



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

SUCCESSION CAUSE NO 24 OF 2018

IN THE MATTER OF THE ESTATE OF ASHA ALI (DECEASED)

AMINA ABDI.....PETITIONER/RESPONDENT

VERSUS

FATUMA MOHAMED EGE.....OBJECTOR/APPLICANT

RULING

1. Counsel for the Petitioner (Ms. Saika) applied for an adjournment on the grounds that the Petitioner (Amina Abdi) was ill. She said that she is suffering from high blood pressure and thyroid imbalance.
2. Mr. Kilele for the objector (Fatuma Mohammed Ege) strenuously opposed the application for adjournment. The reasons for opposing the adjournment are as follows:
3. First, the adjournment is intended to ensure that the court (J. M. Bwonwong'a) leaves the station without completing this trial, since it is on transfer to another station (Kitale).
4. Secondly, counsel for the petitioner did not produce any medical treatment notes to prove that indeed the petitioner was ill.
5. Counsel for the objector submitted that if in the unlikely event, the court is minded to grant an adjournment, counsel for the petitioner should call the remaining witnesses to testify.
6. I have considered the application and the opposition to it. I find that the petitioner is ill. She has been before taken ill due to high blood pressure. In the circumstances, I find that granting an adjournment is in the interests of justice.
7. I further find that since the petitioner is about to complete her evidence under re-examination, it is the interests that her evidence be tendered in court. Thereafter, the evidence of the remaining witnesses will be taken.
8. I will not complete the trial of this succession cause because I am on transfer. The provisions of Order 18 Rule 8(1) of the 2010 Civil Procedure Rules will apply to the taking over of this cause. Those provisions provide as follows:

“where a judge is prevented by death, transfer, or other cause from concluding the trial of a suit or the hearing of any application, his successor may deal with any evidence taken down under the foregoing rules as if such evidence had been taken by him or under his directions under the said rules, and may proceed with the suit application from the stage at which his predecessor left it.

2. The provisions of sub-rule (1) shall, as far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 18 of the Act.”

9. It is clear from the aforesaid provisions that there is in place rules of taking over the part heard or transferred suits or applications. In other words, there is no lacuna in the law.
10. In the premises, the application for adjournment succeeds with the result that the court vacates the trial dates for today and tomorrow.

Ruling signed, dated and delivered at Narok this 21st day of October, 2020 in the presence of Mr. Kilele for the Objector and in the absence of the petitioner and her counsel (Ms. Saika).

J. M. Bwonwong'a

Judge

21/10/2020