



REPUBLIC OF KENYA



**Omwaro v Ogutu (Miscellaneous Application E030 of 2023)  
[2023] KEHC 27030 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27030 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
MISCELLANEOUS APPLICATION E030 OF 2023**

**KW KIARIE, J  
DECEMBER 20, 2023**

**BETWEEN**

**TOM ODOYO OMWARO ..... APPLICANT**

**AND**

**ARARA OGUTU ..... RESPONDENT**

**RULING**

1. Tom Odoyo Omwaro, the applicant herein, moved the court by way of an ex parte notice of motion dated the 9<sup>th</sup> day of June 2023. It was brought under sections 1A & 3A of the *Civil Procedure Act* & order 51 of the *Civil Procedure Rules*. He is seeking the following orders:
  - a) Upon hearing this application, the Honorable Court be pleased to order for transfer of succession file number E047 of 2020 from Ndhiwa Law Courts to Homa Bay CMC Court.
  - b) further and/or other Orders be made as the court may deem fit and expedient.
2. The application was premised on the following grounds:
  - a) The applicant has filed for summons for revocation of the grant in Succession Cause No.154 of 2005.
  - b) There is another ongoing Succession cause over the same estate in Ndhiwa Law Courts Succession Cause Number E047 of 2020.
  - c) The deceased estate in question is Geographically located within the jurisdiction of Ndhiwa Law Courts. However, the initial Succession that intent to revoke was filed before Homa Bay law courts Succession number 154 of 2005.
  - d) No party will be prejudiced if Succession Cause No. E47 of 2020 is transferred to Homabay Law Courts.



- e) That it is in the interest of justice that this application be allowed.
3. The respondent opposed both applications on the following grounds:
- a) That Homa Bay Court has no territorial jurisdiction.
- b) That the application is an abuse of the process of Court.
4. Regulations 4 & 5 of the *Probate and Administration Rules* provide for probate registries and duties of District Registrars. The regulations are meant to ensure that there is no duplicity of succession matters either due to ignorance or because of crafty actions by some parties. When the Central Registry operates to the optimum, chances of having a multiplicity of succession causes filed may be minimal.
5. In the instant case, when the succession cause in Ndhiwa was filed, the applicant therein ought to have been referred to the Homa Bay magistrate's Court where Succession Cause No.154 of 2005 had been filed. It is not only untidy to have more than one succession cause concerning the estate of the same deceased's estate.
6. Although the respondent has alleged that the vast estate of the deceased is in Ndhiwa, the most prudent way was to approach the court at Homa Bay and seek the transfer of the matter to Ndhiwa Court instead of filing another cause.
7. I therefore order that the Succession Cause Number E047 of 2020 in Ndhiwa Law Court be transferred to Homa Bay Chief Magistrate's Court for consolidation with Succession Cause No.154 of 2005. Each party is to meet its costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 20<sup>TH</sup> DAY OF DECEMBER 2023**

**KIARIE WAWERU KIARIE**

**JUDGE.**

