



REPUBLIC OF KENYA



**In re Estate of Muraya (Deceased) (Succession Cause 145 of 2007)  
[2026] KEHC 2385 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2385 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NYERI**

**SUCCESSION CAUSE 145 OF 2007**

**MA ODERO, J**

**FEBRUARY 27, 2026**

**IN THE MATTER OF THE ESTATE OF PHILIP MATHENGE MURAYA (DECEASED)**

**BETWEEN**

**NEWTON MUTHUI MATHENGE ..... APPLICANT**

**AND**

**STEPHEN MURIITHI MWEMA ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Summons dated 22<sup>nd</sup> November 2022 by which the Applicant/Protestor NEWTON MUTHUI MATHENGE seeks the following orders:-
  - “ 1. That the Honourable Court be pleased to set aside the suo moto order dated 4<sup>th</sup> May 2021 dismissing the Protest dated 8<sup>th</sup> July 2009 for want of prosecution and reinstate Nyeri High Court Succession Cause No. 145 of 2007.
  2. That the Honourable Court after issuing of Order (1) above be pleased to issue directions that the Protest be set down for hearing at the earliest available date vide viva voce evidence.
  3. That the costs of this application be in the cause.”
2. The application was premised upon Rule 73 of the Probate and Administration Rules 1980 and Article 159 (2) (a) of *the Constitution* of Kenya 2010 and all enabling provisions of the law and was supported by the affidavit of even date sworn by the Applicant.
3. The Petitioner/Respondent STEPHEN MURIITHI MWEMA opposed the application through the Replying Affidavit dated 8<sup>th</sup> April 2025. The application was canvassed by way of written submissions.



The Applicant filed the written submissions dated 1<sup>st</sup> August 2025 whilst the Respondent relied upon his written submission dated 14<sup>th</sup> April 2025.

## Background

4. This succession cause relates to the estate of the late Philip Mathenge Muraya (hereinafter ‘the Deceased’) who died intestate on 31<sup>st</sup> July 2020. A copy of the Death Certificate Serial Number 760897 was filed in the High Court on 20<sup>th</sup> April 2007.
5. There has been much litigation in this cause. Grant of letters of Administration Intestate was issued to the Respondent on 13<sup>th</sup> November 2018. On 8<sup>th</sup> July 2009 the Applicant filed a Protest seeking to have the grant revoked.
6. The Applicant avers that the Court on 4<sup>th</sup> May 2021 dismissed his protest ‘Suo Moto’. He then filed the present application seeking to review the orders which dismissed the Protest dated 8<sup>th</sup> July 2009.

## Analysis And Determination

7. I have carefully considered this application as well as the submissions filed by both parties. The main issue for determination is whether this application seeking to set aside the previous orders of the High Court is merited.
8. The Applicant in his Supporting affidavit indicated that the Protest dated 8<sup>th</sup> July 2009 was dismissed on 4<sup>th</sup> May 2021. I have anxiously perused the record and I find that no such orders were made on 4<sup>th</sup> May 2021. The correct position is that on 12<sup>th</sup> October 2020, Hon. Justice Ngaah dismissed the Protest *Suo moto* ‘for want of prosecution’ The Honourable Judge then proceeded to set down for hearing the Summons for confirmation of Grant dated 24<sup>th</sup> June 2009. The Grant was eventually confirmed on 4<sup>th</sup> May 2021 and a Certificate of Confirmed Grant was duly issued.
9. To date the estate is yet to be distributed as it is alleged that certain parties have declined to execute the required transmission documents.
10. By this application the Applicant is seeking the setting aside of the orders dismissing his protest for want of prosecution. Once again my perusal of the file reveals that a similar application dated 13<sup>th</sup> May 2021 was made by the same Applicant. That application was dismissed by Hon. Lady Justice Muchemi *vide* the Ruling delivered on 3<sup>rd</sup> November 2022.
11. In the circumstances it is quite clear that this present application is ‘Res Judicata’. Section 7 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya sets out the doctrine of Res Judicata thus  

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.” [Own emphasis]
12. In this case of *John Florence Maritime Services Limited & Another v Cabinet Secretary Transport & Infrastrure & 3 Others*[2021 eKLR the Supreme Court of Kenya stated as follows  

“.....The doctrine of resjudicata in effect allows a litigant only one bite at the cherry. It prevents a litigant or persons claiming under the same title from occasioning unnecessary



costs to the parties and it ensures that litigation comes to an end and the verdict duly translates into fruit for one party and liability for another party conclusively.....”

