



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 4 OF 2005

IN THE MATTER OF THE ESTATE OF GATHIMBA GITUTI (DECEASED)

CHARLES MWANGANGI.....PETITIONER/APPLICANT

VERSUS

MARGARET WANJIRA GATHIMBA.....PROTESTOR/RESPONDENT

RULING

1. This is an application for transfer of this succession cause to the court of the Chief Magistrate at Kerugoya for hearing and determination.
2. The application is based on four grounds. The first ground is that the case was filed in the court of the Principal Magistrate at Kerugoya in 2003 when there was no High Court in that station in respect of succession causes. The second ground is that the grant of letters of administration intestate were issued to the then petitioner (Grace Wambere Kathimba) but the same were not confirmed because there was a protest filed. Ground number three is that the succession cause was transferred to Embu High Court for hearing and determination since there was no High Court in Kerugoya. And finally in ground four, the applicant states that there is need for transfer of the cause to the court of the Chief Magistrate in Kerugoya for hearing and final determination.
3. The application is based on the supporting affidavit of the applicant which runs to eight paragraphs. The applicant has deponed that letters of administration intestate were issued to Grace Wambere Kathimba on 4th May 2004 vide Kerugoya Principal Magistrate's Court Succession cause No. 66 of 2003. He has further deponed that the petitioner who was her mother died in 2009 and the applicant was substituted in place of her late mother. The deponent has further deponed that the letters of administration intestate have never been confirmed because there is a pending protest and as a result the cause was transferred to Nairobi High Court and then to Embu High Court since there was no High Court in Kirinyaga County.
4. Furthermore, the applicant prays that the cause be re-transferred to the court of the Chief Magistrate at Kerugoya for hearing and determination since the properties of the deceased are in Kirinyaga County. He has also deponed that all the beneficiaries live in Kirinyaga County. And finally he has deponed that no party will be prejudiced if the transfer order is made.
5. The application for transfer is opposed by the protestor/respondent. She has filed a replying affidavit in opposition to the application. Amongst the chief grounds deponed to in her affidavit is that this application is vexatious, frivolous, without merit and an abuse of the court process. She has also deponed that she is interested in having this matter determined expeditiously. Additionally, she has deponed that this succession cause has moved many times from court to court and that any further movement shall

result in further undue delay of the determination of this matter. More importantly, she has deponed that it is not true that all the beneficiaries live in Kerugoya citing the example of her son Wilson Muriuki whom she states lives in Nairobi. She has also deponed that if this court deems it fit to transfer the succession cause, it should be transferred to the court of the Chief Magistrate at Embu. And finally, she has deponed that a transfer of this cause will cause more harm than good.

6. I have considered the affidavit evidence of both parties. I have also considered the grounds in support of the application for transfer. I find that this succession cause was originally filed in the court of the Principal Magistrate in Kerugoya in 2003. It was then transferred to Nairobi High Court since there was no High Court in Kirinyaga County. Thereafter again it was transferred to the High Court at Embu because there was no High Court in Kirinyaga County. I find that there have been many transfers of this succession cause. I believe the affidavit evidence of the respondent that this matter should be finalized here in Embu.

7. I find that the court of the Chief Magistrate in Embu has pecuniary jurisdiction to hear and determine this matter. This is clear from the following amendments to the Magistrates' Courts Act. According to **section 23 of the Magistrates' Courts Act No. 26 of 2015**, a magisterial court shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under **section 7 (1) of the Magistrates' Courts Act, 2015**. Furthermore, the provisions of **section 7 (1) of the Magistrates' Courts Act** provides as follows:

7 (1) A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed -

a) twenty million shillings, where the court is presided over by a chief magistrate;

b) fifteen million shillings, where the court is presided over by a Senior Principal Magistrate;

c) ten million shillings, where the court is presided over by a Principal Magistrate;

d) seven million shillings, where the court is presided over by a Senior Resident Magistrate; or

e) five million shillings, where the court is presided over by a Resident Magistrate.

10. The respondent according to her affidavit evidence is not opposed to the matter being heard and finalized in the court of the Chief Magistrate at Embu. She is desirous of having this matter heard and determined expeditiously.

11. In the circumstances, I hereby order this succession cause to be transferred to the court of the Chief Magistrate at Embu for hearing and final determination.

10. There will be no orders as to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **20th** day of **JULY 2016**

In the presence of both the petitioner/applicant and Mr Adoli for the Protestor.

Court clerk Njue

J.M. BWONWONGA

JUDGE

20.07.16

