



In re Estate of the Late Stephen Matheri Chege (Deceased) (Succession Cause E040 of 2025) [2026] KEHC 458 (KLR) (22 January 2026) (Ruling)

Neutral citation: [2026] KEHC 458 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
SUCCESSION CAUSE E040 OF 2025
FN MUCHEMI, J
JANUARY 22, 2026
IN THE MATTER OF THE ESTATE OF THE
LATE STEPHEN MATHERI CHEGE (DECEASED)**

BETWEEN

JOSECK MATHERI CHEGE APPLICANT

AND

SOLOMON MIRANGA CHEGE RESPONDENT

RULING

Brief Facts

1. The summons dated 18th August 2025 seeks for orders of injunction restraining the respondent, his agents, servants or employees from entering, trespassing, occupying, carrying out any construction or carrying out any form of activity on property known as LR. No. Thika/Municipality Block 30/1430 pending the full administration of the deceased's estate. The applicant further seeks for orders of a mandatory injunction compelling the respondent to cease and desist from any further construction on the property known as LR. No. Thika/Municipality Block 30/1430 pending the full administration of the deceased's estate.
2. In opposition to the application, the respondent filed a Replying Affidavit dated 12th September 2025.

The Applicant's Case

3. The applicant avers that he and the respondent are sons of the deceased who passed away on 17th December 2021. The applicant further avers that she was granted a limited grant of letters of *administration ad litem* in the Senior Principal Magistrate's Court in Kigumo, which is limited to the purpose of filing a claim to secure the assets of the deceased's estate. The deceased's estate includes a



parcel of land known as LR. No. Thika Municipality Block 30/1430 whereas the deceased was issued with a title deed in his name on 12th March 2010.

4. The applicant states that the respondent has embarked on unauthorized construction and development of the suit property without the consent of the family or the administrators of the estate of the deceased. The applicant further states that the respondent's actions constitute illegal intermeddling with the deceased's estate which is contrary to Section 45 of the [Law of Succession Act](#). The said construction is being carried out without the prerequisite approvals from the County Government of Kiambu which raises serious concerns and underscores the illegal nature of the respondent's activities.
5. The applicant states that there is a real and imminent risk that if the respondent is not restrained by an order of the instant court, he will continue with the illegal construction thereby causing irreparable harm to the estate, interfering with the beneficial interests of the beneficiaries and rendering the administration process futile. The applicant further states that the balance of convenience squarely lies in favour of granting a temporary preservation order to protect the *status quo* of the property and ensure that the estate is preserved pending its lawful administration and distribution.

The Respondent's Case

6. The respondent states that the instant cause does not relate to his father who is known as Stephen Chege Matheri. The respondent further states that the applicant having been granted a limited grant of letters of *administration ad litem* lacks capacity to file the instant cause in respect of an estate not related to his father.
7. The respondent admits that he is a beneficiary of the deceased's estate and further states that before his father's death, he allocated him a portion of LOC 18/Gachochi/680 where he has built a house and carries out farming. Further, the applicant and his brother Janan Luwum Gachana Chege were also shown their respective portions and they have been utilizing the same peacefully even during the deceased's lifetime.
8. The respondent states that during the deceased's lifetime, he allocated land parcel Thika Municipality Block 30/1430 to him and his brother Janan Luwum Gachana, fact well known to the applicant and all the family members. The respondent further states that he took the half share that was not developed and left for his brother the developed portion and their father proceeded to demarcate the parcel and built a perimeter wall.
9. The respondent avers that no protest or objection was made during the deceased's lifetime and further no other family member has sworn an affidavit to support the applicant's claim.
10. The respondent further avers that the applicant has deliberately refused to release the title deed to the suit property by lodging frivolous claims at the DCI Offices Thika that he was in the process of selling the premises knowing that the title deed was in their mother's custody and by placing a caution against the said title.
11. The respondent states that the applicant has failed to disclose that he has never interfered with their brother's portion and that their sister Judy Wairimu Chege recently occupied one of the residential houses and has been living there rent free. The respondent further states that the applicant and his sister Judy Wairimu Chege were allocated 44 acres and 10 acres by the deceased in Shimoni and Ramisi thereby leaving the suit land to him and his brother.
12. The respondent states that the only property of the deceased which was not shared out was Makuyu/Kambiti/Block 2(Mathengeta) 394 which has a pending issue.



The Applicant's Submissions

13. The applicant submits that it has brought the instant application under Rule 63 of the *Probate and Administration Rules* which makes the *Civil Procedure Rules*, including those relating to injunctions, applicable to succession matters. Further, the court can make such orders under its inherent power as stipulated under Rule 73 of the *Probate and Administration Rules* to meet the ends of justice and prevent the abuse of its process.
14. The applicant submits that he clearly and properly indicated the name of the deceased and annexed a copy of the death certificate of the deceased and the chief's letter which show the name of the deceased. The applicant further submits that the *ad litem* issued at Kigumo Law Courts was purely for civil suits for properties under contention by third parties including the 54 acres in Kwale where the deceased and the wife of the deceased were sued in Mombasa ELC No. 157 of 2021 where the case is still pending in court, a fact well known by the respondent.
15. The applicant submits that he has the capacity to institute the instant application for intermeddling since he is one of the beneficiaries of the deceased.
16. The applicant argues that the beneficiaries of the estate are yet to take out petition letters for the estate of the deceased and the respondent is not willing to begin the process as he is deliberately not attending meetings for the deliberations on the institution of the petition. The respondent decided to construct on one of the properties belonging to the deceased without any authorization or colour of right. The applicant further argues that the unauthorized construction by the respondent lacks the requisite NEMA, NCA and County approvals which constitutes a further act of intermeddling which will cause irreparable harm to the estate thereby frustrating the lawful process of administration and distribution. There is a real and imminent risk that the respondent will continue with the illegal construction which will interfere with the beneficial interests of all beneficiaries and frustrate the proper and orderly administration of the estate. To support his contentions, the applicant relies on the case of *Francis Kamau Mbugua & Another vs James Kinyanjui Mbugua* Nairobi High Court Civil Case No. 111 of 2004 (OS).

The Respondent's Submissions

17. The respondent reiterates the contents of his affidavit and submits that the cause is defective and ought to be dismissed as the deceased is known as Stephen Chege Matheri as evidenced by all the documents filed and not Stephen Matheri Chege and further the applicant has not provided an alias or shown that the deceased was known by another name.

The Law

Whether the Applicant Has the Capacity to Bring This Application

18. Upon perusal of the record, the applicant is the second petitioner in this cause while one Dorcas Wanjiku Chege said to be the widow of the deceased is the first petitioner. This application has been filed by the applicant alone. All he has is an authority to file this petition through a limited grant from Kigumo Law Courts. The applicant is yet to be appointed an administrator of the estate in order to acquire the capacity to administer the estate of the deceased.
19. The record of the court is evident that the petitioners after filing this cause in August 2025 did not pay for gazettelement of this petition. The gazettelement if paid for and is published will have the effect of having the petitioners being appointed administrators of the estate unless there is an objection by an



interested party. In the absence of appointment as an administrator, the applicant lacks the capacity to file the application before this court.

20. In conclusion, I find that the applicant lacks the capacity to move this court for any orders regarding the deceased's estate.
21. Consequently, this application is hereby dismissed for being misconceived and being improperly before this court.
22. There shall be no order as to costs.
23. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 22ND DAY OF JANUARY 2026.

F. MUCHEMI

JUDGE

