



**In re Estate of James Nzioka Mutie (Deceased) (Succession Cause  
697 of 2015) [2026] KEHC 4480 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4480 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION CAUSE 697 OF 2015**

**EM MURIITHI, J**

**MARCH 12, 2026**

**IN THE MATTER OF THE ESTATE OF JAMES NZIOKA MUTIE (DECEASED)**

**BETWEEN**

**PETRONILA MBAIKA NZOKA ..... 1<sup>ST</sup> PETITIONER**

**JOSEPH MUTIE NZOKA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**NANCY MUTHONI NZOKA ..... APPLICANT**

**RULING**

1. The applicant filed Summons dated 28<sup>th</sup> February, 2025 seeking the following orders:
  1. That the Honourable court be pleased to set aside the mediation proceedings and agreement vide Mediation no. KR/MED/084/2022 dated 28<sup>th</sup> October, 2022.
  2. That the Honourable Court be pleased to strike off record the amended affidavit in support of summons for confirmation of grant sworn on 28<sup>th</sup> May, 2013.
  3. That the costs of this application be provided for.
2. The application is based on the grounds on the face of the application and the supporting affidavit of the applicant, which set out the applicant's case that the petitioners filed an amended affidavit in support of summons for confirmation of grant sworn on 28<sup>th</sup> May, 2013 and even so, they listed property that did not belong to the deceased's estate which includes; Wang'uru Township/78 and Kirinyaga Marurumo 501. In the said amended affidavit, the petitioners also omitted a number of the deceased's estate which include Wang'uru Township/44, Wang'uru Township/76, Wang'uru Township 380, 60 horse power turbine money held in KCB A/C No.s 048xxxxxxxx and 0481xxxxxxxx.



3. The applicant avers that on 15<sup>th</sup> August, 2022 the Honourable Deputy Registrar referred the matter to mediation and vide a letter dated 18<sup>th</sup> August, 2022 the beneficiaries were invited for mediation. On 30<sup>th</sup> October, 2022 a mediation report was filed before this court stating that on 28<sup>th</sup> October, 2022 parties came to a consensus in regards to Plot. No. 78, which property does not form part of the deceased's estate. Further, the applicant avers that the alleged mediation agreement that took place on 3<sup>rd</sup> November, 2022 does not have a mediation attendance sheet to it and neither is the same signed by the mediator and/or does it indicate if it is in regards to the mediation proceedings in KR/MED/084/2022. Lastly, it is urged that the applicant on 3<sup>rd</sup> November, 2022 did not consent and/or sign any mode of distribution of the deceased's estate at any mediation settlement. She is desirous of having the deceased's estate justly listed and distributed.

### **Response**

4. The Petitioners deposed to a Replying Affidavit responding that the mediation was conducted with the participation of all the members' way back in 2022. The Applicants' move to file this application is an afterthought and malicious and she is economical with truth. They do not have any claim in Wanguru/Township 630, Wanguru/Township/631 and Kirinyaga/Marurumo/501 especially on the issue of ownership. The mediation attendance list is clear on the parties present as well as the outcome. The Applicant was present and even signed the attendance list. We need not belabour on that issue.
5. The petitioners aver that there was a consensus regarding Plot No. 78 which seems to be the centre of this application. The certificate of official search dated 6<sup>th</sup> August 2009 shows that Wanguru/Township/78 is owned by James Nzoka Mutie and Nancy Muthosi Nzoka as a jointly in equal shares. There is a certificate of lease to that effect. However, the title deed does not indicate the mode of joint proprietorship. Plot No. 78 initially belonged to James Nzoka Mutie (deceased) who later, on the 28<sup>th</sup> May 2009 transferred the same to Thomas M. Nzoka. Further, since there are two (2) documents for proof of ownership, it would only be prudent that they are referred to the environment and land Court so as to determine who really owns the plot in question, Wanguru Plot No. 78.
6. Lastly, the petitioners aver that the family had met and agreed on the mode of distributions especially for the widows to the deceased and the Applicant was present. They do not have any problem if there are additional properties which belonged to the deceased and should be listed herein for distribution by all the beneficiaries.

