



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. SUCCESSION NO. 220 OF 2015

IN THE MATTER OF THE ESTATE OF MUGO GITUMO (DECEASED)

CHARLES NTHIGA GITUMO PETITIONER/APPLICANT

RULING

The applicant/petitioner has moved this court to transfer Succession Cause No. 7 of 2004 from the court of the Principal Magistrate at Siakago to this court for trial and determination. According to him the court of the Principal Magistrate at Siakago does not have the pecuniary jurisdiction to hear and determine the succession cause. He also says that filing a fresh cause in this court will prejudice him, apparently in terms of money. According to him the value of the estate of the deceased is five million Kenya shillings.

Furthermore the applicant has stated in his supporting affidavit that there will be no prejudice if the order sought is granted.

This is a succession matter and as such there is no respondent or defendant.

In his oral submissions in this court the applicant has stated that he was advised by the Magistrate at Siakago to file this application in this court. It is the magistrate who told him that she did not have the pecuniary jurisdiction to entertain the matter. Finally he submitted that if the law permits he would like the case to be determined and finalized in the court of the Principal Magistrate at Siakago. This he says will reduce travel costs from Siakago to this court.

This application was filed in this court on 16th November 2015. During the pendency of the application the Magistrates' Court Act (Chapter 10) of the Laws of Kenya was repealed. In its place a new Magistrates' Court Act (Act No. 26 of 2015) was enacted. The new act became operational on 2nd January 2016. In section 23 of the new Act the various grades of the magistrates' courts had their pecuniary jurisdiction increased as stated in section 7 (1) of the new Magistrates' Courts Act. In terms of sections 7 (1) the pecuniary jurisdiction of the magisterial courts is as follows:-

- a. a sum not exceeding twenty million shillings, where the court is presided over by a Chief Magistrate;
- b. a sum not exceeding fifteen million shillings, where the court is presided over by a Senior Principal Magistrate;
- c. a sum not exceeding ten million shillings, there the court is presided over by a Principal Magistrate;
- d. a sum not exceeding seven million shillings, where the court is presided over by a Senior Resident Magistrate; or
- e. a sum not exceeding five million shillings, where the court is presided over by a Resident Magistrate.

In the light of these statutory provisions it is clear that the court of the Principal Magistrate has a pecuniary jurisdiction not exceeding the sum of ten million shillings. It is also clear that the court of the Senior Resident Magistrate has pecuniary jurisdiction not exceeding a sum of seven million shillings.

Apart from the consideration of pecuniary jurisdiction, I also find that it is costly in terms of travel expenses from Siakago to this court. Additionally, I also find that it is convenient to the parties for the matter to be finalized at Siakago.

In the circumstances, the application has been overtaken by events due to the enactment of the new Magistrates' Court Act. It therefore follows that the application for transfer is moot.

The succession cause will be determined and finally disposed of by the court of Principal Magistrate at Siakago.

The application is therefore dismissed with no orders as to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this.. **19th**.. day of **JANUARY, 2016**.

In the presence of the Applicant

Court clerk Mr Njue

J.M. BWONWONGA

JUDGE

19.01.16