

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT THIKA

MISCELLANEOUS CIVIL APPLICATION NO. E109 OF 2025

IN THE MATTER OF THE ESTATE OF STEPHEN MUHURURI

KIROBI (DECEASED)

SERAH NGOIRI

KAMAU.....1ST APPLICANT

MARY WAMBUI NJUGUNA.....2ND

APPLICANT

VERSUS

STEPHEN MAINA WANJIRU.....1ST

RESPONDENT

ELIJAH MWANGI G.K GITHAE.....2ND

RESPONDENT

CHARLES MUHURURI GICHUI.....3RD

RESPONDENT

IGNATIUS NGARUIYA GITAU.....4TH

RESPONDENT

DAVID MWANGI NJOROGE.....5TH

RESPONDENT

PETER MAINA NJUGUNA.....6TH

RESPONDENT

SAMUEL MWANGI GICHUHI.....7TH

RESPONDENT

JULIUS MBURU NJOROGE.....8TH

RESPONDENT

JOHN MWANGI CHEGE.....9TH

RESPONDENT

SIMON WAWERU KINYANJUI.....10TH

RESPONDENT

R U L I N G

Brief facts

1. The application dated 17th June 2025 seeks for orders of transfer of Thika MCSUCC No. 400 of 1999 to the Principal Magistrate's Court at Kandara for hearing and determination.
2. The application is unopposed.

Applicants' Case

3. The applicants state that they filed Summons for Revocation of Grant sometime in May last year whereas the grant was issued in favour of the respondents and when the matter came up for mention on 12th June 2025, the court determined that it does not have territorial jurisdiction over the matter as the estate comprising of LR No. LOC.3/MUKURIA/628 is located in Murang'a. The applicants further state that Hon I. F. Koome directed that parties file the necessary application before the instant court seeking for orders of transfer to the right court as the instant court lacks territorial jurisdiction. The applicants aver that no prejudice shall be occasioned upon the respondents if the orders sought are granted.

4. The applicants put in written submissions.

The Applicants' Submissions

5. The applicants submit that the estate comprising of LR. No. LOC.3/MUKURUA/628 is located in Murang'a thus the matter ought to be transferred under Section 18 of the Civil Procedure Act. Relying on the case of **15 Minutes Logistics Limited vs Mbala (Civil Appeal E928 of 2022) [2024] KEHC 7863 (KLR)**, the applicants urge the court to transfer the matter rather than dismiss it considering the matter has been in court for over 25 years.
6. The applicants argue that **Section 49 of the Law of Succession Act** provides that territorial jurisdiction of a succession matter is based on the deceased's last known residence or where the estate is located. The applicants further submit that since the estate property is situated in Murang'a, the matter ought to be transferred to the court in Kandara which is within Murang'a County. The applicants further submit that the respondents all have their addresses in Murang'a.
7. The applicants further submit that the Magistrate's Court Act currently provides for magistrates' jurisdiction in succession matters and powers to revoke or annul grants of representation. The applicants argue that the suit property is currently the subject of a related dispute MCCC No. 255 of 2024 which is already pending before

the Kandara Magistrate Court. The applicants further argue that if the succession cause remains in Thika while the civil suit proceeds in Kandara there is an imminent and inevitable risk of inconsistent outcomes and procedural gridlock. Further the law seeks to avoid multiplicity of actions which harms the society's legitimate interest in judicial efficiency.

The Law

8. **Section 18 of the Civil Procedure Act** provides:-

On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any

stage-

a) Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

b) Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter -

I. Try or dispose of the same; or

II. Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

III. Retransfer the same for trial or disposal to the court from which it was withdrawn.

Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn

9. Section 18 of the Act empowers the High Court to withdraw and transfer a case instituted in a subordinate court on application of any of the parties or on its own motion. For the court to grant an order of transfer the applicant must satisfy the court as to the reasons for such orders.

10. This principle was enunciated in the Ugandan case of **David Kabungu vs Zikarenga HCCC No. 36 of 1995** which held:-

Section 18(1)(b) of the Civil Procedure Act gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even *suo moto* by the court without the application by any party. The burden lies on the applicant to make out a strong case for the transfer. A mere balance of convenience in

favour of the proceedings in another court is not sufficient ground though it is a relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction....it is a well-established principle of law that onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are balance of convenience, questions of expense, interest of justice and possibilities of undue hardship, and 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.....Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court which transfer is sought has no jurisdiction to try the case, transfer would be refused.....

11. In the case of **Hanzhou Agrochemicals Industries Ltd vs Panda Flowers Ltd [2012] eKLR** the court held:-

In my view, which view I gather from authorities and from the law. The court should consider such factors as the motive and character of the proceedings, the nature of the relief of 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 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.

12. One John Mwenja Macharia was granted letters of administration of grant on 14th September 2006 in the estate of Stephen Muhururi Kirobi in Thika Succession Cause No. 400 of 1999. The estate comprised of land parcel LOC.3/MUKURIA/628 which was distributed to the ten respondents herein and the grant confirmed on 23rd February 2007. The current applicants moved the lower court on 20/05/2025 seeking for revocation of grant and the court directed that the application be served to the respondents and the matter be mentioned on 12/06/2025. On the said date, the learned

magistrate noted that the estate comprising of land parcel LOC.3/MUKURIA/628 was situated in Murang'a and therefore determined that the court in Thika did not have jurisdiction. The court further found that the court with jurisdiction ought to be Kandara Law Courts and directed that parties file the said application to initiate transfer. It is not disputed that the suit land parcel is located in Murang'a County within the geographical jurisdiction of Kandara Law Courts.

13. For the foregoing reasons, this application has merit and it is hereby allowed.
14. The case MC SUCC No. 400 of 1999 is hereby transferred to Kandara Magistrates Court for hearing and determination.
15. Each party to meet their own costs.
16. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 23RD DAY OF APRIL 2026.***

**F. MUCHEMI
JUDGE**