

KENYA / JUDGMENT

In re Estate of Wachira (Deceased) [2026] KEHC 12796 (KLR)

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COURT

High Court

BEFORE

MA Odero

CASE / FILE NUMBER

Succession Cause 708 of 2012

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In re Estate of Wachira (Deceased) (Succession Cause 708 of 2012) [2026] KEHC 12796 (KLR) (11 August 2026) (Judgment)

Neutral citation:

[2026] KEHC 12796 (KLR)

Republic of Kenya

In the High Court at Nyeri

Succession Cause 708 of 2012

MA Odero, J

August 11, 2026

IN THE MATTER OF THE ESTATE OF STEPHEN MUHUHI WACHIRA (DECEASED)

Between

Francis Maina Mwai

1st Applicant

Francis Macharia Nganga

2nd Applicant

Joseph Muthui Nderitu Kanyugo

3rd Applicant

and

Eunice Wanjiku Muhuhi

Protestor

Judgment

1.The Applicants herein Francis Maina Mwai, Francis Macharia Nganga and Joseph Muthui Nderitu Kanyugo have jointly filed a Summons for confirmation of Grant dated 14th August 2024 seeking that the Grant of Letters of Administration intestate made to the 1st Applicant Francis Maina Mwai on 10th April 2024 be confirmed.

2.The Protestor Eunice Wanjiku Muhuhi filed an Affidavit of Protest dated 12th November 2024. The matter was canvassed by way of written submissions. The Protestor filed the written submissions dated 18th April 2026, whilst the Applicants relied upon their written submissions dated 20th April 2026.

Background

3.This succession cause relates to the estate of the late Stephen Muhuhi Wachira who died intestate on 8th February 2012. A copy of the Death Certificate Serial No. 40xxx9 appears as Annexure 'FMM IV' to the 1st Applicants statement dated 27th September 2011.

4.Following the demise of the Deceased the 1st Applicant issued a citation to accept or refuse letters of Administration dated 18th July 2012 to the widow Eunice Wanjiku Muhuhi (the Protestor herein). The Protestor was duly served with the citation but did not respond and on 23rd January 2024 the High Court authorised the citor to apply for letters of Administration.

5.The 2nd Applicant Francis Macharia Ng'ang'a then filed a Petition for Grant of letters of Administration Intestate in his capacity as a 'Purchaser'. In that petition the 2nd Applicant listed the widow of the Deceased Eunice Wanjiku Muhuhi as the only survivor of the Deceased. The assets forming the estate of the Deceased were listed as follows:-i.Parcel of land known as Mweiga/Gakanga/248ii.Parcel of land known as Mweiga/Gakanga/280

6.The consent to the making of the Grant was signed by the 1st Applicant and the 3rd Applicant.

7.The matter was duly gazetted vide Gazette Notice No. 2785 of 8th March 2024. On 8th September 2024 Grant of Representation was duly issued to the 1st Applicant. The Applicant then filed this applications seeking to have the grant issued to him confirmed.

8.The Applicants are not relatives and/or dependants of the Deceased. They stake their claim to the estate property by virtue of having allegedly purchased land from the deceased. The Applicants describe themselves as Buyers and propose that the estate be distributed as follows:-

List of properties

Who to inherit

Shares

L.R. No. Mweiga/Gakanga/248 (4 Acres)L.R. No. Mweiga/Gakanga/280 (2 ACRES)

- i. Francis Macharia Ng'ang'aii. Eunice Wanjiku Muhuhiiii. Joseph Muthui Nderitu Kanyugoi.
Francis Maina Mwai

0.75 Acres1.25 Acres2 Acres1 Acre

9.The Protestor vehemently opposed the Summons for confirmation of Grant. She stated that she was the widow of the late Stephen Muhuhi Wachira. The Protestor gave the list of the persons who survived the Deceased as ;-a.Eunice Wanjiku Muhuhi - Widowb.Misheck Wachira Muhuhi - Sonc.Ann Wairimu Muhuhi - Daughterd.Samuel Gichuki Muhuhi - Sone.Margaret Wangui Muhuhi - Daughter

10.The Protestor listed the following as the assets left behind by the Deceased.a.Mweiga/Gakanga/248b.Mweiga/Gakanga/280c.Mweiga/Gakanga/87

11.The Protestor claims that she was never notified of the existence of this succession cause filed by the Applicants. The Applicant avers that she has no knowledge of the sale of land to any of the applicants by the Deceased. That the Applicants have no right to benefit from the estate of the Deceased. The Protestor urges the court to revoke the Grant issued to the Applicants and to issue a grant to herself and to direct that all the estate property devolve to herself.

Analysis and Determination

12.I have carefully considered the summons for confirmation of Grant, the Affidavit of Protest as well as the written submissions filed by both parties.

13.The Protestor claims that she was not made aware of the existence of this succession cause. I find this to be a barefaced lie. The record shows that the 1st Applicant issued a citation dated 18th July 2012 which citation was duly served on the Protestor vide the Affidavit of service 11th December 2012 which indicates that the Protestor was served at her home in Gakanga village in Kieni West District of Nyeri County. The process-server indicated that the Protestor was pointed out to him by the 1st Applicant. There are several other Affidavits of Service dated 27th October 2023, 16th January 2024 and dated 2nd October 2024, all of which prove that the Protestor received service at each stage.

