



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**MISCELLANEOUS CIVIL APPLICATION NO. 6 OF 2017**

**IN THE MATTER OF THE ESTATE OF RUPIA MACHARIA (DECEASED)**

**JOSEPH KAMAU WAITHIRA.....APPLICANT**

**VERSUS**

**PETER MUGO RUPIA.....RESPONDENT**

**RULING**

1. The Applicant herein has filed a summons dated 18<sup>th</sup> September, 2017 under section 18, 3A and 4 of the Civil Procedure Act. He seeks orders that Kithimani Principal Magistrate's Succession Cause No. 19 of 2016 be transferred to Machakos Chief Magistrates Court for hearing and determination.
2. The motion is based on the grounds that the deceased's estate is valued at over KShs. 10,000,000/- which sum is above the pecuniary jurisdiction of Kithimani Principal Magistrate's Court which is currently KShs. 8, 000,000/-.
3. Section 18 of the Civil Procedure Act provides:

***“On an 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 motion without such notice, the High Court may at any stage-***

***(a) Transfer any suit, appeal or other proceeding pending before it for trial***

***(b) or disposal to any court subordinate to it and competent to try or dispose of the same.***

4. I have considered the Applicant's Application aforesaid as well as the affidavit in support thereof. I note that the Applicant has not indicated whether or not the Respondent had been served with the said Application. However that notwithstanding, I find that this court has power on its own motion without any notice being served to parties to transfer any suit pending before it to other court subordinate to it to transfer such suits for the purposes of hearing and disposal. The Applicant has already disclosed that Kithimani court seems not to have the requisite jurisdiction to try the matter since the value of the estate is estimated to be over Kshs.10 million and that the said court's pecuniary jurisdiction has been disclosed to be Kshs. 8 million. It has also been indicated that the said court has declined to entertain the suit on ground of jurisdiction. That being the position and the need to fasttrack the matter herein, I find the request for transfer of suit merited. No prejudice will be suffered by the Respondent if the suit is transferred. There is need to ensure the estate of the deceased is properly and promptly administered for the benefit of the beneficiaries. In this regard the justice of the case and the provisions of Sections 18, 3A of the Civil Procedure Act as well as Rule 73 of the Probate and Administration Rules demand that the Application be allowed.

5. In the result the Applicant's Application dated 18/09/2017 is allowed in terms of prayer 1 thereof. Costs shall be in the cause.

It is so ordered.

**Dated and delivered in Machakos this 13<sup>th</sup> day of March, 2018.**

**D.K.KEMEI**

**JUDGE**

**In the presence of:-**

No appearance for Kanui - for the Applicant

No appearance - for the Respondent

Kituva - Court Assistant