

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 857 OF 1992

IN THE MATTER OF THE ESTATE OF CLEMENT MUNGA MUNA (DECEASED)

CLEMENT SOLOMON MUNGA.....APPLICANT

VERSUS

ANN NJOKI MUNGA.....1ST RESPONDENT

ELIZABETH WACHEKE.....2ND RESPONDENT

LOICE WANGOI.....3RD RESPONDENT

PRISCILLAH WANGECHI.....4TH RESPONDENT

RULING

1. This matter begun in this court in 1992 following the death of the deceased Clement Munga Muna on 28th July 1990. A grant of letters of administration intestate was issued to Milkah Mwhaki, Clement Solomon Muna and Samwel Nganga Muna on 12th September 1992. The grant was confirmed and the estate of the deceased distributed. There is amended certificate of confirmation issued on 3rd December 1996 showing how the estate was distributed. On 18th June 2012 Anne Njoki Munga, Elizabeth Wacheke, Loice Wangoi and Priscillah Wangechi (the respondents) filed Petition No. 5 of 2012 at the High Court at Kitale against Clement Solomon Munga (the applicant) and Samuel Nganga in which the substantial complaint was the manner in which this estate was distributed to the beneficiaries. There was, among other things, allegation of discrimination of the respondents on ground of sex. The applicant and Samuel filed an application seeking to have the petition transferred to this court to be heard in this Cause. They argued that the issue regarding the identification of the beneficiaries and their respective shares in the estate of the deceased could only be properly dealt with in this Cause. The application was heard by the court in Kitale and a ruling rendered on 10th November 2015 declining the request to transfer.

2. On 13th April 2016 the applicant filed a chamber application before this court seeking that this court orders the transfer of the Kitale petition to this court for consolidation with this Cause, and for hearing and disposal. The application was opposed.

3. It is notable that the ruling in the Kitale petition has been appealed against as shown by the annexed notice of appeal.

4. In my considered view, when the High Court at Kitale declined to transfer the petition to this court to be heard in this Cause in effect it declined to order the consolidation of the two cases. A party dissatisfied with the ruling should seek its review, or appeal against it. The applicant and his colleague decided to appeal. They have to wait for the determination of the Court of Appeal in the matter. They will be at liberty to seek the stay of proceedings of the petition while awaiting the resolution of the appeal. That application will be made either at Kitale or at the Court of Appeal.

5. As things stand, the application filed herein for consolidation has been heard and determined by a court of competent jurisdiction. It is *res judicata* (**Gichuki –v- Gichuki [1982] KLR 285**). It is therefore dismissed with costs.

DATED and DELIVERED at NAIROBI this 14TH DECEMBER, 2016.

A.O. MUCHELULE

JUDGE