



**Borde v Shige (Family Miscellaneous Application E002 of 2025)
[2025] KEHC 4424 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4424 (KLR)

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

**FR OLEL, J
APRIL 8, 2025**

IN THE MATTER OF THE ESTATE OF HUSSEIN SHIGE BORDE (DECEASED)

BETWEEN

SHUKRI SHIGE BORDE APPLICANT

AND

HAWO HUSSEIN SHIGE RESPONDENT

RULING

A. Introduction

1. The applicant did file his Notice of motion Application under provisions of Section 34,45,47 and 83 of the *law of succession Act*, Order 40 Rule 1(a) and 4 of the Civil procedure Rules and Article 40 of *the Constitution* of Kenya and sought for Orders that;
 - a. Pending the hearing and determination of this Application, this Honourable court be pleased to issue a temporary injunction restraining the Respondents, their agents, servants and/or employees from intermeddling and/or interfering, wasting, constructing on or howsoever dealing with parcels of land at Dakabaricha sagante (121), a land at Dirib Gombo and residential home occupied by the widow which form part of the Deceased Estate.
 - b. This Honourable court be pleased to order for an audit of the entire Deceased estate since his demise to be conducted by a reputable audit firm.
 - c. Pending the hearing and determination of this Application, this Honourable court be pleased to issue an order preserving the Deceased Estate.
2. This application is supported by the grounds stated on the face of the said Application and the supporting affidavit of the applicant where he depones that matters relating to the estate of the deceased had been determined by the Kadhi, vide Marsabit Succession cause No E1 of 2023, and the respondent



being dissatisfied had appeal against the said decision vide Marsabit High court civil Appeal No E003 of 2023, yet she was a stranger to the estate and had not even been listed as a beneficiary by their Area chief.

3. The applicant further averred that the respondent was selling estate property to third parties and was therefore unlawfully intermeddling with the deceased estate. He therefore urged the court to intervene and issue the orders sought as the estate beneficiaries would suffer irreparable loss and damage should the respondent be allowed to continue with her unlawful activities.
4. In response, the respondent did file her replying affidavit dated 10th March 2025, where she averred that the Kadhi's decision on distribution of the estate was set aside by the honorable judge in Marsabit High court, Civil Appeal No E003 of 2023 and the applicant had neither filed an appeal to the court of appeal or sought to review the said judgment. The upshot was that the applicant was neither an administrator nor had the capacity to sue as such.
5. Secondly, the respondent averred that the applicant had not provided any evidence to prove that the properties referred to, belonged to the estate and/or proof of their sale. The issue of intermeddling with estate property was therefore mute. She prayed that the application be dismissed with costs.

B. Analysis & Determination

6. I have considered the application and response filed. The judgment issued by the kadhi in Marsabit Kadhi's Succession cause No E001 of 2023 was set aside by the Honorable judge in Marsabit High court Civil Appeal No E003 of 2023 and he did direct that the Kadhi's court file be forwarded to the High court, Marsabit for hearing and determination.
7. The applicant should have filed this application in the succession file, to be forwarded to this court and not seek substantive orders in a Miscellaneous Application filed not hinged on any substantive suit. See *Rajab Kosgei Magut Vrs Nuru Jepleting choge (2020) eklr*, *J P Machira T/A Machira & co Advocates Vrs Wachira Waruru & Another (2007) eklr* and *County government of Machakos Vrs Export processing zone Authority*
8. Be that as it may, the application filed must also fail as the applicant has not proved that the property referred to belongs to the estate and/or that the respondent has interfered/intermeddled in any manner with the said estate. No injunctive orders can therefore issue as prayed for.
9. The upshot is that the notice of motion application dated 7th February 2025 lacks merit and is dismissed with costs to the Respondent.
10. It is so Ordered.

READ, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 8TH DAY OF APRIL, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 8TH DAY OF APRIL, 2025

In the presence of: -

Applicant - Present

Respondent – Present

Ms Nkirote for Respondent



