



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. E028 OF 2021**

**IN THE MATTER OF AN APPLICATION FOR TRANSFER**

**IN THE MATTER OF MERU CM'S SUCCESSION CAUSE NO.199 OF 2019(ESTATE OF AKIDA MOHAMMED MWERERI)**

**MICHAEL BRONUM MOHAMMED AKIDA.... APPLICANT**

**VERSUS**

**JULIUS MWITI.....1<sup>ST</sup> PETITIONER**

**HARRIET MAKENA.....2<sup>ND</sup> PETITIONER**

**RULING**

1. Before the court for determination is an application under certificate of urgency dated 22/6/2021, pursuant to Section 47 of the Law of Succession Act, and Rule 73 of the Probate and Administration Rules. The substantive prayer in the application is transfer for subsequent consolidation of Meru CMC Succession Cause No.199 of 2019 with Meru H.C Succession Cause No. E003 of 2021. The application is predicated on the grounds on the face of it and the supporting affidavit of the applicant sworn on 1/6/2021 and sums up to the fact that there exist two causes over the estate of one deceased person, AKIDA MOHAMMED MWERERI.
2. To the applicant, the value of the estate properties is way beyond the pecuniary jurisdiction of the lower court hence that court has no jurisdiction to deal with the matter which thus ought to be transferred to the High Court for determination. He blames the petitioners for filing the cause in the lower court secretly without his knowledge and/or consent.
3. The 1<sup>st</sup> respondent/petitioner in the lower court matter, in his replying affidavit sworn on 26/7/2021 does not oppose the transfer sought by the applicant, but resist consolidation on the basis that the cause in the High Court, having been filed using a forged will, has no legal standing and consolidation is sought to validate the fraudulent document. He refutes the allegation that the cause in the lower court was filed secretly, because the applicant here has been adequately provided for in the will sought to be proved in the lower court file.
4. Following the court's directions that the application be canvassed by way of written submissions, the parties filed their respective submissions on 11/8/2021 and 4/10/2021, each reiterating their respective and rival positions.
5. In his submissions, the applicant asserted that the estate is valued at more than 59,000,000 and that the lower court file was filed by respondents who are spouses without information to or concurrence by him yet he is a son to the deceased. The applicant then ambivalently cites **re Estate of Elijah Mutiso (Deceased) (2018) eKLR** for the proposition of the law that a suit filed in a court without jurisdiction is incapable of being transferred.
6. For the respondents, the submissions offered were to the effect that while it is true that the applicant is a son to the deceased with a Danish mother, the respondents are parents-in-law to the deceased subject to a married out of which there are three minor children. That the will said to ground the High Court cause is suspect was echoed with an assertion that the judge had commented so in his ruling of 15/04/2021 and the fact that its authorship is the subject of Meru CMCCR E094 of 2021. There was an addition that even though the applicants are the petitioner in the lower court, they stake nothing in the estate and have been candid to disclose the interests and right of the applicant here as a beneficiary. Questions are then posed of the prejudice or benefit would accrue to the applicant in the high court cause which will be diminished or bludgeoned in the lower court cause when an appreciation is made of the fact that the two wills are a replica of each other save for the names of the executors. For such concerns the position taken is that to consolidate the two causes would save no course of justice but would result in impropriety.

**Determination**

7. Since there is no objection to transfer, I have isolated the only issue for determination to be whether there should be consolidation as sought. In my considered view and opinion, based on the valuation report exhibited is that Meru CMC Succession Cause No.199 of 2019, ought not to proceed away from Meru H.C Succession Cause No. E003 of 2021 for the simple reasons that the court is bound to use its time in resource, as a public resource in an efficient and proportionate manner. Therefore, to transfer the lower court cause here then maintain it and deal with it separately from the cause already here would be a brazen misuse and misallocation of judicial resources and would fly on the face of the rules on *sub judice* as much as it would on the face of basic common sense.

8. That the will exhibited in the high court cause could be suspect is the more reason to have the matter determine together with the lower court cause where it is alleged the genuine will is exhibited. That is informed by the appreciation that consolidation serves the purpose of having all disputes over same subject matter determined in a single cause rather than separately to avoid prospects of contradictory outcomes with attendant ridicule to the judicial system. It is to the court, imperative that one estate cannot be the subject of litigation in two different files with full knowledge and blessing of the court, and I decline any invitation to effect such blessings. The two matters must be consolidated so that the question of which of the two will is determined genuine or not and then the question of who ought to be the administrator will just fall into its rightful place.

9. In the end, I find merit in the application dated 22/6/2021, and I allow it in terms of prayer 3, with the effect that the Meru CMC SUCC CAUSE NO. 199 of 2019 is transferred to the High court for the purposes of being consolidated with HC SUCC CAUSE NO E003 of 2021. Once, the lower court file gets transmitted here, let the two files be place together and treated as consolidated in terms of this determination so that the same is mentioned in court on the 23/11/2021.

10. Let the orders in terms of this ruling be extracted and served upon the executive officer of the court for the transfer to be effected forthwith. Once that is done, let this file be closed in the system

**DATED SIGNED AND DELIVERED AT MERU VIRTUALLY VIA MICRO SOFT TEAMS THIS 21<sup>ST</sup> DAY OF OCTOBER, 2021**

**PATRICK J.O OTIENO**

**JUDGE**

**In presence of**

Mr. Mwirigi for applicant

Ms Kaunyangi for the respondent

**PATRICK J.O OTIENO**

**JUDGE**