



**In re Estate of Late Maria Muthoni (Deceased) (Succession Cause 1621 of 2016)
[2025] KEHC 17426 (KLR) (Family) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1621 OF 2016
HK CHEMITEI, J
NOVEMBER 27, 2025
IN THE MATTER OF THE ESTATE OF THE LATE MARIA
MUTHONI (DECEASED)**

BETWEEN

VERONICAH NJERI MAINA APPLICANT

AND

**PATRICK MAINA MWANGI ALIAS JOHN PATRICK MAINA
MUCHIRI RESPONDENT**

RULING

1. In her application dated 15th July 2025 the Applicant seeks orders that:-
 - (a) The court be pleased to grant leave to the Applicant to reopen her case for purposes of calling all her witnesses and for purposes of cross examining the Respondents witnesses who testified on 20th May 2025.
 - (b) Costs in the cause.
2. The application is based on the grounds thereof and the sworn affidavit of the Applicant of even date.
3. The substance of the application is that the Applicant was represented by an advocate when this matter was due for hearing on 20th May 2025 but abandoned the matter when the hearing was confirmed.
4. She deponed that the said advocate proceeded with the matter without informing her or taking instructions.



5. She swore that mistakes of counsel should not be visited upon the litigant like her and it was therefore expedient that the matter be reopened and allow her call witnesses and cross examine the Respondent's witnesses.
6. The Respondent on his part filed grounds of opposition dated 15th August 2025. He said that the application ought to be dismissed as her advocate was present in court when the date was taken by consent.
7. That she had not laid any grounds or basis to permit the application to be allowed and therefore the proceedings to be set aside.
8. He accused her of always delaying the matter by appointing new lawyers at the eve of hearing and obstructing the logical conclusion of this matter.
9. The court directed parties to file written submissions which they complied.
10. The court has perused the same and in particular the proceedings of the day and note that indeed one Mr. Nganga appeared during call over and the court disallowed his application for adjournment. The matter was slated for hearing that morning.
11. When the matter was called at 11.20 am there was no representation on the part of the Applicant neither was, she present. The court was left with no option but to proceed with the Respondent's case.
12. As clearly submitted by the Respondent the date was taken by consent on 12th November 2024 and I think it is ingenious on the part of the Applicant to argue that she did not give instructions to her advocate.
13. I also note that as at 12th November 2024 there was a new counsel, one Mr. Oloo who claimed that he had just been instructed and he needed time to familiarize with the matter.
14. The same position obtained on 13th March 2024 when one M s Akinyi told the court that they had just been instructed and they were not ready to proceed but needed to familiarize themselves with the matter.
15. The current application has been filed by Dennis Law Advocates whom I guess took over from M s Chepkuto Advocates who had taken over from M s Benedict Odhiambo Advocates who had also taken over from Ngari & Kaburu Advocates.
16. Prior to this there was the firms of Mugo & Associates who took over from Namasaka & Kariuki Advocates who were all acting for the Applicant.
17. That sequence of changing advocates clearly explains the Applicant's character. In as much as she has all the constitutional right to seek legal representation from whoever she chooses, the same cannot be used to defeat or delay the interest of other beneficiaries in the estate and in this case the Respondent.
18. I have also perused the court file and it is clear that on various dates for example 19th July 2021, 6th December 2021 and 12th November 2024 the Applicant for some reason sought adjournments.
19. Citing the provisions of Article 159 of *akn ke act 2010 constitution the Constitution* is not a panacea for this kind of application and an indolent Applicant who has in my view attempted to obstruct justice in many ways including seeking services of many counsels who when time for hearing comes, they duck. It is upon her to sort out her differences with her advocates.
20. The mantra that "mistakes of a counsel should not be visited on litigants" cannot suffice herein. She has demonstrated lack of consistency in her choice of advocates and she must live with it. The matter



is too old in the circumstances and it has passed through several judicial officers to warrant a further delay. In any case this was her case and she ought to have been at the forefront in prosecuting it.

21. Had she been present during trial and her counsel absent then, I think the court would have been lenient on her. In this case however, the counsel who appeared during call over in the morning for some reason decided to absent himself at the main hearing and the court had no option but to proceed to determine the matter and close the case after hearing the rest of the witnesses called by the Respondent.
22. Consequently, I find that this is a classic case where the court must exercise its discretion in favour of the Respondent. It is of course unusual especially in family matters not to allow parties to present their version of events in the estate. With this I think the court is extremely reluctant to exercise the discretion.
23. The application is dismissed with costs to the Respondent.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 27TH DAY OF NOVEMBER 2025.

H K CHEMITEI

JUDGE

