



**Murage v Msuya & 3 others; Kirika (Caveator) (Miscellaneous Civil Case E101 of 2024) [2025] KEHC 4856 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4856 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
MISCELLANEOUS CIVIL CASE E101 OF 2024**

**EM MURIITHI, J**

**APRIL 24, 2025**

**BETWEEN**

**JOYCE WAKUTHII MURAGE ..... APPLICANT**

**AND**

**FLORENCE NANZIA MSUYA ..... 1<sup>ST</sup> RESPONDENT**

**BEATRICE WAKARITI MURAGE ..... 2<sup>ND</sup> RESPONDENT**

**ROSE MUTHONI MURAGE ..... 3<sup>RD</sup> RESPONDENT**

**EDWARD MUTHIGANI MURAGE ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**PAULINE WANJIRU KIRIKA ..... CAVEATOR**

**RULING**

1. Before the Court is an application dated 31/10/2024 seeking the transfer of the trial court file to the High Court on the ground of lack of pecuniary jurisdiction following a ruling of 27/9/2024 declining an application for revocation of grant issued by the Court on 4/9/2024 on the ground of want of jurisdiction.
2. The Respondent has appealed from the ruling by a Memorandum of Appeal dated 23/10/2024 on the grounds set out as follows:

“Memorandum Of Appeal.

Having been aggrieved and dissatisfied with the Ruling of Hon. David Muchangi Ileri delivered on 27th September 2024 in BARICHO SUCCESSION CAUSE O. E010 OF 2023, the Appellant hereby appeals against the judgment and puts forth the following grounds:



### Grounds Of Appeal.

1. That the Learned Magistrate erred in Law and fact in making a Ruling against the weight of evidence.
2. That the learned Magistrate erred in law and fact in failing to fairly evaluate and analyse the evidence adduced by the Appellant's thereby arriving at an erroneous decision.
3. That the learned magistrate erred in law and fact in determining that the Court had jurisdiction to issue a grant on 4th September 2023 while the value of the suit land was beyond his pecuniary jurisdiction
4. That the learned magistrate erred in law and fact in upholding a grant that was issued by the court devoid of jurisdiction.
5. That the learned magistrate erred in law and fact in relying on Form P& A. 5 that contained untrue allegations.
6. That the learned magistrate erred in law in determining that Section 76 of the Law of Succession Act does not provide for revocation of a grant for want of jurisdiction.
7. That the learned magistrate erred in law in his interpretation of section 76 and specifically Section 76 (a) and (c) of the Law of Succession Act.

Reason Wherefore the appellant prays for Judgment that:

- a) The appeal herein be allowed with costs.
  - b) That the Judgement of the lower court be set aside and be substituted with an order annulling and revoking the grant of letters of administration given on 4th September 2023 issued to Joyce Waguthii Murage with costs.”
3. Upon hearing the applicant and the Respondent's counsel, the court takes the view that the grant of the application for transfer while the appeal from the decision of the trial court is pending would prejudice the appeal. The appeal from the decision of the trial court declining the application for revocation of the Grant made by the Court, which was filed earlier in time by the Memorandum of Appeal of 23/10/2024, should be heard before the question of its transfer to the High Court is considered.
  4. If the appeal fails, the application for transfer to the High Court for hearing and determination of the succession dispute shall still be live for consideration.
  5. If the appeal succeeds, the Grant by the trial court will be revoked, and further proceedings in the matter may, upon transfer on the basis of the value of the estate, be taken before the High Court.
  6. To transfer the trial court file at this stage before the hearing of the appeal would mean that there is in the dispute, simultaneously, a Petition in the High Court's exercise of original jurisdiction as well as a prior appeal to the Court in its appellate jurisdiction. It would be an absurd situation.
  7. Presently, the application for transfer in the circumstances of the case is improper and it is struck out.
  8. The applicant may renew his application for transfer on the ground of the value of the estate exceeding the jurisdiction of the trial court upon the hearing and determination of the appeal from the ruling of 27/9/2024.



**Order**

9. Accordingly, for the reasons set out above, the application dated 31/10/24 is struck out.

10. There shall be no order as to costs of the application.

Orders accordingly.

**DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF APRIL 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

APPEARANCES:

Applicant in person.

Ms. Natocho for the Respondent.

