



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**MISC. SUCCESSION NO. 199 OF 2015**

**IN THE MATTER OF THE ESTATE OF NYAGA MURWANGUNGI alias NYAGA M'NGUNGI  
(DECEASED)**

**SUSANA MATI NYAGA .....1<sup>st</sup> APPLICANT**

**MURITHI WANYAGA .....2<sup>nd</sup> APPLICANT**

**RULING**

The applicants have moved this court to transfer succession cause No. 4 of 2010 from the court of Principal magistrate court at siakago to this court for trial and disposal. It is an ex-parte application brought by Notice of Motion under section 18(1) and section 3A of the Civil Procedure Act and Order 50 rule 1 of the 2010 Civil Procedure Rules. According to the applicants the pecuniary jurisdiction of the principal magistrate court at Siakago is One hundred thousand shillings (Kshs 100,000). In their affidavit evidence they have stated that the value of estate of the deceased exceeds One hundred thousand shillings (Kshs 100,000). The applicants have stated that the value of the estate is one million Kenya shillings (Kshs 1,000,000)

Furthermore, the applicants in their affidavit have stated that they were ordered to file an application for transfer of the succession cause in the High Court because the magisterial court at Siakago did not have pecuniary jurisdiction to determine it.

The applicants have also stated that it is the magistrate who told them that she did not have the pecuniary jurisdiction to entertain and determine the matter. Finally they have submitted that if the law permits, they would like the case to be determined and finalized in the court of the Principal Magistrate at Siakago. The reason they have given is that it is costly in terms of travel expenses from Siakago to this court.

This application was filed in this court on 14<sup>th</sup> October 2015. During the pendency of this application the Magistrates' Courts Act (Chapter 10) of the Laws of Kenya was repealed. In its place a new Magistrates Courts Act (Act No. 26 of 2015) was enacted. The new act became operational on 2<sup>nd</sup> January 2016. In Section 23 of the new Act the various grades of the magistrate courts had their pecuniary jurisdiction increased as stated in Section 7 (1) of the new magistrate Act. In terms of **section 7 (1)** of the new Act 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, where 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 now has a pecuniary jurisdiction not exceeding the sum of ten million shillings. It is also clear that the court of Senior Resident Magistrate also now 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' Courts 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 the Principal Magistrate at Siakago.

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

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

In the presence of the parties

Court clerk Mr Njue

**J.M. BWONWONGA**

**JUDGE**

**19.01.16**