13. Similarly in the case of Koross(legal personal representative of Elijah CA Koross) v Komen & 4 Others[2015] eKLR the Court of Appeal stated that:-

“The philosophy behind the principle of res judicata is that there has to be finality; Litigation must come to an end. It is a rule to counter the all too human propensity to keep trying until something gives. It is meant to provide rest and closure, for endless litigation and agitation does little more than vex and add to costs. A successful litigant must reap the fruits of his success and the unsuccessful one must learn to let go.

Speaking for the bench on the principles that underlie res judicata, Y.V. Chandrachud J in the Indian Supreme Court case of Lal Chand v Radha Kishan,AIR 1977 SC 789 stated and we agree;

“The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.” [Own emphasis]

14. Finally on this point the court in Njue Ngai v Ephantus Njiru Ngai & another [2016] KECA 805 (KLR) stated as follows:-

13. What is res judicata and when does it apply? The Latin of it is simply “a thing adjudicated”. But it has overtime received extensive judicial interpretation in various jurisdictions of the globe which we shall not be tempted to explore here. Suffice it to adopt the definition in Black’s Law Dictionary, Ninth edition, as:

- (i) An issue that has been definitively settled by judicial decision;
- (ii) An affirmative defence barring the same parties from litigating a second lawsuit on the same claim or any other claim arising from the same transaction, or series of transactions and that could have been - but was not – raised in the first suit.

14. In the case of Ukay Estate & another vs Shan Hirji Manek Ltd & 2 others [2006] eKLR, (supra), cited by the appellant, Waki JA stated as follows:

“The doctrine is not merely a technical one applicable only on records. It has a solid base from considerations of high public policy in order to achieve the twin goals of finality to litigation and to prevent harassment of individuals twice over with the same account of litigation. Put another way, there must be an end to litigation and no man shall be vexed twice over the same cause.”

15. ....

16. An issue may then arise from that section as to whether interlocutory proceedings, appeals or civil proceedings other than suits commenced by plaint are covered under the section or under the general principle of res judicata. The uhuru Highway Development Limited v Central Bank of Kenya & 2 others [1996] eKLR, (supra) which is relied on by the appellant, extensively discussed the issue and particularly whether the principle of res judicata applied to an application heard and determined in the same suit. In other words, whether a matter of interlocutory nature decided in one suit can be subject of another similar application in



the same suit. The Court held that the principle was applicable and that Section 7 was but an aspect of the general principle, stating thus:

“.....there must be an end to applications of similar nature; that is to say further, wider principles of res judicata apply to applications within the suit. If that was not the intention, we can imagine that the courts could and would be inundated by new applications filed after the original one was dismissed. There must be an end to interlocutory applications as much as there ought to be an end to litigation. It is this precise problem that section 89 of our *civil procedure Act* caters for.” [Own emphasis]

15. Finally in the same case the Court of Appeal summarized the doctrine of res judicata as follows:-

“In order to rely on the defence of res judicata there must be

- i. A previous suit in which the matter was in issue
- ii. The parties were the same or litigating under the same title.
- iii. A competent court heard the matter in issue
- iv. The issue has been raised once again in a fresh suit.”

16. In this application the applicant is seeking to have the orders dismissing the protest set aside. These are the very same prayers which the applicant sought in the application dated 13<sup>th</sup> May 2021 which application was heard and determined by Hon. Lady Justice Muchemi.

17. The applicant in this summons contended that the application of 13<sup>th</sup> May 2021 differed from the present application in that the former did not contain a prayer seeking reinstatement of the protest. That is a blatant attempt to mislead the court. Prayer (2) of the application dated 13<sup>th</sup> May 2021, sought for orders;-

“That in place thereof the order for hearing of the protest by way of Viva Voce evidence be reinstated.” [own emphasis]

This is clearly a prayer seeking reinstatement of the protest which prayer had been dismissed vide the ruling delivered on 3<sup>rd</sup> November 2022.

18. I therefore find that this application is an abuse of court process. The Applicant cannot continue bombarding the court with similar applications hoping to get a favourable result. This court has no authority to countermand orders made by a competent court of concurrent jurisdiction.

19. Finally I find no merit in this application for review. The same is dismissed in its entirety. Costs will be met by the Applicant.

**DATED IN NYERI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

.....

**MAUREEN A. ODERO**

**JUDGE**

