



**In re Estate of Milka Kariuki alias Milka Murugi Kariuki alias
Milkah Murugi Kariuki (Deceased) (Succession Cause E1068 of 2020)
[2025] KEHC 13146 (KLR) (Family) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13146 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE E1068 OF 2020

HK CHEMITEI, J

SEPTEMBER 25, 2025

**IN THE MATTER OF THE ESTATE OF MILKA KARIUKI ALIAS MILKA
MURUGI KARIUKI ALIAS MILKAH MURUGI KARIUKI (DECEASED)**

BETWEEN

ROSE WANJIRU MAINA 1ST ADMINISTRATOR

KELLEN NYANJAU KARIUKI 2ND ADMINISTRATOR

AND

GODFREY KABOLE MUNZALA OBJECTOR

AND

CHARLES KINYUA MAINA PROPOSED INTERESTED PARTY

***(IN THE MATTER OF THE ESTATE OF MILKA KARIUKI alias MILKA
MURUGI KARIUKI alias MILKAH MURUGI KARIUKI (DECEASED))***

RULING

1. This ruling relates to the summons dated 2nd September, 2024 filed by the Applicant Charles Kinyua Maina seeking for Orders That:-
 1. Spent.
 2. The Applicant herein, Charles Kinyua Maina, be and is hereby joined in this matter as an Interested Party.



3. An order be and is hereby issued directing for the removal of the property listed as Plot No. 60 on Land Reference 6845/65/60 (now known as Nairobi/Block 206/221) from the estate of Milka Murugi Kariuki herein or in any matter relating to the administration of the said state.
4. Costs be provided for.
2. The application is based on the grounds thereof and supported by affidavit and supplementary affidavit sworn by Charles Kinyua Maina on 2nd September, 2024 and 11th November, 2024.
3. He avers inter alia that he is the proposed interested party and he seeks to be joined in these proceedings to protect his legal rights, as any decision regarding the distribution of Plot No. 60 on Land Reference 6845/65/60 may adversely affect him. He claims legal ownership of the land, now known as Nairobi/Block 206/2221, and requests that it be excluded from the deceased's estate to allow him to participate in these proceedings without prejudicing existing parties.
4. He swore that the land did not belong to the deceased at the time of her death and, therefore, should not have been included in the estate's assets. The administrators interfered with his property, prompting him to file suit in the Milimani Commercial & Environmental Land Court: MCELC No. E067 of 2024, which has been stayed pending the outcome of this succession case.
5. That it is essential that Plot No. 60 be excluded from distribution until the ELC determines rightful ownership, as that court has jurisdiction over land ownership disputes and further Rule 41 of the Probate & Administration Rules permits such exclusion.
6. The deceased he averred never owned Utawala Plot No. 6845/65/60, as confirmed by Beca Investment Co. Ltd., and the administrators have not provided evidence to the contrary. The plot listed in the estate has since been subdivided, giving rise to the registered title now held by the interested party. Therefore, the administrators cannot distribute a non-existent or incorrectly attributed asset.
7. He went on to aver that if the ELC later rules in favor of the estate, the administrators can then properly include the property for distribution. The interested party is a bona fide purchaser, having acquired the land from a third party, and has demonstrated lawful ownership. He does not intend to intermeddle with the deceased's estate but seeks only to prevent the unlawful inclusion of his property. The court cannot distribute an asset that no longer exists, and ownership must be confirmed by the competent court before it can be listed as part of the estate. For justice, fairness, and efficiency, Plot No. 60 on Land Reference 6845/65/60 should be removed from the estate's assets pending the ELC's determination.
8. The application is opposed vide replying affidavit and Protester's replying affidavit, sworn by Kellen Kinyanjui and Godfrey Kabole; and all dated 15th October, 2024.
9. Kellen Kinyanjui avers inter alia that the Objector has interfered with the deceased's estate by selling Utawala Plot No. 6845/65/60, which was part of the estate. The proposed interested party claims to be the registered owner of this property, attempting to portray himself as a bona fide purchaser. However, he bought the property on 30th August, 2021 from Yuna Nyathiriga Njogu, who had acquired it from the Objector on 1st March, 2021, while it legally belonged to the deceased's sister.
10. The Objector challenges him to produce the sale agreement to verify the purchase date. The administrators had filed an application on 22nd November, 2023 alleging intermeddling, while the proposed interested party filed MCELC No. E067/2024 on 4th March, 2024 seeking an injunction against the administrators, despite never having been in possession of the property, making his claims baseless.



