



**Mwangi v Mwangi & 4 others (Miscellaneous Application
E006 of 2025) [2025] KEHC 11544 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11544 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E006 OF 2025
DO CHEPKWONY, J
JULY 11, 2025**

BETWEEN

MARY MUTHONI MWANGI APPLICANT

AND

JOSEPHINE WANGUI MWANGI 1ST RESPONDENT

MARGARET NYAMBURA NYUTU 2ND RESPONDENT

ELIZABETH WANJIRU MWANGI 3RD RESPONDENT

GRACE WANJIKU MWANGI 4TH RESPONDENT

GEOFFREY MAINA MWANGI 5TH RESPONDENT

RULING

1. The Applicant herein approached this court vide a Notice of Motion application dated the 10th February 2025 filed under Section 18[1][b] of the *Civil Procedure Act* seeking the following orders: -
 - a. Spent.
 - b. Spent.
 - c. That the Honourable Court be pleased to exercise its supervisory jurisdiction and call for and or order for the transfer of Embu Chief Magistrate’s Court Succession No. E022 of 2022 file to the Kiambu High Court for further dealings.
 - d. That the Court do make such order of further orders as it may deem fair and just in the interest of justice.
2. The application is premised on the grounds set out on the face thereof and is supported by the affidavit of the Applicant sworn on 10th February 2025. The Applicant avers that the 5th Respondent,



who is the Administrator of the Deceased's Estate, instituted succession proceedings in Embu Chief Magistrate's Court Succession Cause No. E022 of 2022, wherein he was issued with a grant of Letters of Administration, subsequently confirmed by the said court. The Applicant contends that she filed a Notice of Preliminary Objection dated 30th October, 2024, challenging the jurisdiction of the Embu Magistrate's Court on both pecuniary and territorial grounds. It is her position that the Estate of the Deceased has an estimated value exceeding Kenya Shillings One Hundred and Five Million [Kshs.105,000,000.00], which surpasses the monetary jurisdiction of a magistrate's court and supported the assertion with valuation of two properties belonging to the Estate. Further, she asserts that the Deceased was domiciled in Kiambu at the time of his death and was interred there, and that two prime properties comprising part of the Estate are located within Kiambu County. Accordingly, she submits that the suit ought to have been filed in a court within the Kiambu jurisdiction, which possesses both the territorial and pecuniary competence to entertain the matter.

3. The Applicant further asserts that her inability to access and benefit from the Estate has been exacerbated by delays occasioned by the filing of the succession cause in Embu, a forum she deems improper. She avers that, in contrast, the 5th Respondent continues to unilaterally enjoy the benefits of the Estate. She contends that unless the succession cause is transferred to this Court, she stands to suffer continued injustice and exclusion.
4. The application is supported by the 1st to 4th Respondents, through an affidavit sworn by the 1st Respondent, Josephine Wangui Mwangi, on their collective behalf. They confirm having raised a Preliminary Objection on 30th October, 2024 before the Embu Chief Magistrate's Court, impugning its jurisdiction on the basis of a valuation report dated 8th October, 2024, which places the value of part of the Estate above Kshs.105,000,000.00. They allege that the 5th Respondent procured the grants through material non-disclosure and misrepresentation, without involving the 1st to 4th Respondents.
5. That upon becoming aware of the proceedings, the said Respondents filed an application dated 26th July, 2024, seeking the annulment and revocation of the grants, but the court declined to issue interim orders, which they submit was indicative of bias in favour of the 5th Respondent.
6. The 1st to 4th Respondents further submit that the Embu Court has persisted in hearing the matter despite the challenge to its jurisdiction, raising concerns as to whether the 5th Respondent may have improperly influenced the process. They reiterate that the Deceased was domiciled in Kiambu County, within the territorial jurisdiction of this Court, and that the Estate comprises properties within Kiambu. Consequently, they urge this Court to allow the application for transfer on the ground that Kiambu is the appropriate forum.
7. The application is opposed by the 5th Respondent through a replying affidavit sworn on 25th March, 2025. He contends that the application is made in bad faith and amounts to an abuse of the court process. He states that the Applicant is in fact a co-administrator of the Estate in Embu Succession Cause No. E022 of 2022, having jointly filed the proceedings with him. He notes that the Applicant actively participated in the succession proceedings without raising any jurisdictional objections until much later, and now seeks to challenge the forum after having obtained orders appointing her as a co-administrator. He submits that both the Preliminary Objection and the application for revocation of the grant are still pending determination before the Embu court and are yet to be determined.
8. The 5th Respondent further argues that territorial jurisdiction alone does not justify a transfer of the cause, especially where the Estate comprises various properties located within Embu, including land parcels Gaturi/ Githimu/216, Gaturi/Githimu/2141, Gaturi/Githimu/2131, and Embu/ Town/ Municipality/LR.111. He contends that only two properties are located in Kiambu, and that the Deceased also resided in Embu during his lifetime. He asserts that the Applicant herself submitted a



Chief's Letter confirming that the Deceased had ties to Embu, but has conveniently omitted these facts in the current application.

9. In further opposition, affidavits were filed by Antony Mathenge Mwangi and Paul Karieny Mwangi, who describe themselves as beneficiaries of the Estate. They state that they were not consulted or involved in the filing of the present application. They reiterate that the Embu Succession Cause was instituted jointly by the Applicant and the 5th Respondent. That, the Applicant remained active in those proceedings until the grant was confirmed and she was appointed co-administrator. They question the Applicant's timing in raising the issue of jurisdiction, contending that she has not explained why. And for over two [2] years since the initiation of the proceedings in 2022, she failed to realize or challenge the jurisdiction of the Embu Magistrate's Court.

