

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**MILIMANI LAW COURTS**

**SUCCESSION CAUSE NO. 646 OF 2009**

**IN THE MATTER OF THE ESTATE OF NELSON MUCHAI**

**KINUTHIA - DECEASED**

**RULING**

1. Nelson Muchai Kinuthia died on 29<sup>th</sup> September, 2008. Upon his death, Eric Muchai alias Nelson Muchai, petitioned for the probate of a Written Will. He was named as a co-executor, together with one Wambui Godfrey Mwaura, who was stated to have migrated to Germany, obtained citizenship there, and to be unreachable. Eric was thus appointed as the sole administrator. Eric and Wambui are the deceased's grandchildren and are named as executors in the Written Will dated 21<sup>st</sup> January, 2008.
2. The Grant was confirmed on 30<sup>th</sup> October, 2023.

3. On 27<sup>th</sup> September, 2024 an application was filed by Eric Muchai, Pauline Muthoni Githara and Hellen Wambui Githara for revocation of the Grant of Probate issued to Eric Muchai alias Nelson Muchai. The three are the deceased's grandchildren and administrators of the estate of Margaret Wanjiru Githara, who died on 18<sup>th</sup> January, 2017, and was a daughter of the deceased, Kinuthia Nelson Muchai. The three challenge the Will and its distribution, arguing that their Mother, the late Margaret, was left out even though she is a beneficiary.
4. The summons for revocation is opposed. The matter was referred to Court annexed mediation. Before the summons for revocation was determined, two applications seeking joinder were lodged by interested parties, and those applications are the subject of this ruling.
5. The first application is dated 31<sup>st</sup> October, 2025 by Thomas Muchai. The application seeks the following orders;
- (a) The honourable court be pleased to certify this application urgent;**

- (b) Service of this application be dispensed with owing to the urgency of the matter;**
- (c) The applicant be enjoined in the ongoing Court Annexed Mediation proceedings relating to the Estate of Nelson Muchai Kinuthia being MLM/MED/954/2025 currently ongoing before CPM Sheila Wairimu;**
- (d) This honourable court be pleased to grant leave to the proposed interested party to fully participate in the proceedings herein and file such pleadings, affidavits, submissions and other documents subject to joinder;**
- (e) Cost of this application be in the cause;**
- (f) The court grants any other relief it deems just and expedient in the circumstances.**

6. The second application is dated 3<sup>rd</sup> November, 2025 and is filed by David Kangethe on behalf of Munderu Farmers and Traders. It seeks the following orders;

- (i) The honourable court be pleased to certify this application urgent;**

- (ii) Service of this application be dispensed with owing to the urgency of the matter;**
- (iii) The applicant, Munderu Farmers and Traders be enjoined in this Succession Cause as interested party;**
- (iv) The applicant be enjoined in the ongoing Court Annexed Mediation proceedings relating to the Estate of Nelson Muchai Kinuthia being MLM/MED/954/2025 currently ongoing before CPM Sheila Wairimu;**
- (v) This honourable court be pleased to grant leave to the proposed interested party to fully participate in the proceedings herein and file such pleadings, affidavits, submissions and other documents subject to joinder;**
- (vi) Costs of this application be in the cause;**
- (vii) The court grants any other relief it deems just and expedient in the circumstances.**

7. The Administrator opposed the applications and filed replying affidavits in opposition to the two applications. The Applicants in the summons to revoke the Grant do not oppose the two applications seeking joinder.
8. Thomas Muchai argues that he is a grandchild of the deceased and that the deceased, in 1994, had gifted him a quarter of an acre of land during his lifetime as a gift and allowed him to take possession. Thomas is the son of Grace Wairimu Muchai, a daughter of the deceased. He argues that he has an interest in the succession cause because of this portion, which he was gifted, and also argues that the Will does not indicate if the  $\frac{1}{4}$  of acre mentioned in the Will may refer to an additional bequest and not the same gift he had been given.
9. Eric Muchai alias Nelson Muchai opposes the assertion by Thomas that the referenced  $\frac{1}{4}$  is a separate bequest, arguing that Thomas seeks to subvert the will. He stated that Thomas is an automatic party by virtue of being a grandchild and being named in the Will.
10. Enjoinment is not automatically granted as a matter of right; rather, it is conferred at the discretion of the

Court. Consequently, it is essential for an Applicant to present compelling grounds to the Court to justify the issuance of such an order.

11. To determine the application by Thomas Muchai, it is correct that he does not need any leave for joinder to participate in the proceedings. He has a direct and identifiable interest in the estate and is a grandchild of the deceased. He is at liberty to move the Court, just as the other beneficiaries are. His attendance and participation in the mediation process is also important.
12. On the second application dated 3<sup>rd</sup> November, 2025 filed by David Kangethe on behalf of Munderu Farmers and Traders, there is no authority filed by David that shows that he is acting on behalf of Munderu Farmers as claimed. Additionally, there is evidence that the claim he is purporting to lodge at present in relation to the interest in Kiambaa/Thimbigua/569 was already determined by the High Court at Nairobi in **Civil Case No. 3043 of 1996, Benson Nderu Karanja and others vs Nelson Muchai & Eric Muchai**. The deceased and the executor were named as defendants, and the case was dismissed

on 22<sup>nd</sup> April, 2005. The principle of *res judicata* applies, and David and Munderu Farmers cannot seek to relitigate it by seeking joinder in the succession proceedings.

13. The application dated 3<sup>rd</sup> November, 2025 is not merited and is dismissed with costs to the executor.

14. Thomas Muchai is at liberty to participate in the succession proceedings and the mediation process and may file such pleadings as may be necessary. I make no order as to the costs of his application.

15. The Honourable Deputy Registrar shall contact the Mediator to reconvene the mediation process based on the directions requested in her communication to the Court. Updates regarding the mediation process will be shared with the parties involved, including Thomas.

16. The mediation process shall be completed within 60 days from the date the directions are formally communicated to the mediator. If necessary, parties may request an extension from the Court.

17. Further directions will be issued once the parties report on the progress or outcome of the mediation process.

18. It is so ordered.

**DATED, DELIVERED and SIGNED at NAIROBI** through the Microsoft Teams Online Platform on this **16<sup>TH</sup>** day of **FEBRUARY, 2026.**

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**C. KENDAGOR**

**JUDGE**

**In the presence of:**

Court Assistant: Beryl

Ms. Ameka for Objectors

No appearance for Applicants

No appearance for Administrator