



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS APPLICATION NO. 8 OF 2016

STANLEY MUNGAI WAWERU.....APPLICANT

VERSUS

SUZZANE NYAMBURA NUNGI.....DEFENDANT

RULING

1. The application dated the 28th of January 2016 is brought under Order 1 Rule 1 of the Civil Procedure Rules and Sections 3A, 11 and 18 of the Civil Procedure Act seeks the following orders;

i. That the Court be pleased to transfer Succession Cause No. 16 of 2014 filed in Kikuyu Law Courts to the High Court Nairobi and the Family Division Court.

ii. That the estate of Karai/ Karai/818 is the suit land in an ELC Court in the High Court of Kenya at Nairobi filed in 2009 and still pending in court of hearing on 8th February 2016.

2. The application is supported by grounds on the face of the application and the supporting affidavit of Stanley Mungai Waweru dated the 28th of January 2016. He depones that applicant who filed the Succession Cause No. 16 of 2015 in Kikuyu Law Court is his sister. That there is pending in the High Court in the ELC suit No. ELC 614/09. The said suit was for hearing on the 8th February 2016 and that the respondent's lawyer was served with the hearing. That it is in the interest of justice that Succession Cause No. 16 of 2015 filed in Kikuyu Law Court be transferred to the Family Court at Nairobi for more interpretation to the applicant. That the applicant in Succession Cause No. 16 of 2015 in the Lower Court is the 2nd defendant in the matter suit case ELC614 of 2009 for the estate of Karai/Karai/818 which was fraudulently transferred to the 1st defendant Keziah Wamaita Waweru. That in the circumstance the matter should be allowed to be transferred from Kikuyu Law Court to the Family Court in Nairobi High Court as prayed.

3. The respondent file a replying affidavit dated the 3rd March 2016. She avers that the application has no merit and should be dismissed with costs. That Succession Cause No. 614 of 2009 was dismissed on the 19th March 2015. That Succession Cause No. 16 of 2014 which is filed in Kikuyu Law Court is the right jurisdiction. That the Magistrate's Court Act 2015 gives jurisdiction to the Magistrate's Court to entertain intestate succession and administration of intestate estates. That there is therefore no need to transfer Succession Cause No, 16 of 2014 from Kikuyu Law Court to the High Court Nairobi as the Court in Kikuyu Law Court is vested with the jurisdiction to entertain the succession cause. That the applicant is a beneficiary in Succession Cause No. 76 of 2014 Kikuyu and not the petitioner or administrator as he has refused to sign the succession documents though he is her brother saying she does not qualify to be the petitioner.

4. In an affidavit dated the 22nd of March 2016 applicant avers that he is not aware of Succession Cause No. 614 of 2009 which was dismissed as alleged by the respondent. That the respondent has enlightened him that there is Succession Cause 76 of 2014 in Kikuyu Law Court. That she should serve him with copies of the said case so that he can know the beneficiaries. That she has no right to file succession causes while knowing that there is a pending suit against her over the said estate Karai/ Karai/818 which she fraudulently transferred from David Waweru Wanuma the original owner to Keziah Wamaitha. He attached an application that was to be heard on the 7th April 2016 for the revival of ELC No. 614 of 2009. In a further affidavit filed on the 27th of April 2016 the applicant avers that he has attached a valuation report of the property Karai/ Karai/818 which valuation gives the value of the said property at Kshs. 50 million hence the need to transfer the cause to the High Court. That he perused Succession Cause No. 76 of 2016 and found that the applicants in the said cause and the beneficiaries are not their family members and the estate was owned by Nelly Wangui Mugacha a deceased who is unknown to him. That the property in the said cause is Kiambaa/Kihara/2590 and not Karai/Karai/818 which is mentioned in the Succession Cause No. 16 of 2014. That he also perused Succession Cause No. 16 of 2014 and found anomalies such as omission of his late brother's children. That Suzzane Nyambura Nungi had applied for the letter of administration for the estate which had prohibitory orders, that Suzzane ignored the orders issued on the 17th of June 2010 by filing the said succession cause.

5. On the 4/5/2016 Counsel for the respondent Mr. Kahuthu informed the Court that the respondent had no objection to Succession Cause No. 16 of 2014 being transferred to the High Court. The court then granted the said prayer in the application dated the 28/1/2016. At the hearing of the said application the applicant stated that the matter should not go on as there are orders that Suzzane should not deal with the land until the ELC suit is heard and determined. That Suzzane should be charged with contempt of court. Mr. Kahuthu for the respondent in reply stated that they oppose prayer 3 of the said application dated the 28/1/2016 as the property in issue does not belong to the applicant nor the respondent. That the property belonged to their father who transferred it to their mother before he died. That both the applicant and the respondent are both beneficiaries. That the ELC case was a case against the mother, the sister and the mother is now deceased. That the current application is a delaying tactic as the applicant does not want the case to go in Kikuyu, that the application should be dismissed.

DETERMINATION

6. I have considered the affidavits filed by the parties and what was submitted at the hearing of this application, I have also perused Succession cause no. 16 of 2014. The said cause relates to the estate of Keziah Wamaitha Waweru who died intestate leaving behind 4 beneficiaries namely Jane Nyokabi Waweru, Stanley Mungai Waweru (the applicant), Medrine Wanjiku Waweru and Linda Wamaitha Waweru and Suzanne Nyambura Nungi (the respondent) who is also the petitioner in the said cause. The deceased is their late mother. In the said cause there was citation filed against Stanley Mungai Waweru who refused to sign the petition. There is a ruling attached in the said file of ELC Case No. 614 of 2009. In the said Ruling the dispute was over land parcel No. Karai/Karai/818 the plaintiff being the applicant and the defendant their late mother and Suzzane. The applicant's claim in the said suit was 2 acres he alleged he is entitled to claiming that the said 2 acres were promised to him by his late father. Justice Okwengu as she then was issued an order of injunction restraining the defendants from transferring subdividing, charging the suit property pending the hearing and determination of the said suit. The court further ordered the parties respect each other rights. This ruling was delivered on the 17th of June 2010.

7. The respondent has not objected to the transfer of Succession Cause No. 16 of 2014 filed in Kikuyu to the High Court Nairobi family division. This prayer was granted. The applicant 2nd issue as I understand it is that property Karai/Karai/818 is the subject of a suit in the ELC Division, ELC Suit No. 614/09 and it should not form part of the succession cause until such time that the ELC court determines the depending suit. It is not disputed by the respondent that the suit is pending and the said parcel of land is the subject of the said suit. It makes sense to have the ELC court make a finding on the issue affecting the said property. Parties shall proceed with the Succession Cause before this Court but exclude parcel no. Karai/Karai/818 from the list of assets in the deceased's estate. No orders as to costs. It is so ordered.

Dated, signed and delivered this **17th** Day of **August 2017**

R. E. OUGO

JUDGE

In the presence of:

Applicant in person

Miss Mukiri h/b for Mr. Kahuthu for the Respondent

Ms. Charity Court Clerk.