



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO.1490 OF 2015
IN THE MATTER OF THE ESTATE OF G S E (DECEASED)

D D M.....APPLICANT

VERSUS

R E E.....RESPONDENT

RULING

1. The deceased G S E died intestate on 4th April 2014. He was a resident of [particulars withheld] in Khwisero in Kakamega County. His estate comprised of the following properties:-
 - a. Kisa/Emasatsi/[particulars withheld] ;
 - b. Kisa/Emasatsi/particulars withheld;
 - c. Kisa/Mundobelwa/particulars withheld;
 - d. Kisa/Mwikalikha/particulars withheld;
 - e. Kisa/Mushiangubu/particulars withheld;
 - f. Kisa/Mushiangubu/particulars withheld;
 - g. Kisa/Mushiangubu/particulars withheld;
 - h. Kisa/Mushiangubu/particulars withheld;
 - i. Kisa/Mushiangubu/particulars withheld;
 - j. Kisa/Mushiangubu/particulars withheld;
 - k. Marama/Shikunga/particulars withheld;
 - l. Kisumu/Karateng/particulars withheld;
 - m. Motor Vehicle [particulars withheld] Mitsubishi Pajero;
 - n. Fiat Tractor [particulars withheld];
 - o. Insurance Policy with Madison Insurance;
 - p. Equity Bank, Luanda Branch, Account Nos. [particulars withheld];and [particulars withheld];
 - q. Money in Deposit Protection Fund in Nairobi;
 - r. Account in Middle East Bank Kenya Ltd, Milimani Road Branch, in Nairobi; and
 - s. Shares in Barclays Bank of Kenya Ltd, Athi River Mining and Kenya Airways.

2. On 4th September 2015 the applicant D D M petitioned the High Court at Kakamega in Succession No. [particulars withheld] of 2015 for the grant of letters of administration intestate. In the affidavit sworn to support the petition she indicated that she and the respondent R E E were the

widows of the deceased. She named the children of the deceased as follows:-

- a. T W E;
- b. B W E;
- c. B E ;
- d. S E;
- e. L E;
- f. R S O;
- g. H A E (minor);
- h. D A M (minor);
- i. C W ; and
- j. S A E.

The grant has not been issued.

3. Prior to that, the respondent had on 18th June 2015 filed the instant Cause also seeking for a grant of letters of administration intestate. She indicated that she was the only widow of the deceased and named the children as T W E, B W E, S N E, S A E and L N E. The property listed were Kisa/Mushiangubu [particulars withheld] and Kisumu/Karateng/[particulars withheld]. A grant was issued to her on 9th November 2015.
4. On 21st January 2016 the applicant filed the instant application under **section 47** of the **Law of Succession Act (Cap. 160), Rules 49** and **73** of the **Probate and Administration Rules** and **Article 159 (2)(d)** of the Constitution of Kenya 2010 seeking that this Cause be transferred to the High Court at Kakamega for hearing and disposal. The grounds were that the deceased's last place of residence was at [particulars withheld] in Khwisero in Kakamega County; the substantial part of the estate was located in Kakamega County; full disclosure on the beneficiaries and estate had been done in the Kakamega Cause; most of the beneficiaries reside at [particulars withheld] in Kakamega County; and, therefore, that the proper and most convenient place to hear and determine the dispute was at the High Court at Kakamega. In the supporting affidavit, it was deponed that the respondent resides in Nairobi and the choice to have this Cause filed in Nairobi was to suit her convenience, and to gain advantage over the applicant.
5. Mr Wahome for the respondent and Mr Shifwoka for the applicant filed written submissions on the application for transfer. I have considered the submissions.
6. When choosing the forum where to file a suit, a party has to decide on the most appropriate or suitable court. What is appropriate will be determined by the nature and character of the matter, the nature of the relief or remedy sought, the interests of the litigants and their convenience, and the wider interests of justice (**Jazira Agencies (NRB) Limited –v- Dolphin Stationers Ltd, MSA HCCC NO. 477 of 1998**). When considering the interests of the parties and their witnesses, the court will bear in mind the cost to them when comparing the distance to the forum sought in relation to the one from which the parties seek to move the Cause.
7. It is not in issue that the deceased was living within Kakamega County where the substantial portion of his estate is located. It is also not disputed that most of the named beneficiaries reside in the County. The respondent may be living in Nairobi, but the appropriate place to have the dispute heard and resolved has to be the High Court at Kakamega.
8. The respondent argued that she was the legal widow of the deceased, having married the deceased statutorily. Her case was that the deceased lacked capacity to contract any other marriage. She does not recognise the applicant as the deceased's widow, and therefore argued that the applicant lacks capacity to petition for grant. This is because she is neither a widow nor beneficiary of the deceased and his estate. My view is that, the court that will hear this dispute will determine who the beneficiaries of the estate of the deceased are. It will determine the extent of the estate, and then distribute the same to the beneficiaries. The question whether the applicant was the

deceased's widow will be decided by that Court. For now, the parties will bear in mind the provisions of **section 3(5)** of the **Act** which provides that:-

“Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of this Act, and in particular sections 29 and 40 thereof, and her children are accordingly children within the meaning of this Act.”

9. In conclusion, I allow this application. I order that this High Court Succession Cause No. [particulars withheld] of 2015 at Nairobi be transferred to the High Court at Kakamega to be consolidated with Succession Cause No.[particulars withheld] of 2015. This is a family dispute and therefore the court will not make any order as to costs.

DATED and SIGNED at NAIROBI this 25TH day of FEBRUARY 2016.

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI on the 29TH day of FEBRUARY 2016.

W. MUSYOKA

JUDGE