11. The Magistrate, in a ruling on 30th July, 2024, confirmed that the current cause takes precedence, and the proposed interested party's request to exclude the property from the estate is therefore misguided and lacks merit. The title for Nairobi/Block 206/2221 was issued to the proposed interested party on 16th November, 2022, while this cause, listing Utawala Plot No. 6845/65/60 as part of the estate, was filed on 23rd October, 2020.
12. Further that excluding the property from the estate would effectively endorse intermeddling and validate an illegal sale, as the property was transferred without a confirmed grant and by a person who was not an administrator. The proposed interested party acquired the property only in 2022, has never been in possession and only approached the court in 2024. It is incorrect to argue that the property cannot be distributed due to pending ownership issues, since the Magistrate stayed MCELC E067/2024 pending the determination of this cause.
13. While the law allows exclusion of property from succession proceedings, it does not cover property illegally transferred during the pendency of the estate, which constitutes intermeddling. The lower court explicitly declined to entertain the proposed interested party's suit until this cause is resolved, making his requested orders unsupportable. The application highlights the necessity of a temporary injunction to prevent intermeddling, cancel the illegal sale and stop the transfer of Utawala Plot No. 6845/65/60 to Charles Kinyua Maina.
14. The sale occurred before the grant was confirmed, meaning no valid title passed to Maina, who may only seek to recover the purchase price from the seller. The evidence demonstrates that Godfrey Kabole Munzala interfered with the estate by allowing the property to change hands during these proceedings. Accordingly, the proposed interested party's application should be dismissed as it lacks legal basis and attempts to validate an unlawful transaction.
15. Godfrey Kabole Munzala avers inter alia that he is the Protester in this matter. The proposed interested party seeks to be joined in these proceedings and requests that the property listed as Plot No. 60 on Land Reference 6845/65/60 (now Nairobi/Block 206/221) be excluded from the deceased's estate, claiming ownership of the same. He is not aware of the proposed interested party's claims that he is the registered owner of the suit property, nor of the alleged interference with his land by the administrators.
16. While the proposed interested party asserts that the suit property did not belong to the deceased at the time of her death and should not form part of her estate, he cannot confirm these claims. He is also unaware of the proceedings in Milimani MCELC No. E067 of 2024. He acknowledges that the Environment and Land Court has jurisdiction over disputes concerning land ownership and agrees with the proposed interested party's position in this regard. He raises no objection to the proposed interested party being joined to this matter.
17. The Applicant/proposed interested party has filed written submissions dated 11th November, 2024, placing reliance on the following:-
 1. Bottom of Form
 2. Top of Form
 3. Bottom of Form
 - a. Estate of Stone Kathuli Muinde (Deceased) [2016] eKLR where the court pronounced itself as follows: "With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore



it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere. Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that court can give effect to it.”

- b. Priscilla Ndubi and Zipporah Mutiga vs Gerishon Gatobu Mbui, Meru Succession Cause No. 720 of 2013 where the court stated as follows: “The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41 (3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”

18. The Protester has filed written submissions dated 24th February, 2025, placing reliance on the following:-

- a. In re Estate of Atibu Oronje Asioma (Deceased) (Succession Cause 312 of 2008) [2022] KEHC 11046 (KLR) where it was said as follows: “What is in dispute here is land, what would evidence ownership of the subject property would be evidence of registration of the same in the name of the deceased. The probate court only distributes assets that are undisputedly owned by the deceased. Assets that are encumbered or the subject of ownership disputes are not undisputedly owned by the deceased, and are not available for distribution by the court until the encumbrances are removed or the ownership disputes are resolved. Property available for distribution is defined in section 3 of the *Law of Succession Act* as the free property of the deceased. 10. The design of the *Law of Succession Act* is that the mandate of the probate court is limited to distribution of the assets, and where a dispute arises on ownership of any asset, then the same should be placed in another forum, and not the succession cause, for litigation and determination. That is the spirit of rule 41 (3) of the Probate and Administration Rules, which states as follows: “Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71 (2) of the Act, proceed to confirm the grant.”

Analysis And Determination

19. I have read the application before this court, the responses thereto and filed submissions; and address it as follows:-



20. In Communications Commission of Kenya & 4 Others Vs. Royal Media Services Limited & 7 Others the Supreme Court of Kenya pronounced itself on who an interested party is and held as follows:-

“In determining whether the Applicant should be admitted into these proceedings as an interested party we are guided by this Court’s decision in the Mumo Matemo case where the court (at paragraphs 14 and 18) held: “An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”

21. In the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:-

- i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings.
- ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law.
- iii) Joinder to prevent a likely course of proliferated litigation.

22. In view of the above cited authorities and the reasons advanced by the Applicant, I find that the Applicant’s position in the disputed property is worth a consideration. Already there is evidence of a contestation between him and the administrators as well as the Protester over the parcel. The three parties must be allowed to ventilate their positions in this matter including whether the parcel indeed belonged to the deceased.

23. Failing to enjoin the Applicant will create more confusion and the ultimate determination of the cause. In any event I do not see any prejudice which the estate stands to suffer if he is enjoined.

24. Already the ELC has pronounced itself and stayed any action on the suit property pending the outcome of this cause.

25. In the premises the application is allowed in terms of prayer (2) thereof and the Applicant granted 30 days to file and serve his protest.

26. Costs shall await the outcome of the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 25TH DAY OF SEPTEMBER 2025.

H K CHEMITEI

JUDGE

