



In re Estate of Stephen Kimani Gitara (Deceased) (Family Miscellaneous Civil Case E017 of 2024) [2025] KEHC 8546 (KLR) (18 June 2025) (Directions)

Neutral citation: [2025] KEHC 8546 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
FAMILY MISCELLANEOUS CIVIL CASE E017 OF 2024**

PN GICHOHI, J

JUNE 18, 2025

IN THE MATTER OF THE ESTATE OF STEPHEN KIMANI GITARA (DECEASED)

BETWEEN

MARY WANJIRU THUO APPLICANT

AND

VERONICAH MUTHONI NDIRANGU RESPONDENT

DIRECTIONS

1. The background of these directions is that vide Summons dated 12/5/2024, the Applicant sought transfer of Nakuru Chief Magistrates Court Succession Cause No. E 911 of 2021 to this Court for trial and disposal and that costs of the application be in the cause.
2. Parties entered into a consent dated 4/7/2024 and which was adopted by this Court on 28/10/2024.
3. This Court then reserved the matter for mention on 12/11/2024 to confirm availability of the lower court file.
4. On 19/2/2025, this Court confirmed the “transfer” of the said file whereupon parties confirmed filing and exchanging submissions in respect of Notice of Motion dated 1/3/ 2024 which was pending before the trial court.
5. This Court reserved the matter for Ruling on 2/4/2025 but it was not ready due to pressure of work. It was eventually reserved for 9/7/2025.
6. As this Court embarked on writing the said ruling, the Court noted that the matter had been substantially handled by the lower court. That was before the filing of the current Notice of Motion 7/4/2024 by Veronica Muthoni Ndirangu (Respondent herein).



7. The application was brought under sections 1A, 1B, 3A, & 63(e) of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules, Section 146(4) of the *Public Health Act*, Section 3(2) & (5) of the *Law of Succession Act*, Article 159 of *the Constitution* seeking mainly exhumation of the deceased 's body for purposes for carrying out DNA Test to ascertain paternity of both the applicant's and Respondent's children. The trial court granted stay orders pending hearing and determination of the application.
8. In her Replying Affidavit sworn on 11/3/2024, Mary Wanjiru Thuo (Applicant herein) stated that the trial court, sitting as a probate court lacked jurisdiction to order exhumation of a body, hence, she sought the striking out of the application.
9. The trial court reserved the matter for Ruling on 21/5/2024 and in its stead, the learned magistrate gave directions that parties file their responses on its pecuniary jurisdiction hence the application for transfer.
10. From the material on record, there was no issue of pecuniary jurisdiction. The trial court ought to have proceeded to deliver a ruling on the application at hand. In short, there was no reason for transfer.
11. Further, this Court noted an administrative gap in the manner the file was transferred here, reason being that after this Court's order allowing transfer: -
 1. The original file ought to have been transferred in the system from lower court to High Court and issued a High Court Succession Cause Number.
 2. Thereafter, the Miscellaneous file No. E017 would have been closed. In effect, the trial court file was not transferred but simply attached to the Miscellaneous file No. E017 of 2024.
 3. Proceedings in regard to the succession matter herein cannot be in a miscellaneous file.
12. In the circumstances, this Court issues the following Orders: -
 1. The ruling date set by this Court for 9/7/2025 be and is hereby vacated.
 2. The Order transferring Nakuru Chief Magistrate's Court Succession Cause No. E 911 of 2021 to High Court be and is hereby set aside.
 3. The High Court Miscellaneous Case No E017 be and is hereby closed.
 4. The lower court file being Chief Magistrate's Court at Nakuru Succession Cause No. E 911 of 2021 is hereby returned to the lower court for purposes of hearing and disposal by Hon. E. Soita (SRM).
 5. In event that the learned magistrate is no longer in the station, then the matter be placed before the Chief Magistrate for re-allocation to another magistrate.
 6. Mention before the Chief Magistrate on 30/6/2025 to ensure compliance .

DATED, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF JUNE 2025.

PATRICIA GICHOHI

JUDGE

Mr. Githui for Applicant

Mr. Wairegi for the Respondent

Ruto, Court Assistant

