

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION MISCELLANEOUS APPLICATION NO. E002 OF
2025

**IN THE MATTER OF THE ESTATE OF RICHARD MUCHAI
KIBATHI (DECEASED)**

KEVIN MUCHAI KIBATHI & MAUREEN

NJOKI

KIBATHI.....APPLICANTS

RULING

1. The application coming up for determination is a notice of motion dated 18th December, 2024 seeking the following orders;

(i) Spent.

(ii) This Honourable Court be pleased to transfer the file in the Kericho Magistrate's Court, Succession Cause No. E311 of 2023; In the Estate of Muchai and the same be placed before this Honourable Court for directions.

(iii) This Honourable Court be pleased to revoke the confirmed Grant of Letters of Administration issued in Kericho Magistrate's Court, Succession Cause No. E311 of 2023; In the Estate of Muchai to allow for the inclusion of other assets owned by the deceased.

(iv) This Honourable Court be pleased to issue any other directions as it may deem fit.

2. The application is supported by the grounds on the face of it and the supporting affidavit of ***Kevin Muchai Kibathi and Maureen Njoki Kibathi*** the applicants and the children of the Deceased herein, the Late RICHARD MUCHAI KIBATHI thus duly authorized to swear the affidavit.
3. The applicants aver that on the 26th day of January 2023, their father passed away at Nairobi and his last known place of residence was at Nairobi, they attached a copy of the Certificate of Death and further aver that he died intestate.
4. The applicants aver that subsequent to their father's death, they sought legal counsel on the succession process and were misadvised by counsel on the succession process and

due to the advice received, they petitioned for Letters of Administration Intestate in respect of the assets of their father's estate situated in Kericho in the Magistrates' Court Succession Cause E311 of 2023, believing that they have to petition for letters for assets in every area separately. Therefore, a grant was issued and confirmed which erroneously and solely listed the deceased's assets based in Kericho, they annexed a copy of the confirmed Grant of Letters of Administration Intestate.

5. The applicants aver that a larger portion of the estate, most of which are situated in Nairobi County, were not listed in the petition for the Letter of Administration Intestate filed at the Magistrate's Court situated at Kericho, the assets not listed include vast real estate properties, bank accounts and share assets.
6. The applicants aver that in addition, the value of the property not listed in the Petition filed before the Magistrate's Court in Kericho in Succession Cause E311 of 2023, the estate of the deceased is estimated to be worth

over Kes. 20,000,000/-.

7. The applicants aver that they informed the counsel on record M/S Alakonya & Associates Advocates LLP of the desire to institute succession proceedings with respect to the remaining properties and the advocate thus proceeded to prepare the draft Petition, however, they were unable to file the petition as the Judiciary's e-filing system has refused to accept the documents because of the succession matter filed at the Magistrate's Court situated at Kericho.
8. The applicants aver that the beneficiaries of the deceased currently reside in Nairobi County and on account of the territorial and pecuniary jurisdiction of the properties of the deceased, it is therefore imperative for this Honourable Court to transfer the file to Milimani High Court, Family Division, and give directions as to the filing of the Petition to enable them to complete the succession process.
9. The applicants aver that the beneficiaries of the estate of the deceased will be prejudiced if the circumstances are not rectified since a large portion of the estate was left out in the

Petition for Letters of Administration Intestate filed at the Magistrate's Court situated at Kericho.

10. The applicants aver that it is in the interest of justice that this Honourable Court allows the Application herein as prayed to enable them rectify the mistake occasioned due to the incorrect advice by the previous counsel and that the failure to allow the Application herein would occasion a miscarriage of justice to the beneficiaries of the estate as they will not receive what rightfully belongs to them as the next of kin to the deceased.
11. The matter came up for inter partes hearing, the learned counsel for the applicants stated that the instant application is unopposed.
12. I have considered the application which is unopposed and I find that the issue (s) for determination are whether to have the Kericho Magistrate's Court, Succession Cause No. E311 of 2023 transferred and placed before this Honourable Court for directions and whether to revoke the

confirmed Grant of Letters of Administration issued in the said cause.

13. On the issue as to whether to have Kericho Magistrate's Court, Succession Cause No. E311 of 2023 transferred and the same placed before this Honourable Court for directions, it is clear from the pleadings that the deceased was domiciled in Nairobi and larger portions of the estate, most of which are situated in Nairobi County, including vast real estate properties, bank accounts and share assets were not listed in the petition for the grant of Letters of Administration Intestate filed at the Magistrate's Court situated at Kericho and that the value of the property not listed in the Petition filed before the Magistrate's Court in Kericho in Succession Cause E311 of 2023; constituting the estate of the deceased is estimated to be worth over Ksh. 20,000,000/=.

14. Therefore the territorial and pecuniary jurisdiction of the estate of the deceased in its entirety is beyond the scope of the Magistrate Court at Kericho and it is evident that the cause was filed in the lower court inadvertently or out of

ignorance. Either way, the lower court did not have jurisdiction to deal with the matter from the very start. In ***Boniface Waweru Mbiyu v Mary Njeri & another [2005] eKLR*** when dealing with the issue of jurisdiction, J. B. Ojwang, J (as he then was) expressed himself as follows:

“Whenever a matter is filed before a Court lacking jurisdiction, the professional error there committed is a fundamental one, which cannot be excused as an ordinary mistake by counsel and which should not be held to prejudice the client. As between the advocate and his or her client, such a professional error could very well lead to claims in tort. As for the Court, the matter thus filed is so defective as to be a nullity. It is incompetent and void in law; and therefore it is not a motion or suit that can be transferred to any other Court. It is the duty of the Court or tribunal before which such matter is first brought to declare its status as a nullity; and it follows that such matter has no capacity to be transferred to any other Court.”

15. It is therefore the finding of this court that there is no valid petition or succession cause which can be transferred to this court.
16. On the issue as to whether to revoke the confirmed Grant of Letters of Administration issued in the said cause. The substantive issue to be ascertained is whether this court has original jurisdiction to hear and determine the summons for revocation of grant issued in Kericho Magistrate's Court, Succession Cause No. E311 of 2023. The law on revocation of grants changed in the year 2015 to give jurisdiction to the magistrate's court to revoke grants that they have power to make. In the case of ***Kakamega High Court Miscellaneous Succession Cause No. 10 of 2018 RE: Estate of Charles Boi (Deceased) (2020) eKLR*** the court held that by virtue of the amendment of Section 48 (1) of the *Law of Succession Act*, a magistrate's court has power to revoke a grant of representation that it has power to make.

17. The law is settled on the jurisdiction of the Magistrate's Court in determining disputes concerning revocation of grants. The Magistrate's court was accorded the jurisdiction to hear and determine applications under the *Law of Succession Act* provided they are within the required pecuniary limit.
18. At the time, the Magistrate's Court confirmed the grant, based on contents of the petition before it, it had the requisite jurisdiction to grant the orders sought, however, in light of the new developments on the vast nature of the estate of the deceased situated in Nairobi, it is the view of this court that the instant application for revocation of grant ought to be made in Kericho Magistrate's Court, Succession Cause No. E311 of 2023 and be heard and determined by the judicial officer seised of the matter. For the foregoing reasons, the prayer for revocation of grant before this court found to be is misconceived and without merit.
19. Consequently, the notice of motion dated 18th December, 2024, is hereby dismissed.

**Delivered, signed and dated at Kericho this 29th
day of May, 2025.**

.....
**J.K. SERGON
JUDGE**

In the presence of:-

C/Assistant

Nyambura holding brief for Alakonya for the Applicant