### **Applicant's submissions**

7. BY Submissions dated 20/1/2026 the Applicant submits that she is the wife to the late James Nzioka Mutie. The 1<sup>st</sup> Petitioner herein namely Petronilla Mbaika is her co-wife. They have also annexed a copy of the Mediation Agreement as Annexure No.5. On the second page of the Mediation Agreement it shows that parties agreed that the 1<sup>st</sup> Petitioner herein namely Petronilla Mbaika gets the whole of Plot No.78. (See Page 16-17 of the Summons before this Honourable Court).
8. The applicant submit that Wang'uru Township/78 does not form part of the deceased's estate that was up for distribution. The Applicant herein had leased the property from the County Government of Kirinyaga jointly with the deceased (James Nzoka Mutie) and upon his demise, his interest automatically passed to the Applicant herein and she became the sole lessee of the Property.
9. When one person in a joint land ownership passes away, the deceased's share automatically transfers to the surviving owner(s) through a "right of survivorship". The property is free property and does not therefore constitute the deceased's estate going through probate or succession.



10. The applicant has annexed a copy of the Official Search for Wang'uru Township/78 as Annexure No.6. (See Page 18 of the Summons before this Honourable Court). From the Official Search one will notice that a Certificate of Lease was issued in August, 2005.
11. On 12<sup>th</sup> July, 2005 the deceased (James Nzioka Mutie) was given a consent to add the name of the Applicant herein in the said lease (Wang'uru/Township/78). The applicant has annexed copies of the said consent and the payment receipt to their Summons before this honourable Court (See Page 19 and 20 of the Summon, before this Honourable Court).
12. Upon consent being granted to add the Applicant's name, a Certificate of Lease was issued jointly to the two of them on 15<sup>th</sup> August, 2005 (See page 21-24 of the Summons before this Honourable Court). Thus it is contended that the Applicant herein is the sole lessee of Wang'uru Township/78.
13. It is in light of the foregoing that they urge this court to set aside the mediation proceedings and agreement vide Mediation No. KR/MED/084/22 dated 28<sup>th</sup> October, 2022 and also strike off record the Amended Affidavit in Support of the Summons for Confirmation of Grant sworn on 28<sup>th</sup> May, 2013 so as to accord the beneficiaries of the estate of the deceased a chance to organize themselves, list all the rightful properties of the deceased and ensure that they are justly distributed.

#### **Respondents/Petitioners' submissions**

14. In their submissions dated 26/9/2025, the Petitioners submit that this is a Probate Court, and as such it can only deal with the administration and distribution of the estate of the deceased. The issue of title and ownership or rather proprietorship of a property places the matter under the environment and Land court. The probe court has no jurisdiction to handle issues to do with ownership. The Plot No. 7 Wang'uru, which is in question, is no exception. They urged that applicant does not occupy that Plot No 78. She has never been in occupation. She signed off as number 3 in the Mediation attendance sheet. She has not demonstrated how the Mediation proceedings were compromised and why the same should be struck out.
15. In a nutshell, they urge that the parties should first of all settle on the ownership of plot No. 78 Wanguru in the Environment and Land Court. The rest of the property in deceased name may be distributed accordingly. The Applicant has not showed sufficient reasons as to why the Mediation proceedings and report should be set aside.

#### **Issues**

16. The issues for determination are:
  1. Whether Honourable court be pleased to set aside the mediation proceedings and agreement vide Mediation no. KR/MED/084/2022 dated 28<sup>th</sup> October, 2022.
  2. Whether the Honourable Court be pleased to strike off record the amended affidavit in support of summons for confirmation of grant sworn on 28<sup>th</sup> May, 2013.

#### **Analysis**

##### **Whether the Mediation Agreement should be set aside**

17. The Applicant contends that Plot No. Wang'uru Township/78 does not form part of the estate of the deceased as it was jointly owned and therefore devolved to her by right of survivorship. She further argues that she did not consent to the mode of distribution reflected in the mediation agreement.



