



**In re Estate of Nthambi Kiilu Muange (Deceased) (Succession Cause 540 of 2008) [2025] KEHC 9460 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9460 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 540 OF 2008**

**EN MAINA, J**

**JUNE 26, 2025**

**IN THE MATTER OF THE ESTATE OF NTHAMBI KIILU MUANGE (DECEASED)**

**BETWEEN**

**MUENI NGUMA ..... ADMINISTRATOR**

**AND**

**SERAH NZIVULU MUSYOKI ..... ADMINISTRATOR**

**JUDGMENT**

1. Before this court is the Summons dated 18<sup>th</sup> November 2024 that filed by the 2<sup>nd</sup> Administrator seeking orders as follows-
  - a. That the letters of Administration dated 2<sup>nd</sup> April 2024 be confirmed in terms of the mode of distribution proposed in paragraph 10 of the affidavit in support of the summons.
  - b. That the 1<sup>st</sup> Administrator be ordered to execute the relevant documents and to return the original title deeds for Land Parcels LR NO Masii/Embui/793 and LR NO Masii/Mbaani/353 to the Machakos Land Registry for proper transmission processes.
  - c. That the costs of this application be in the cause.
2. In the supporting affidavit the 2<sup>nd</sup> Administrator deposes that the grant was issued to herself and the 1<sup>st</sup> Administrator on 2<sup>nd</sup> April 2024 following a ruling delivered on 24<sup>th</sup> October 2023 whereby the previous grant was revoked and the court directed the Registrar of Titles to cancel the transfer of land parcel Masii/Embui/793 and Masii/Mbaani/353 to the 1<sup>st</sup> Administrator and to revert the titles back to the deceased herein which was done. In addition, the parties were directed to meet and discuss and agree on the mode of distribution but all her efforts to meet the 1<sup>st</sup> Administrator have proved futile.



She annexed several letters written by her Advocate requesting for the meeting. The letters are dated 23/02/2024, 05/03/2024, 03/04/2024 and 20/092024. She deposed that the 1<sup>st</sup> Administrator is still threatening to evict her and her family from land parcel Masii/Embui /793 where they are settled and are cultivating. That the 1<sup>st</sup> Administrator brought third parties and purported to sub divide the said property with intention to sell/alienate it. She proposed distribution as follows;

-Masii/Embui /793 measuring 2.8ha to Serah Nzivulu Musyoki

-Masii/Mbaani/353 measuring 3.5ha to Mueni Nguma.

3. The 1<sup>st</sup> Administrator though personally served with the Summons and a hearing notice did not file a response. The summons and a mention notice were also served upon her advocate as can be seen from the affidavit of service dated 13<sup>th</sup> January 2025. In addition, the Affidavit of service dated 24<sup>th</sup> April 2025 shows that the 1<sup>st</sup> Administrator was served with a judgement notice.
4. There being no response to the summons by the 1<sup>st</sup> Administrator the same is unopposed.

### **Determination**

5. This court has considered the summons, the supporting affidavit, the previous rulings in the file and the law. In the judgment delivered on 24<sup>th</sup> October 2023, Muigai J made a finding that the 2<sup>nd</sup> Administrator was a widow of the deceased having been married to her by way of a woman to woman marriage under Kamba customary law. The 1<sup>st</sup> Administrator was therefore recognised by the court as a bona fide beneficiary of the estate. Upon revocation of the first certificate of confirmed grant the titles issued to the 1<sup>st</sup> Administrator were to be cancelled and the Administrators were to apply for confirmation of the grant afresh. There is nothing to show that the judgment of Muigai J was appealed. It therefore remains the judgment of this court.
6. Where there are more than one administrator and they are not able to agree either on applying for confirmation of the grant or on the mode of distribution, either one or the other can apply for confirmation and propose the mode of distribution and the other can concede or file a protest. The 2<sup>nd</sup> Administrator has demonstrated that she has tried to reach out to co-administrator in vain. The grant has remained unconfirmed for close to two years and there is need to confirm it now so the beneficiaries of the estate can move on with their lives. Indeed Section 71 of the [Law of Succession Act](#) provides for confirmation after six months.
7. As the summons for confirmation and the mode of distribution are not opposed the grant is confirmed. The mode of distribution proposed seems fair to this court and shall be adopted by it as follows;
  - a. Masii/Embui /793 measuring 2.8ha to Serah Nzivulu Musyoki
  - b. Masii/Mbaani/353 measuring 3.5ha to Mueni Nguma
8. With regard to signing of the transmission forms, I make reference to Section 83 ( I ) of the [Law of Succession Act](#) which provides the duties of an administrator to include inter alia, completion of the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.



9. I am persuaded by the holding of Mutuku J in Re Estate of Kiruthu Kimiti (Deceased) [2021] KEHC 575 (KLR) that;

“Completion of the administration of the estate entails completion of distribution of the shares to the assigned beneficiaries. By failing to sign transmission documents in this case, the Respondents are ill-advised and have breached the law. I need to remind the Respondents that failure to proceed diligently with the administration with the estate may lead to making the grant become useless and inoperative.”

10. In this case, it is clear that the 1<sup>st</sup> Administrator is frustrating the process and thus delaying the conclusion of the distribution of the estate yet she has not appealed the judgment which brought in the 2<sup>nd</sup> Administrator. Despite service, she has refused to participate in these proceedings. She is therefore in breach of the law and by this ruling shall be granted one last chance to participate in executing the transmission forms within sixty (60) days of this ruling, failing which the Deputy Registrar shall execute on her part. She shall also within the same period be required to return the original title deeds for Land Parcels Number Masii/Embui /793 and Masii/Mbaani/353 either to this court or to the Machakos Lands Registry and may be cited for contempt of court should she refuse to do so.

11. The Registry is directed to fix a date for mention of the cause after six months to confirm transmission so as to close the file.

12. This being a family matter it is best that parties bear their own costs.

Orders accordingly.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 26<sup>TH</sup> DAY OF JUNE 2025.**

**E N MAINA**

**JUDGE**

In Presence of-

Mr Kyalo Advocate for the 2<sup>nd</sup> Administrator.

Ms Kavita Advocate for the 1<sup>st</sup> Administrator.

Geoffrey Court Assistant.

