



**In re Estate of James Mireri Orina alias Mireri Orina (Deceased) (Miscellaneous Civil Application E115 of 2023) [2023] KEHC 25898 (KLR) (22 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25898 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
MISCELLANEOUS CIVIL APPLICATION E115 OF 2023  
TA ODERA, J  
NOVEMBER 22, 2023  
IN THE MATTER OF THE ESTATE OF JAMES  
MIRERI ORINA ALIAS MIRERI ORINA- DECEASED  
AND  
IN THE MATTER OF THE APPLICATION OF MARY KERUBO**

**IN THE MATTER OF  
MARY KERUBO MIRERI ..... APPLICANT**

**RULING**

1. The Applicant/defendant moved this Court by way of Notice of Motion dated 27.9.23 seeking transfer of the Kisii Chief Magistrate Succession cause no. E403 of 2022 In the matter of the Estate of James Mireri Orina alias Mireri Orina to Principal Magistrate’s Court at Keroka for hearing and determination.
2. The Application is premised on grounds that the land parcel no. Kisii-east Kitutu/bonyamondo 11/6 which has competent jurisdiction to hear and dispose of the suit herein and that it is in the ends of justice if the suit is transferred.
3. The application is supported by an affidavit sworn by the Applicant where he deponed on the issue of territorial jurisdiction.
4. The Application was canvassed by way of oral submissions. The Applicant’s counsel urged this court to allow the application as prayed as it was not opposed.
5. Section 18 of the *Civil Procedure Act* that provides that:

“(1) 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  - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.
- (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn”.

6. Section 11 of the *CPA* that provides thus:

“Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts:

Provided that—

- (i) if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and
- (ii) nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same district”.

7. In Ugandan case of *David Kabungu –Vs. Zikarenga & 4 others*, Kampala HCCS NO. 36 of 1995 where it was 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 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 well established



principle of law that the 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 from which transfer is sought has no jurisdiction to try the case, transfer would be refused..."

8. It is clear that the applicant filed the said succession cause in the Chief Magistrate's Court at Kisii. A copy of the title deed to the suit land has been annexed to the application ("WO2") and it indicates that it is in Keroka. There is no doubt in my mind that the suit land is located at Keroka.
9. This court takes judicial Notice that Keroka Law Courts is the nearest to the said land. article 48 of [the constitution](#) provides for access to justice and for reduction of the distance that parties travel to reach courts. The rationale of access to justice is to bring justice closer to the people. this court has a duty to promote the same and avoid situation where parties are inconvenienced by travelling long distances to court which has serious financial implications.
10. This court has the jurisdiction to transfer cases filed outside jurisdiction under section 18 of the *Civil Procedure Act*.
11. In the premises, I order that Kisii Chief magistrate's succession cause no E403 of 2022 be and is hereby transferred to the principal Magistrate's Court at Keroka for hearing and determination, it shall be mentioned before the said court on 18.12.23
12. Costs to the applicant .
13. It is so ordered.

**T.A ODERA**

**JUDGE**

**22.11. 23**

**Delivered virtually in open court at Kisii on this 22<sup>nd</sup> day of November 2023 in the presence of Court assistant Mr Oigo . No appearance for applicant.**

