



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
SUCCESSION CAUSE NO. 211 OF 2015
IN THE MATTER OF THE ESTATE OF NJOGU MUTHAKIE (DECEASED)
PETER MACHAKI NYAGA NJOGU.....PETITIONER

RULING

The applicant/petitioner has moved this court to transfer Succession Cause No. 211 of 2015 from the court of the Principal Magistrate at Siakago to this court for hearing 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. The petitioner has stated that the value of the estate of the deceased is three million Kenya shillings (Kshs 3,000,000), which exceeds the jurisdiction of that court. The jurisdiction of that court is a sum not exceeding Kshs 100,000/

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

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 his application in this court. It is the magistrate who told him that she did not have the pecuniary jurisdiction to entertain the matter. He has also stated that Siakago court is nearer to his home than coming to Embu. He submits that the transfer will reduce travel costs from Siakago to this court.

This application was filed in this court on 28th October 2015. During the pendency of this application the Magistrates' Court Act (Chapter 10) of the Laws of Kenya was repealed.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:-

1. a sum not exceeding twenty million shillings, where the court is presided over by a Chief Magistrate;
2. a sum not exceeding fifteen million shillings, where the court is presided over by a Senior Principal Magistrate;
3. a sum not exceeding ten million shillings, there the court is presided over by a Principal Magistrate;

4. a sum not exceeding seven million shillings, where the court is presided over by a Senior Resident Magistrate; or

5. 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 16th day of February 2016.

In the absence of the Petitioner

Court clerk Mr Njue

J.M. BWONWONGA

JUDGE

16.02.16