



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCCESSION CAUSE NO. E012 OF 2024**

**IN THE MATTER OF THE ESTATE OF JEREMIAH MUTHOMI**  
**(DECEASED)**

**WINFRED KARIMI MUTHONI**

**JOY KATHAMBI KITHINJI.....APPLICANTS**

**VERSUS**

**NAOMI**

**NKIROTE**

**MUTHOMI.....1<sup>ST</sup>**

**PETITIONER/RESPONDENT**

**STELLA**

**MUKAMI**

**MUTHOMI.....2<sup>ND</sup>**

**PETITIONER/RESPONDENT**

**RULING**

1. For determination is the Summons dated 8/8/2025 under Rules 63 and 72 of the Probate and Administration Rules, seeking that;
  1. Spent.
  2. The letters of administration be issued to the petitioners and Winfred Karimi Muthomi.
  3. This case be transferred to Nanyuki High Court for hearing and disposal.
  4. The Court be pleased to Order that the rent and other profits due to the estate be deposited in an interest earning account.
  5. The petitioners do give an account for all the rents and profits collected from the rental premises within Nanyuki, from date of death of the deceased.
  6. This Court do give such further direction as it may deem fit.

2. The application is premised on the grounds that the petitioners and the applicants herein all reside at Kamangura within a radius of less than 6 kilometers from Nanyuki High Court, and majority of the estate properties are within the environs of Nanyuki Town within the jurisdiction of Nanyuki high Court. This cause was filed in Meru with a view to secretly conduct it to the detriment of the applicants, and it is more expedient and cost effective that it is heard at Nanyuki. The petitioners have been collecting and appropriating to themselves all the rental income from the properties of the deceased to the exclusion of the applicants, and it is mete that the orders sought are granted.
3. The 1<sup>st</sup> petitioner/respondent swore a replying affidavit on 21/10/2025 in opposition to the application. She termed the application a non-starter aimed at frustrating the conclusion of this cause and denied knowing the applicants and/or their familial relationship to the deceased. The deceased hailed from Meru, and the fact that some of his properties are in Nanyuki is not a basis for the transfer sought. She is willing to render an account of the income accruing from the estate upon proof that the applicants are indeed beneficiaries or dependants, as the case may be.
4. The applicants swore a supplementary affidavit on 20/10/2025 in support of their application.
5. Although the application was directed to be canvassed by way of written submissions, none were filed by counsel.

### **DISPOSITION**

6. Having considered the application and the responses thereto, I find the issue for determination to be whether the threshold for transfer has been met.

7. Section 47 of the Law of Succession Act vests the High Court with jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.
8. Indeed, the High Court is empowered under Section 18 of the Civil Procedure Act to withdraw and transfer any suit pending before a lower court to itself or to another court of competent jurisdiction to hear and determine it.
9. The factors to be considered before a transfer can be ordered were enlisted by the court (*G.V Odunga J as he then was*) in **Hangzhou Agrochemicals Industries Ltd. v Panda flowers Ltd [2012] eKLR** as follows;  

***“...the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case.”***
10. According to the chief’s introductory letter dated 22/7/2024, the deceased hailed from Kibaranyaki Location, Abothuguchi West Ward in Meru County survived by 8 beneficiaries. It would be manifestly unjust to transfer the cause from Meru where majority of the beneficiaries reside, merely to accommodate the convenience of the applicants herein. The cost implication that such transfer would

occasion to the majority beneficiaries far outweighs the convenience sought by the applicants.

11. I find that granting the transfer sought will occasion undue hardship to the petitioners and the other beneficiaries, which may ultimately result in a miscarriage of justice.
12. In the circumstances therefore, the balance of convenience tilts in favour of declining the transfer sought.
13. On the prayer to render accounts however, one of the duties imposed on an administrator under Section 83 (h) of the Law of Succession Act is;

***“to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”***

14. In this regard, the law requires administrators to be accountable, transparent, and to act in the best interest of all beneficiaries. In **re Estate of David Kyuli Kaindi (Deceased) [2015] KEHC 3310 (KLR)**, the court (*W. Musyoka J*) highlighted that;

***“The obligation to account is tied up with the fact that personal representatives are also trustees. This is so as property belonging to another vests in them in their capacity as personal representatives, and they hold the same for the benefit of others - beneficiaries, heirs, dependants, survivors, creditors, among others. They stand in a fiduciary position in relation to the property and the beneficiaries. As they hold the property for the benefit of others or on behalf of others - they stand***

***to account to the persons for whose benefit or on whose behalf they hold the property. It is an equitable duty and a statutory obligation.”***

15. From the foregoing, it is vivid that the administrators are fiduciaries entrusted by law to manage and account for the deceased's estate with integrity, transparency, and accountability. Rendering full accounts is not just procedural, it is a core duty, and failure to do so can lead to serious legal consequences, including revocation of the grant.
16. The prayer for the deposit of the rent income in an interest earning account is in tandem with the duties of the administrators as stipulated under section 83 of the Law of Succession Act, and it is equally merited.
17. In their supplementary affidavit, the applicants have expressed their willingness for the petitioners to continue acting as the administrators of the estate, and therefore prayer 2 is spent.
18. The upshot from the foregoing is that the application is merited and is granted in terms of prayers 4 and 5.
19. Mention to confirm compliance on 16/6/2026.

**DATED AND DELIVERED AT MERU THIS 9<sup>TH</sup> DAY OF APRIL 2026.**

**S.M. GITHINJI**  
**JUDGE**

**APPEARANCES:**

Mr. Mugire for the Petitioner.

Mr. Karweru for the Applicant absent.