14.I am satisfied that the Protestor was duly served with notice each step of the way. The Protestor has not applied to cross-examine the deponent of any of the Affidavits of service. I find that the Protestor was fully aware of the existence of this cause. She probably ignorantly thought that by failing to respond the issue would go away. The Protestor only woke up when the Applicants filed the summons for confirmation of grant.

15. Be that as it may the Applicants are claiming a stake of the estate of the deceased by virtue of being purchasers. They claim that during his lifetime the deceased sold to them parts of his land. Annexed to the Supporting affidavit to the summons for confirmation of Grant dated 14th August 2024 are copies of agreements of sale allegedly entered into between the Deceased and the Applicants Annexure MK '1' MK '2' and MK '3'.

16. This court is sitting as a Probate Court. The duty of a Probate Court is to supervise and facilitate the distribution of the estate of deceased person to the genuine beneficiaries. The duties of a Probate Court were set out in the case of Priscilla Ndubi Zipporah Mutiga vs Gerishon Gatobu Mbui, Meru Succession Cause No. 720 of 2013 which established that the primary duty of the probate court is to distribute the estate of the deceased. It was held that: "The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation."

17. The Applicants are not, neither do they claim to be beneficiaries to the estate. None of the applicants claims that he was a dependant of the deceased in terms of Section 29 of the Law of Succession Act. A purchaser is not a beneficiary of an estate. A purchaser is a person who claims to have entered into a civil contract with the deceased.

18. On her part the widow of the deceased categorically denies that the deceased sold any land to the applicants. The certificates of search annexed by the Applicants to their supporting affidavits indicate that LR Mweiga/Gakanga/133 and Mweiga.Gakanga/280 are both still registered in the name of the deceased. There has been no transfer of the said parcels of land to any of the applicants.

19. It is quite clear that the bone of contention in this matter is the question of ownership of the two parcels of land.

20. The role of the Probate court is clear. It is to collect the property of the deceased and distribute it to the rightful beneficiaries. When it comes to issues of ownership, that is the province of another court altogether. In short the probate court lacks the jurisdiction to determine issues of ownership in land. In *Re Estate of Mbai Wainaina (Deceased)* [2015] eKLR, the court held as follows: ".....The mandate of the probate court under the Law of Succession Act is limited. It does not extend to determining issues of ownership of property.... It is not a matter of the probate court being incompetent to deal with such issues but rather the provisions of the Law of Succession Act and the relevant subsidiary legislation do not provide a convenient mechanism for determination of such issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land Court. Consequently, and for the reasons above stated, I must find and hold that this court has no jurisdiction to resolve the proprietary interest..... In this case therefore, the only path legally open to the applicants is to

institute separate proceedings to articulate their claim/rights in the right forum and which is the Environment and Land Court.” [Own emphasis]

21.The Applicants therefore are barking up the wrong tree. Their remedy does not lie this court. Their claim of ownership of the two parcels of land cannot be determined by this court.

22.Matters relating to the ownership, use and occupation of land have now under Article 162 of the constitution of Kenya been mandated to be determined by a specialized court being the Environment and Land Court (‘ELC’).

23.Section 13 of the Environment and Land Court Act provides for the jurisdiction of that court as follows:-13.Jurisdiction of the Court(1)The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land. (2)In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes -a.relating to environmental planning and protection climate issues, land use planning, title tenure boundaries, rates, rents, valuations, mining, minerals and other natural resources;(b)relating to compulsory acquisition of land;(c)relating to land administration and management;(d)relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and(e)any other dispute relating to environment and land [Rev. 2012] No. 19 of 2011 Environment and Land Court 9 [Issue 1].

24.Therefore, the correct and proper forum before which the parties ought to ventilate their claim to the suit land is the ELC. The Environment and Land Court is the only court exclusively mandated by law to determine the question of ‘ownership’ of the suit land.

25.In *Re Estate of Stone Kathubi Muinde (Deceased)* [2016] eKLR Hon. Justice William Musyoka held that:-“Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit property brought before a civil court in accordance with the provisions of the Civil Procedure Act and Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.” (Own emphasis)

26.I therefore find that this court has no jurisdiction to make any pronouncement regarding the Respondents claim to ownership of land in question. If the Applicants wish to seek orders on that regard they must file a civil suit in the Environment and Land Court, which is the only court with the Mandate to make a decision over issues relating to ‘ownership’ of land.

27.Finally I find that this protest is merited. The Applicants have no locus standi in this succession cause. I note that this is a very old succession cause. The Deceased died way back in the year 2012. It is imperative to have the estate distributed to the genuine heirs.

28. Section 47 of the Law of Succession Act provides as follows: “The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient. Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

29. Likewise Rule 73 of the Probate and Administration Rules provides that “73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

30. In conclusion this Court makes the following orders. (1) The Grant of letters of Administration issued to Francis Maina Mwai on 10th April 2024 be and is hereby revoked. (2) A declaration be and is hereby made that the two parcels of land LR No. Mweiga/Gakanga 248 LR No. Mweiga/Gakanga/280 belonged to the Deceased at the time of his demise and therefore form part of the estate available for distribution to the genuine beneficiaries. (3) Grant of letters of Administration to issue to the widow Eunice Wanjiku Muhuhi. (4) The Administrator to file a summons for confirmation of Grant within forty (40) days. (5) No orders on costs.

DATED IN NYERI THIS 11TH DAY OF AUGUST, 2026.....MAUREEN A. ODERO JUDGE

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Prepared on 25 October 2026 · Esheria