



REPUBLIC OF KENYA



**Mwanzia v Mutunga & another (Miscellaneous Civil Application  
E070 of 2023) [2025] KEHC 1226 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1226 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
MISCELLANEOUS CIVIL APPLICATION E070 OF 2023**

**EM MURIITHI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**PETER MUTUNGA MWANZIA ..... APPLICANT**

**AND**

**MATHII MUTUNGA ..... 1<sup>ST</sup> RESPONDENT**

**MELI KANINI MUTUNGA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant filed a notice of motion via a certificate of urgency dated 20<sup>th</sup> November, 2023 seeking the following orders:
  1. Spent.
  2. That this honourable court be pleased to issue an order transferring succession cause no. E015 OF 2022 at Wang'uru Magistrate's Court (in the matter of the estate of the late Mutunga Mwanzia-deceased) from Wang'uru Law Courts to Kithimani Law Courts for determination.
  3. Costs be provided for.
2. The application is based on the grounds on the face of the application and the supporting affidavit of the applicant.
3. The applicant depose that he is a resident of Makadara within Athi River Sub-County in Machakos County. He avers that he has been struggling to attend court at Wang'uru Law Courts due to the high costs of matatu and taxi tickets of approximately 5,000/- and at Kithimani Law Courts he will be using 600/- inclusive of lunch. That the deceased hails from Masinga Sub-County which is within the area of jurisdiction of Kithimani Law Courts. That the succession cause was wrongly filed at Wang'uru Law Courts instead of Kithimani Law Courts. That it will be affordable for the beneficiaries to travel from their various end point to Kithimani Law Courts.



4. The respondent filed a Replying Affidavit dated 7<sup>th</sup> March, 2023 stating that the land parcel P/No. 1028 Photo No.158 Wachoro Makima adjudication section is within the jurisdiction of Wangu'ru Law Court which made him to file the succession cause at Wangu'ru Law Courts. That the applicant and the 2<sup>nd</sup> Respondent consented to him being the administrator/petitioner and he filed succession proceeding of the estate of Mutunga Mwanzia (deceased) at Wang'uru Law Courts. The respondents aver that the matter has proceeded at the said court only that the applicant has been filling frivolous applications to avoid completion of the succession cause hence causing unnecessary delay in the completion of the matter. Further, the applicant and his advocate have been attending court without any complaint. Further, that the 1<sup>st</sup> Respondent is elderly and over 85 years and Wang'uru Law court is the nearest court that he can attend. Lastly, that the applicant's home is at Makima Mbeere and he is not a resident of Athi River, Machakos County and he only want to delay these proceedings for his selfish act and punish them.

### **Applicant Submissions**

5. The applicant submits that jurisdiction on every matter is everything both pecuniary and territorial whereby in the instant matter the deceased hailed from Masinga Sub County which is within Machakos County, his home is established at the same place and his remains are interred in the same area whose court of jurisdiction is Kithimani Law Courts. Further, the deceased also owned a parcel of land at Makima adjudication section which is situated in Embu County whose court of jurisdiction is Siakago and not Wang'uru Law Courts. That the filing of the said succession cause at Wang'uru law court was in bad faith and a calculated move by his sister and his mother who did such after intermeddling with the estate of the deceased by selling the land at Makima adjudication scheme through non-material disclosure and concealment.

### **Respondent Submissions**

6. The Respondent submits that the place of instituting succession cause is provided under Section 49 of the *law of Succession Act* as read to Section 7(3) of *Probate and Administration Rules* and provides that, the place of instituting a succession matter is the deceased's last known place of resident. An exception is where there is proof that the greater part of the deceased's estate is situated within the area of that other magistrate or there is good reason for transfer. Article 159 2) (b) of the *Constitution* provides that justice shall not be delayed.
7. The respondent submitted that 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. Other matters to be taken into consideration are: balance of convenience, questions of expense, interest of justice and possibilities of conduct hardship. In the case of *Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd* 2012 eKLR the court addressed conditions to be considered in determining whether or not to grant an order transferring a suit, thus:

- “ 1. “..In my view, which view I gather from authorities and from the law, the court should consider such factors as 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”.

