



**In re Estate of Muchiri (Deceased) (Probate & Administration
181 of 2009) [2026] KEHC 4403 (KLR) (3 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4403 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
PROBATE & ADMINISTRATION 181 OF 2009**

SM MOHOCHI, J

MARCH 3, 2026

IN THE MATTER OF THE ESTATE OF FRANCIS NDEGWA MUCHIR-DECEASED

BETWEEN

SAMSON NJUGUNA MBUGUA APPLICANT

AND

ZIPPORAH WAITHIRA NDEGWA LATE RESPONDENT

RULING

1. Before me is a summons dated 4th June 2025 filed pursuant Sections 1A, 1B, 3A, 17 and 18 of the *Civil Procedure Act* filed by one Samson Njuguna Mbugua a purported purchaser for consideration that now classifies himself as a beneficiary.
2. The Applicant seeks the following relief(s);
 - a. That the Honorable Court be pleased to reactivate this succession proceedings.
 - b. That the Honorable Court be pleased stay proceedings at Engineer Magistrates Court in ELC case No. EO12/2015 Zipporah Waithira Ndegwa (Suing as the administrator of the Estate of the late Francis Ndegwa Muchiri) Vs Samson Njuguna Mbugua pending conclusion of succession proceedings.
 - c. That the costs of this application be costs in the cause.
 - d. That the Honorable Court be pleased to transfer these proceedings to Engineer Magistrates Court
3. The Application was supported by an even sworn Affidavit by the Applicant and is grounded on the following grounds;



- a. The succession proceedings herein have not been active since the year 2009 or thereabouts and the file was closed.
 - b. The Applicant is not certain as to whether or not a certificate of confirmation of grant was issued at the time of making this application since he was not in position of perusing the Court file.
 - c. The Petitioner/ Respondent has instituted eviction proceedings against the Applicant via Engineer Magistrates Court in ELC case No. EO12/2025.
 - d. The Applicant is desirous of filling an affidavit of protest for being excluded as a beneficiary to Estate of the Deceased despite purchasing a portion of land measuring 0.202HA that was meant to be hived of LR. Nyandarua/MAWINGO/110.
 - e. The Applicant is a bonifide purchaser for value and a beneficiary to the Estate of Francis Ndegwa Muchiri-Deceased having purchased a portion of land measuring 0.202HA from the deceased in year 2004 that was meant to be hived off the suit property.
 - f. The Petitioner/Respondent commenced these succession proceedings without the knowledge of the Applicant
 - g. The suit property LR. Nyandarua/Mawingo/110 within the competent geographical and pecuniary Jurisdiction of Engineer Magistrates Court.
 - h. Both the Applicant and the Respondent reside at Mawingo -Engineer within Nyandarua County.
 - i. It is in the interest of justice to have this matter reinstated and transferred to Engineer Magistrates Court.
4. While the Application was uncontested despite service, the Court directed the Applicant to file written submissions.

Applicants Submissions.

5. The Applicant submits that he seeks for orders of reactivation of this case, having this suit be transferred to Engineer Magistrates Court, and an order for stay in Engineer MCEL C Case No. EO12/2025. The Petitioner/ Respondent instituted eviction proceedings against the Applicant via Engineer Magistrates Court in ELC Case No. EO12/2025.
6. That the Applicant is desirous of filling an affidavit of protest for being excluded as a beneficiary to Estate of the Deceased despite purchasing a portion of land measuring 0.202HA that was meant to be hived of LR. Nyandarua/Mawingomo. The Applicant is a rightful bonafide purchaser for value and a beneficiary to the Estate of Francis Ndegwa Muchiri-Deceased having purchased a portion of land measuring 0.202Ha from the deceased in year 2004 that was meant to be hived off the suit property.
7. That the Petitioner/Respondent commenced these succession proceedings without the knowledge of the Applicant. Both the Applicant and the Respondent reside at Mawingo-Engineer within Nyandarua County. It is in the interest of justice to have this matter reinstated and transferred to Engineer Magistrates Court.
8. The Applicant framed the following issues for determination.
 - I. Whether it is justifiable for these proceedings to be reactivated?



