



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

MISC. SUCCESSION CAUSE NO. 4 OF 2019

IN THE MATTER OF THE ESTATE OF NGARI THINGI (DECEASED)

MUGO NGARI.....APPLICANT

VERSUS

CHRISTINA NDEGI.....RESPONDENT

RULING

A. Introduction

1. This is a ruling for the application dated 5/11/2019 in which the applicant seeks to have Siakago Succession Case No. 193 of 2018 transferred from Siakago Magistrate's Court to Embu Chief Magistrate's Court as well as an order of stay of execution of the grant issued on 5th September 2019 in the said succession cause pending the hearing and determination of the instant application.
2. It is the applicant's case that he and four other beneficiaries have faced hostility from the Siakago Law Court registry in their attempts to file summons for revocation of grant on the grounds that the only avenue available to them is to file an appeal to the High Court in Embu.
3. The applicant further states that the court at Siakago mysteriously confirmed grant on the 5/9/2019 without the consent and presence of all the 12 beneficiaries. The applicant further states that unless the orders sought herein are granted he and his other siblings are likely to be rendered destitute and homeless as they are likely to be evicted on the land they currently occupy.
4. In rejoinder the respondent deposes that the estate of the deceased was shared amongst the known beneficiaries of the deceased, the applicant included and further that the proceedings to obtain the grant were done with full knowledge of all the beneficiaries the applicant included.
5. It is further deposed that is the application is allowed, the respondent and other beneficiaries stand to suffer irreparable damage.
6. Mr. Momanyi for the respondent was given fourteen (14) days to file his submissions but failed to do so while Mr. Ndolo for the applicant opted to rely on the supporting affidavit. For both parties, this court will rely on the pleadings of the parties and their respective affidavits.

B. Analysis & Determination

7. The power bestowed upon the High Court to transfer suits of a Civil nature is provided for in Section 18 of the Civil Procedure Act that stipulate thus:

“(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”.

8. Circumstances that would move a court to grant the order sought were considered in the **David Kabungu v Zikarenga & 4 others, Kampala HCCS NO. 36 of 1995** where Okello J stated that;

“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...”

9. The Applicant herein has called upon the court to find that he and four other beneficiaries have faced hostility from the Siakago Law Courts registry in their attempts to file summons for revocation of grant failure of which the applicant and the beneficiaries stand to lose their inheritance as they have no remote chance of getting justice at the Siakago Law Courts.

10. In the case of **Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd (2012) eKLR** the court addressed conditions to be considered in determining whether or not to grant an order transferring a suit, thus:

“ ..In my view, which view I gather from authorities and from the law, the court should consider such factors as the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating

witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. 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. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case”.

11. The applicant has an obligation to demonstrate that he is not likely to get justice in Siakago Law Courts and that the only avenue available to them is to file summons for revocation of grant in High Court Embu.

12. The registry at Siakago court is subject to the supervision of the Senior Principal Magistrate Siakago. If it is true that the applicant has been denied right of applying for revocation of grant at Siakago they ought to have raised their concerns with the Court Executive Officer or to the Senior Principal Magistrate. No correspondence or complaint has been annexed to the application to support the grounds in the application.

13. It is noted from the supporting affidavit that the applicant has no complaint against the court or any of the two magistrates in Siakago. If the applicant was complaining of bias by any of the magistrates, this would be a different matter. As was held in the **Kabumgu Vs Zikarenga** case (supra), the applicant has an obligation to satisfy this court that there are major difficulties in the trial that are likely to lead to injustice on his part. Failure to show this will not work in favour of an applicant.

14. In this matter, there is no trial where the applicant can say that he is experienced any difficulties or bias from the trial magistrate. The succession cause has been concluded by confirmation of the grant. The summons for revocation are yet to be filed by the applicants to challenge the distribution of the deceased's estate.

15. All the parties in the said cause reside at Siakago and most of the assets of the deceased are situated within the jurisdiction of Siakago court.

16. I come to the conclusion that the applicant has not discharged the burden for a case of transfer of the Succession case or for being allowed to file the summons for revocation in another court. It is trite law that this court should not interfere unless the expense or difficulties in the trial, as well as bias if any have been established which has not been done in this case.

17. Being a succession matter, each party will meet their own costs.

18. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF MAY, 2020.

F. MUCHEMI

JUDGE

Ruling sent to the parties through their respective emails