Analysis and Determination

10. I have carefully considered the application, the rival affidavits, the written and oral submissions presented by the parties, and the applicable legal framework. The primary issue for determination is whether the Applicant has established sufficient grounds to warrant the transfer of Embu Chief Magistrate's Court Succession Cause No. E022 of 2022 to the High Court at Kiambu.

11. This Court's jurisdiction of this Court to transfer a suit or cause from one subordinate court to another, or from a subordinate court to the High Court, is derived from Section 18[1][b] of the [Civil Procedure Act](#), which provides:-

“On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

[b] withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—

- i. try or dispose of the same; or
- ii. transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same...”

12. It then follows that transfer of suits should be guided by considerations of convenience, the ends of justice, and the competence of the court from which and to which the matter is sought to be transferred. It is settled law that a court must possess both territorial and pecuniary jurisdiction for it to competently entertain and determine a matter.

13. Turning to the facts of the present application, it is alleged that Embu Chief Magistrate's Court Succession Cause No. E022 of 2022 was initiated by the 5th Respondent jointly with the Applicant, who was appointed Co-Administrator. However, it is not disputed that the Estate in question includes immovable properties situated both within Embu and Kiambu County and that the Deceased was interred in Kiambu. However, the parties differ as to whether the Deceased was domiciled in Kiambu or Embu at the time of his death, and whether Embu court is the appropriate forum in terms of territorial jurisdiction.

14. However, of significance is the response by the 5th Respondent, which raises assertions to the effect that the Applicant, while seeking to impugn the proceedings before the Embu Chief Magistrate's Court, is herself a Co-Administrator in the said cause and has participated in the said proceedings all along. However, in the absence of the pleadings and full record of the Succession Cause pending before the Embu Magistrate's Court, this Court finds that it is not properly seized of the requisite factual matrix



to determine what has transpired before that court or to assess whether there exists any impropriety or irregularity that might justify its intervention.

15. In this regard, this Court must emphasize that while the High Court possesses supervisory jurisdiction over Subordinate Courts pursuant to Article 165[6] and [7] of the *Constitution*, such jurisdiction must be exercised within the structural confines established by law. Notably, Section 12 [3] of the *High Court [Organization and Administration] Act*, No. 27 of 2015 provides as follows:-

“The filing of appeals, bail applications and references from The subordinate courts, tribunals and other bodies or authorities within the regions designated by the Chief Justice under the Rules, shall be made at the High Court station with the corresponding supervisory jurisdiction.”
16. It therefore follows that supervisory jurisdiction over the Embu Magistrate’s Court properly resides with the High Court at Embu, which is the designated station with corresponding regional oversight. This Court sitting at Kiambu, though clothed with unlimited original jurisdiction, cannot arrogate to itself supervisory powers over a magistrate’s court situated in a region outside its designated supervisory reach. Consequently, any attempt by this Court to delve into the propriety or legality of proceedings pending before the Embu Magistrate’s Court would be not only procedurally irregular but also a direct affront to the hierarchical and geographical organization as provided under the *High Court [Organization and Administration] Act*.
17. Further, this Court observes that the Applicant has failed to annex or furnish this Court with any of the key pleadings filed in the Embu Succession Cause. This deficiency renders this Court’s ability to evaluate the history or the factual context of the succession cause inherently constrained. In this Court’s respectful view, it would be inappropriate for this Court to make pronouncements or orders affecting the jurisdiction or conduct of proceedings before a subordinate court when the record of such proceedings is not before it.
18. As regards the question of pecuniary jurisdiction, This Court notes that the Applicant has annexed a valuation report dated 8th October, 2024, which places the value of part of the Estate in excess of Kshs.105 million. This Court is also alive to the fact that a Preliminary Objection has been raised and is said to be pending determination before the Embu Chief Magistrate’s Court. This Court is cautious not to usurp the authority or jurisdiction of that court to deal with matters properly before it.
19. Also, although the said Preliminary Objection was not placed before this court, for this Court to intervene at this stage, and on incomplete information, it would amount to unjustified interference with an active issue pending before a court which is yet to pronounce itself on the same issue. This is because such intervention could prejudice the fair adjudication of the dispute and compromise the integrity of both the subordinate court and these proceedings.
20. In view of the foregoing, and in recognition of the supervisory authority of the High Court at Embu over the Embu Magistrate’s Court, it is this Court’s finding that the proper and prudent course of action is to transfer the present miscellaneous application to the High Court at Embu which is better placed to call for the record of the Succession Cause and to determine, on the basis of a complete and accurate record, whether sufficient grounds exist to warrant the transfer of the succession cause from the Embu Magistrate’s Court to a more appropriate forum such as the High Court at Kiambu or any other competent court.
21. In light of the foregoing analysis, this Court declines to issue any conclusive orders regarding the transfer of Embu Chief Magistrate’s Court Succession Cause No. E022 of 2022 to the High Court at Kiambu at this stage. Instead, The Court hereby orders that:-



- a. Miscellaneous Application No. E006 of 2025 be and is hereby transferred to the High Court at Embu for hearing and determination.
- b. Being a family matter there shall be no order on costs.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 11TH DAY OF JULY 2025. [UPLOADED VIA ELECTRONIC MAIL]

D. O. CHEPKWONY

JUDGE

