



**In re Estate of Edward Muigai Kinuthia (Deceased) (Family Miscellaneous Application E064 of 2024) [2025] KEHC 9002 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 9002 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
FAMILY MISCELLANEOUS APPLICATION E064 OF 2024  
DO CHEPKWONY, J**

**MAY 5, 2025**

**IN THE MATTER OF THE ESTATE OF EDWARD MUGAI KINUTHIA (DECEASED)**

**BETWEEN**

**CAROLINE WAITHIRA KINUTHIA ..... APPLICANT**

**AND**

**EDWARD MBUGUA MUNGAI ..... 1<sup>ST</sup> RESPONDENT**

**JAMES KAHURO HINGA ..... 2<sup>ND</sup> RESPONDENT**

**EDWARD MUNGAI HINGA ..... 3<sup>RD</sup> RESPONDENT**

**GEORGE WAIYAKI MUNGAI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. For determination before this Court is the Notice of Motion application dated 27<sup>th</sup> November, 2024 filed under Certificate of Urgency where the Applicant is seeking the following orders:-
  - a. Spent.
  - b. That orders do issue authorising the transfer of Succession Cause No. 296 of 2010 – Estate Of Edward Mungai Kinuthia(Deceased) from Kiambu Chief Magistrate Court to the High Court at Kiambu for want of jurisdiction.
  - c. That costs be in the cause.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Caroline W. Kinuthia sworn on the instant date. The Applicant has averred that the parcel of land known as Kabete/Lower Kabete/624 measures approximately 1.20 Hectares and it has a government acquired road measuring 0.32 HA and the remaining acreage available for distribution is 0.88 ha which was not been factored in the distribution of the estate, hence need to rectify the Grant. The Applicant holds



- that the approximate value of the said property is more than Kshs.150,000,000/= (One Hundred and Fifty Million) and it would be in the best interest of the estate that the orders are granted.
3. The Application is opposed through the Replying Affidavit of Edward Mbugua Mungai, the 1<sup>st</sup> Respondent sworn on 22<sup>nd</sup> January, 2025, wherein he has stated that the application is seeking transfer of the file for two reasons being that the road was not factored in the distribution of the property and that the approximate value of the land is Kshs. 150,000,000/=.
  4. According to the 1<sup>st</sup> Respondent, the Applicant is a granddaughter of the deceased, hence does not have the locus standi to make the application without obtaining grant of administration of her father's estate. He states that the failure to consider the road in the distribution is not a consideration for a case to be transferred to another court nor is the need for rectification of grant as alleged. These are grounds for revocation of a grant.
  5. The Respondent has deponed that the Applicant made an application to substitute her deceased father who was the administrator in the Estate of this case. She then applied for resurvey of the land and upon establishing that the resurvey was not in the favour of her father's Estate, she now wants to delay the implementation of the grant. Further, the Respondent holds that the Applicant has alleged that the value of the parcel of land is Kshs. 150,000,000/= but has not supported this with any document, thus it is only guess work. He then urges that the Applicant cannot claim lack of jurisdiction by this Court based on the value of the land which is not substantiated, thus the application ought to be dismissed since it lacks merits.
  6. The Applicant filed Further Affidavit which is sworn on 28<sup>th</sup> January, 2025. She confirms that she is indeed a granddaughter to the deceased and obtaining Letters of Administration for her own deceased father is not a requirement since the property had not yet devolved to her father. With respect to the parcel of land known as Kabete/Lower Kabete/624, she holds that since it sits on a prime area next to the tarmac road of Route 118, she used the assumption such a property which is almost three acres cannot be less than Kshs. 20,000,000/= within the jurisdiction of the Magistrates' Court and thus the need to have this case transferred. The Applicant has also raised issues of distribution of the land into Plots A, B, C and D whereby Plot D was allocated to her father and it is in dispute because her grandmother indicated that it ought to be distributed equally and as such there is need for transfer of the case to High Court for proper litigation of all issues.
  7. The Applicant's reason for seeking the transfer of the case from the Magistrates' Court to the High Court is that the Government acquired 0.32 Hectares of land from Parcel of Land No.Kabete/Lower Kabete/624 measuring 1.20 Hectares leaving 0.58 Hectares as available land for distribution and this was not factored in the distribution. She also stated that the approximate value of the property was Kshs.150,000,000/=.
  8. The Respondent has opposed this application on the ground that the failure to take into consideration the portion of land acquired by the Government for a road and the unsubstantiated value of land cannot be grounds for seeking rectification of a grant.

### **Analysis and Determination**

9. The Court has read through the Notice of Motion application and the Supporting Affidavit, the Replying Affidavit and the Further Affidavit filed in support and against the said application and finds that the main issues for determination being:-



**a. Whether the application for the transfer of Succession Cause No.296 of 2010, Estate of Edward Mungai Kimuthi to this court is meritable.**

10. In essence, the main ground the Applicant is relying on is that the parcel of land is valued at more than Kshs. 150,000,000/= which exceeds the pecuniary jurisdiction of the Chief Magistrates' Court of Kshs. 20,000,000/= However, as correctly stated by the Respondent, the Applicant has not demonstrated this value by either availing a Valuation Report or any other document to confirm this acreage and value. It is not enough to state that a piece of land is located in a prime area or is next to a road or that it is even almost three acres. Without any documentary evidence, the court cannot rely on such claim by the Applicant. Therefore, the Court finds that the Applicant has not provided any justifiable reason to warrant the transfer of this case from the Chief Magistrate's Court to this Court.
11. For those reasons, the court finds that the application lacks merit and it is thus dismissed with no orders as to costs.
12. Subsequently, the Court directs the Lower Court File to be remitted back to the Civil Registry of the Kiambu Magistrate's court for hearing and determination.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 5<sup>TH</sup> DAY OF MAY, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr. Ochieng counsel for the Respondents

Court Assistant - Martin