8. The respondent submits that the party applying for a transfer has the burden of providing sufficient reasons as to why the transfer is merited. It is not in doubt that the matter which the Applicant is seeking to have transferred was due for the confirmation of grant. It is the Applicant’s contention that he does not have money to be attending court. That he is a resident of Makadara, Athi River and that the deceased hailed from Masinga Sub-County, located within the jurisdiction of Kithimani Law Courts. The death certificate and the chiefs letter dated 07/02/2022 which was adduced by the 1<sup>st</sup> respondent in the succession cause clearly states that the deceased was a resident of Makima Location in Mbeere district which is within the jurisdiction of Wanguru Law Courts. The 1<sup>st</sup> respondent is elderly she is over 85 years and she ought to be allowed to complete the succession cause in time without unreasonable delay. Moreover, the respondent submits that at the time the deceased passed on, all the beneficiaries were settled in Land Parcel No.1028 photo No.158 Wachoro Makima Adjudication section. The said parcel of land is within the jurisdiction of Wang’uru law courts and that was the reason why the 1<sup>st</sup> respondent filed the succession cause in Wang’uru Law Courts.

### Issue

9. The issue for determination is whether the suit should be transferred.

### Analysis

10. The applicant seeks for an order transferring succession cause no. E015 OF 2022 at Wang’uru Magistrate’s court (in the matter of the estate of the late Mutunga Mwanzia-deceased) from Wang’uru Law Courts to Kithimani Law Courts for determination.
11. The place of instituting succession cause is provided under Section 49 of the *Law of Succession Act* as read to Section 7(3) of *Probate and Administration Rules* and provides that, the place of instituting a succession matter is the deceased’s last known place of residence. Section 49 of the law of Succession Act provides for an exception to the rule thus:

“ 49. Territorial jurisdiction of magistrates

The Resident Magistrate within whose area a deceased person had his last known place of residence shall, if the gross value of the estate of the deceased does not exceed one hundred thousand shillings, have in respect of that estate the jurisdiction conferred by section 48:

Provided that—

- i. the magistrate may, with the consent or by the direction of the High Court, transfer the administration of an estate to any other resident magistrate where it appears that the greater part of the estate is situated within the area of that other magistrate or that there is other good reason for the transfer;
- ii. if the deceased had his last known place of residence outside Kenya, the High Court shall determine which magistrate shall have jurisdiction under this section; (iii) every Resident Magistrate shall have jurisdiction, in cases of apparent urgency, to make a temporary grant of representation limited to collection of



assets situated within his area and payments of debts, regardless of the last known place of residence of the deceased. [Act No. 8 of 1976, s. 10C.]

12. The applicant deposed that he is a resident of Makadara within Athi River sub-County in Machakos County. He has been struggling to attend court at Wang'uru Law Courts due to the high costs of matatu and taxi tickets. The applicant submits the deceased hails from Masinga Sub County which is within Machakos County, his home is established at the same place and his remains are interred in the same area whose court of jurisdiction is Kithimani Law Courts.
13. However, the respondent submits that the death certificate and the chiefs letter dated 07/02/2022 which were adduced by the 1<sup>st</sup> respondent in the succession cause clearly states that the deceased was a resident of Makima Location in Mbeere district which is within the jurisdiction of Wang'uru Law Courts. Further, all the beneficiaries were settled in Land Parcel No.1028 photo No.158 Wachoro Makima Adjudication section.
14. The 1<sup>st</sup> respondent avers that the applicant and the 2<sup>nd</sup> Respondent consented to him being the administrator/petitioner and he filed succession proceeding at Wang'uru Law courts. The applicant and his advocate have been attending court without fail.
15. In the case of *Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd* 2012 eKLR Odunga J addressed conditions to be considered in determining whether or not to grant an order transferring a suit, thus:

“,..In my view, which view I gather from authorities and from the law, the court should consider such factors as 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.

16. The Respondents deposed that the applicant's home is at Makima Mbeere and he is not a resident of Athi River, Machakos County and he only want to delay this proceeding for his selfish act and punish them.
17. The applicant has not attached any evidence in his supporting affidavit to prove that he is a resident of Makadara within Athi River.
18. The Court notes the decision of the Court *in re Estate of Ngari Thigingi (Deceased)* [2020] eKLR where Muchemi J. held:

“I come to the conclusion that the applicant has not discharged the burden for a case of transfer of the Succession case or for being allowed to file the summons for revocation in another court. It is trite law that this court should not interfere unless the expense or difficulties in the trial, as well as bias if any have been established which has not been done in this case.”

## Orders

19. Accordingly, for the reasons set out above, the Court finds no merit in the application for transfer of the succession proceedings and it is declined.
20. There shall be no orders as to costs.



Order accordingly.

**DATED AND DELIVERED THIS 27TH DAY OF FEBRUARY, 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Applicant in person.

Ms. Nzuki for Mr. Nyaga for Respondents