18. The Petitioners maintain that mediation was properly conducted, that all parties were present and signed the attendance sheet, and that the Applicant's challenge is an afterthought. Court-annexed mediation is anchored under Article 159(2)(c) of *the Constitution* and Order 46 of the Civil Procedure Rules. Once adopted by the Court, a mediation agreement assumes the force of a judgment of the Court.
19. The Applicant has not demonstrated fraud, coercion, misrepresentation or mistake in the mediation process. The mere assertion that she did not agree, without evidence impeaching the integrity of the mediation process, is insufficient to warrant setting aside a consent judgement.
20. The Applicant has not demonstrated fraud, coercion, misrepresentation or mistake in the mediation process. The mere assertion that she did not agree, without evidence impeaching the integrity of the mediation process, is insufficient to warrant setting aside a consent. However, the Court must consider whether the subject property forms part of the estate.

### **Jurisdiction on ownership disputes**

21. It is settled law that the Probate Court lacks jurisdiction to determine contested questions of ownership of property as between the estate and third parties.
22. In re Estate of M'Marete M'Mugambi (Deceased) [2017] eKLR, the Court held that where a dispute arises as to whether a property forms part of the estate, and such dispute involves third-party claims, the appropriate forum is the Environment and Land Court. See also re estate of Prisca Ongayo Nande (2020) KEHC 6553 (KLR) cited by the respondent.
23. The dispute as to whether Wang'uru Township/78 was jointly owned and whether it devolved by survivorship raises substantive issues of proprietorship and interpretation of land registration documents. Such determination falls within the jurisdiction of the Environment and Land Court under Article 162(2)(b) of *the Constitution*.
24. The Court respectfully notes the decisions of re Estate of Keziah Wanjiru Mondo (Deceased) (2025) KEHC 14640 (KLR) and re Estate of Stephen Cheruiyot Kositany (Deceased) [2019] KEHC 4151 (KLR), on joint ownership and the right of survivorship cited by the applicant. However, the Court is also aware of section 91 (2) of the *Land Registration Act* which provides that:

“Except as otherwise provided in any written law, where the instrument of transfer of an interest of land to two or more persons does not specify the nature of their rights there shall be a presumption that they hold the interest as tenants in common in equal shares.”
25. In this case, there is also evidence of a transfer of the said plot to a third party one Thomas M. Nzioka on 28/5/2009. In the end, it is a question of ownership of land, which the ELC is constitutionally mandated to determine.
26. Accordingly, while this Court will not set aside the Mediation agreement for lack of demonstrated legal grounds, it cannot distribute property whose ownership is contested without proper adjudication.

### **Whether the Amended Affidavit of confirmation of grant should be struck out**

27. The Applicant alleges that certain properties were wrongly included and others omitted. Such issues can be addressed at confirmation of grant through oral evidence if necessary.
28. Under Section 71 of the *Law of Succession Act*, the Court must be satisfied as to the identification of beneficiaries and the assets of the estate before confirming a grant. The proper remedy is rectification



or amendment, not striking out the affidavit in its entirety. If the applicant considers that some of the deceased's properties have been omitted from the succession proceedings, the Applicant may, if so advised, file an application for rectification.

## **ORDERS**

29. Accordingly, for the reasons set out above, the application dated 28/2/2025 for the setting aside of the Mediation settlement is declined.
30. In the interests of justice, the Court will stay the implementation of the Mediation Report pending determination by the Environment and Land Court (ELC) of the question of the ownership of plot Wanguru/Township/78.
31. This Succession proceedings shall be stayed for ninety (90) days to allow the applicant, if so advised, to file a suitable cause before the appropriate ELC for determination of the ownership of parcel of land LR. Wanguru/Township/78.
32. Mention for directions on 6/7/2026.
33. There shall be no orders as to costs.

Order accordingly.

**DATED AND DELIVERED THIS 12<sup>TH</sup> DAY OF MARCH 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Kathigi for Mr Magee for the Applicant.

Mr. Mugo for the Petitioners/Respondents.