II. Whether it is justifiable for these proceedings to be transferred to Engineer Magistrates Court?

As to Whether it is justifiable for these proceedings to be reactivated

9. The Applicant seeks reactivation of this case outdistancing the fact that this file has been inactive since the year 2009 or thereabouts. The Applicant was not aware and was never notified at the inception of this succession proceedings. The Applicant first learnt of suit upon being served by pleadings in the ongoing Engineer Magistrates Court MCELC case No. EO12/2025. The Applicant seek to move the honorable Court for the purposes of revoking the grants issued because they were obtained without disclosing all material fact before the Court as the express provision of Section 76 a, b &c of the Law of Succession Act.
10. The Applicant implores the Court to find that; there is sufficient cause for reactivating these succession proceedings because the Applicant was concealed as a beneficiary to the Estate without any justifiable reason.

As to Whether it is justifiable for these proceedings to be transferred to Engineer Magistrates Court?

11. That this suit was filed in the year 2009 before the establishment of Engineer Laws Courts. It is a matter of Judicial notice that Engineer Law Court was gazetted and established in the year 2012 after the commencement of this suit.
12. That the suit property LR. Nyandarua/MAWINGO/110 is located at Mawingo Nyandarua an area of within the territorial jurisdiction of the Engineer Magistrates Court. Both parties to this suit are residents of Engineer in Nyandarua county. The cause of action arose in Mawingo Nyandarua County as well.
13. The Applicant urges the invocation of the provisions of Section 11 (ii) of the Civil Procedure Act Cap 21 Laws of Kenya in exercising its discretion of transferring these proceeding to Engineer Magistrates Court.
14. It is the Applicant's submission that, the Court has the discretion of transferring this suit to Engineer Magistrates Court for ease and convenience of both litigants.
15. That the contested portion of land measuring 0.202HA is located in remote area -Mawingo location whose monetary value is less than KSHS 20 million within competent civil Jurisdiction of the nearest Magistrates Court which is Engineer Law Courts. That Engineer Magistrates Court has both the civil and pecuniary jurisdiction to entertain this suit.
16. Applicants are desirous of this Honorable Court finding merit in the instant application for being unopposed. The Respondent has been duly served on different occasions but has never entered appearance. The Respondent is well aware of these proceeding since she has always made an appearance as the Plaintiff in Engineer Magistrates Court MCELC case No. EO12/2025 where the Magistrates Court has from time to time been informed of the pendency of the instant application before the High Court.

Analysis and Determination

17. I have considered the Applicants case and the following issues crystalize for my consideration: -
 - i. Whether the Applicant has locus in this matter?
 - ii. Whether there is any basis or reopening an otherwise closed probate?



18. Rule 17(1) of the Probate and Administration Rules provides for, any person objecting to a pending application for a grant of representation (letters of administration or probate). It should be recalled that the window to object is 30 days during the gazette period.
19. Rule 40(6) of the Probate and Administration Rules provides for, any interested party to object to the proposed confirmation of grant. The window exists after the grant has been made.
20. If a grant has already been confirmed, the only way to challenge it is by applying to revoke or annul the grant under Section 76 of the *Law of Succession Act*.
21. Section 66 provides that in cases where a Deceased dies intestate, priority in granting letters of Administration will go to the surviving spouse or spouses and the children of the Deceased. The line of consanguinity is contained in Section 29 of the Act.
22. Based on the above it is my finding that the Applicant is a beneficiary to the estate and does not rank at all in priority to the beneficiaries of the Deceased's estate therefore has no locus standi in this matter.
23. The Applicant claims to have been a purchaser for consideration from the deceased, took possession, currently occupies the suit property.
24. The Applicant has equally been sued by the Administrator in Engineer Magistrates Court in ELC case No. EO12/2015. So, for 11 years the Applicant has been involved in the litigation over the suit property.
25. The Applicant maintains that he became aware of the probate recently. However, he has been engaged in a litigation for eleven years against the Administrator.
26. The probate was concluded without any protest or objection and the Court is of the view that the Applicant lacks any locus standi to move the Court.
27. The Applicant is best placed to articulate his concerns within the suit before the environment and land Court including all remedies such as specific performance against the administrator is his transaction with the deceased is validated by Court.
28. I am unable to find any merit in this Application 4th June 2025 and accordingly dismiss the same with no order as to costs.
29. This Probate file shall be marked as closed

It is so ordered.

DATED SIGNED AND DELIVERED AT NAKURU ON THIS 3RD DAY OF MARCH 2026

MOHOCHI S.M.

JUDGE

