



In re Estate of Harrison Murangi Gakinya (Deceased) (Succession Cause 336 of 2011) [2022] KEHC 14358 (KLR) (26 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 336 OF 2011**

JN NJAGI, J

OCTOBER 26, 2022

**IN THE MATTER OF THE ESTATE OF HARRISON MURANGI
GAKINYA (DECEASED)**

BETWEEN

CATHERINE N G GAKINYA 1ST PETITIONER

TERESA WANGUI GAKINYA 2ND PETITIONER

AND

CATHERINE MARIGU NJERU 1ST APPLICANT

BRIAN GAKINYA MURANGI 2ND APPLICANT

RULING

1. The applicants have filed an application dated November 4, 2019 seeking for transfer of Nyeri Succession Cause No 336 of 2011 from this court to the High Court in Embu on the grounds that they are widow and son of the deceased respectively whereas the respondents are sisters to the deceased. That the deceased was domiciled in Embu prior to his death and the applicants and the respondents all reside in Embu. That the larger family members and siblings of the deceased are all residents of Embu. That the respondents petitioned for letters of administration of the estate of the deceased in Nyeri High Court without informing the applicants or disclosing to the court that the deceased had a wife and two children. That the transfer of the matter will be economically favourable in terms of costs to all the parties.
2. The respondents on the other hand opposed the application on the ground that the applicants do not have *locus standi* in the matter as was determined in Business Premises Rent Tribunal in Tribunal Case No 37 of 2019 in Embu whereby the 1st applicant was found to be a tenant on the suit property Embu Township/112. Therefore, that transferring the matter at the behest of a party which has no locus



standi will be an injustice to the respondents. Further that the applicants have not shown that they have obtained letters of administration to the estate of the deceased prior to coming to the instant court. Therefore, that the applicants are improperly before the court and should not be given any audience.

3. The respondents further state that the deceased was a beneficiary to the estate of Gakinya Murangi who was the original registered owner of the suit property, Embu Township/112. That the bulk of the estate of Gakinya Murangi is situated in Nyeri as shown in the Certificate of the Confirmed Grant dated December 3, 2002. That all subsequent issues which involve the estate ought to be filed in Nyeri where the mother file is. That transferring the file to Embu will cause undue hardship to them and all the parties concerned. Furthermore, that the deceased was a mere trustee for the 3rd house which the respondents belonged and therefore the property would automatically pass to the respondents upon the demise of the deceased. That the application is frivolous and ought to be dismissed.
4. The main issue for determination herein is whether the court should transfer Nyeri Succession Cause No 336 of 2011 to Embu High Court.
5. The jurisdiction of the High Court to transfer suits from one court to another is provided under Section 18 of the [Civil Procedure Act](#) which states as follows:

"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."
6. In the case of *David Kabungu vs Zikarenga & 4 Others* Kampala HCCS No 36 of 1995 cited with authority in [Oceanic Towers Limited vs Hussein Builders Limited](#) [2021] eKLR the court had the following to say on the circumstances under which the order to transfer suits may be granted:

"Section 18(1) 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 any 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 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 or the suit has been filed in a particular court for the purposes of working injustice. What the court has to consider is whether the applicant has made a case to justify it in closing doors of the court on which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction....It is a 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 expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all circumstances it is proper to order transfer, the duplication 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 could be refused...."

7. In the present case, the applicants contend that they are the wife and son of the deceased and they together with all the family members of the deceased reside in Embu. They contend that it would be prudent to have the matter transferred to Embu as it will be economically favourable to them.
8. I have perused the court record and it is apparent from the pleadings that the respondents instituted the cause in Nyeri and they carried out the succession proceedings and were issued with a Certificate of Confirmed Grant dated March 16, 2012. As such, they are the legal representatives of the deceased's estate. Although the applicants contend that they are wife and son of the deceased, only a succession court can determine that. It is also apparent from the record that the estate of Murangi Gikanya which the respondents state is the original registered owner of the suit property Embu Township/112 was instituted in Nairobi High Court and not Nyeri High Court as alleged by the respondents. In that regard, I find that the applicants have not made out a case to warrant the transfer of the matter to Embu. The matter was already concluded by the instant court and in the interests of justice it would be prudent for the applicants to contest the proceedings while the matter is in Nyeri. In addition to that, the applicants have not demonstrated what hardships they will experience if the matter is determined in the instant court. In any event, no one shall be locked out of the proceedings if the cause remains in Nyeri as Section 76 of the *Law of Succession Act* allows any interested party to revoke or annul a grant.
9. The upshot is that the application dated November 4, 2019 lacks merit and is hereby dismissed.

SIGNED THIS 16TH SEPTEMBER 2022.

J. N. NJAGI

JUDGE

DELIVERED, DATED AND SIGNED AT NYERI THIS 26TH DAY OF OCTOBER, 2022.

By:

HON. JUSTICE M. MUYA

JUDGE

In the presence of:

Beth Ndirangu: for Applicants

.....**for Respondents**

Court Assistant: Kinyua

30 days R/A.

