ownership of any asset, then the same should be placed in another forum, and not the succession cause, for litigation and determination. That was the spirit of rule 41(3) of the Probate and Administration Rules. Succession proceedings were not appropriate for determining disputes between the estate and third parties over title to or ownership of assets placed before the court for distribution.

Besides the provisions of the Law of Succession Act and the Probate and Administration Rules, the applicants had to also contend with the Constitution of Kenya, 2010 (Constitution), so far as the jurisdiction of the High Court was concerned, with respect to disputes over title to land and trusts over land related to title to the land. Article 162(2) of the Constitution envisaged a court with jurisdiction to handle disputes relating to title or ownership of land. Under article 165(5) of the Constitution the High Court should not exercise jurisdiction over the matters to be placed under the court contemplated by article, 162(2). The court envisaged in article 162(2) was subsequently established under the



Environment and Land Court Act, to handle the disputes stated in article 162(2). The Land Registration Act and the Land Act identified the Environment and Land Court as the court for the purposes of disputes relating to matters touching on land, including registration, which was at the core of the instant application.

12. The Applicant is therefore well advised to apply for letters of administration with respect to her late husbands' estate and file her claim in the Environment and land court.

Disposition

13. The upshot, is that the Notice of motion Application dated 6th November 2023 lacks merit and the same is dismissed with no orders as to costs.

14. It is so ordered.

READ, SIGNED AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 6TH DAY OF FEBRUARY, 2025.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this 6th day of February, 2024

In the presence of:-

No appearance for applicant

No appearance for respondent

I.Jabo Court Assistant

