



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO 41 OF 2015

EVERLYNE WANJIRU NJOROGE.....APPLICANT

VERSUS

JOSEPHINE MUTHONI GITHAE.....RESPONDENT

RULING

The Applicant by an application filed on 24th March, 2015 and filed on the same date applied to the Court that **Succession Cause 82 of 2014 from Limuru Law Courts** be transferred to Nairobi High Court Family Division.

The affidavit of the applicant outlines that the matter was heard in Limuru Law Courts and the Respondents obtained part of the proceeds in the deceased's estate held by the Public Trustee. The amount in question far exceeds the requisite pecuniary jurisdiction of the Magistrate's Court as stipulated in **Section 48 of the Law of Succession Act Cap 160**.

There is also contest as to who the beneficiaries of the deceased's are; is it the Applicant sister to the deceased who sued on behalf of his aged parents and /or is it the Respondent as widow of the deceased and her/ child as the next of kin.

The Respondent raised a preliminary objection filed on 3rd June, 2015 that the applicant sought similar orders in Limuru Law Courts and the application was dismissed. To hear the present application again is in contravention of **Section 7 of the Civil Procedure Act Cap 21 Laws of Kenya** on res judicata.

The application is defective as it should not seek transfer of the case instead the Respondent should file afresh suit/application in this Court.

The Applicant referred to the case of **CECILIA WANGARI KIMANI & 2 OTHERS Vs JOHN GATUNGU & 2 OTHERS MISC. APPLICATION 37 OF 2014** where the Court held that;

“there are no express provisions on prayer of cases transferred from one Court to another. Therefore the Court relied on provision 159 of the Constitution”.

The Respondent relied on the case of **ISAAC NGIRI MWANGI Vs VERONICA WANGARI & OTHERS SUCCESSION CAUSE NO. 137 OF 2013** where the Court held that;

“where a matter is filed in a Court which has no jurisdiction that there is no suit, properly so called, which has been filed. Consequently, there is no suit, so to speak to be transferred in this instance”.

In the instant case the Court finds the submission made by both Counsel to be relevant. It is common ground that **Section 48 and 49 of Law of Succession Act Cap 160** give jurisdiction to Magistrate's Court but the jurisdiction is subject to the pecuniary limit in this case Kshs.100,000/=. The matter was heard and determined in Limuru Law Courts which was in excess of the present pecuniary jurisdiction of the Court. As such it ought to be heard in the High Court in light of the amount of money held by the Public Trustee.

The proceeds/terminal dues of the deceased terminal dues exceed this limit as shown in the pleadings Ksh. 1,179,540/= whose balance is now Ksh.461,600/=.

As to the mode of transfer, by invoking **Article 159 2(d) of the Constitution of Kenya 2010** that stipulates;

“Justice shall be administered without undue regard to procedures technicalities”

Section 1A on the overriding objective of the **Civil Procedure Act**; and the family divorce proceedings are in part civil proceedings.

“is to ensure the overriding objective to facilitate the just, expeditious, proportionate and affordable resolution of disputes governed by the Act”

Section 1B of the **Civil Procedure Act** is on the duty of the Court in furthering the overriding objective as provided in **Section 1A of Civil Procedure Act**.

In light of the above provisions of law this Court is persuaded that the Limuru Law Courts lacks jurisdiction to determine the present matter and it shall in the interest of justice have **Succession Cause 82 of 2014** be transferred to High Court Family Division in line with the overriding objective.

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF JULY 2015

M. MUIGAI

JUDGE

In the absence of:

The Parties and Counsel.