



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
MISC. APPLICATION NO.37 OF 2014

CECILIA WANGARI KIMANI.....1ST APPLICANT
FLORA WANJIRU KIMANI.....2ND APPLICANT
CHRISTINE WANJIRU KAMAU.....3RD APPLICANT

-VERSUS-

JOHN GATUNGU.....1ST RESPONDENT
JOYCE WANJIKU KARIITHI.....2ND RESPONDENT
PETER KAMAU WAKARIITHI.....3RD RESPONDENT

RULING

1. This Succession Cause was initially filed in the Senior Resident Magistrate's Court Gatundu as Succession Cause No. 21 of 2008. Grant of letters of Administration were issued to the first Applicant and the third Respondent as Co-Administrators of the Estate of the deceased.
2. On 19th February 2014 when the parties appeared before the court for the confirmation of the grant, the court noted suo moto, that form 57 annexed to the Petition indicated that the estate which was worth Kshs.400,000/=, was beyond its pecuniary jurisdiction which is set at Kshs.100,000/=. It was argued by learned counsel Mr. Simiyu for applicants, that the applicants initially petitioned the court in their personal capacity and were ignorant of the jurisdiction of the court. Further that were the order not to issue, there would be continued wastage of the estate and the money already spent would also be wasted.
3. This is therefore, an application for the transfer of the said Succession Cause No. 21 of 2008 from Gatundu Senior Resident Magistrate's Court to the High Court of Kenya sitting at either Nairobi or Murang'a, for its further hearing and determination. The application is premised on the supporting affidavit sworn by the first applicant Cecilia Wangari Kimani.
4. In principle the Respondents are not opposed to the transfer of the Succession Cause from Gatundu Senior Resident Magistrate's Court to the High Court for hearing and determination. Mr. Okemwa learned counsel for the Respondent however, contends first, that the High Court has no

jurisdiction to invoke **Section 18 Civil Procedure Code** to order such a transfer and issue the orders sought.

5. Secondly, it is Mr. Okemwa's argument that where a matter is filed in a court that lacks jurisdiction, it becomes a nullity *ab initio* and is not capable of being transferred. In his view the Succession Cause should commence afresh. He relied on the cases of **Isaac Ngiri Mwangi v Veronica Wangari Isaac & Others Murang'a HC Succ. Cause No. 137 of 2013** and **Wilson Kamau Muigai v Njeri Kamau & Ano. Succ. Cause No. 2346 of 2008 Nairobi**.

6. In response Mr. Simiyu argued for the applicants that in the cited cases the lower court had itself purported to issue orders transferring the Cause to the High Court and was rightfully admonished. He urged the court to have regard to the provisions of **Article 159** of the **Constitution**, which the courts did not do in the cited cases and breathe life into this Succession Cause.

7. The jurisdiction of the courts, both the High Court and the magistrate's courts, in matters governed by the **Law of Succession Act, Chapter 160 Laws of Kenya** is set out in **Sections 47 to 50** of that Act. **Section 48** thereof defines the extent of the magistrate's jurisdiction as follows:

“48 Notwithstanding any other written law which limits jurisdiction, but subject to provisions of section 49, a resident magistrate shall have jurisdiction to entertain any application other than an application under section 76 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 one hundred thousand shillings.

8. The jurisdiction of the magistrate's court to entertain an application or determine any dispute in matters of succession, is monetarily capped and is therefore determined by the value of the estate. Under the provisions of the law as set out above, the value of the estate may not exceed Kshs.100,000/=. The value of the estate in the Succession Cause before Gatundu Senior Resident Magistrate's Court is stated to be Kshs.400,000/= and is therefore obviously beyond the jurisdiction of that court.

9. Under normal circumstances there would be no proceedings to transfer where such proceedings were filed in a court lacking jurisdiction as such proceedings would be a nullity. To my mind however, this is the kind of procedural technicality which is envisaged and which is curable under **Article 159** of the **Constitution**, for the ends of justice to be met. Rules of procedure are, after all, the hand maidens of justice and should not tramp substantial justice. The strict adherence to rules of procedure sometimes has that unfortunate outcome.

10. It is not in doubt that **Phyllis Wambui Kamau** whose estate is sought to be administered is deceased. I note that both the Applicants and the Respondents participated actively in the lower court proceedings and are all desirous of obtaining the grant. I also note that the value of the estate which is not disputed, is quite small and it is in the interest of justice that requisite orders are issued expeditiously to avoid any further wastage thereof.

11. There is no specific provision of the law to govern the transfer of a succession cause in the manner presented before me. The High Court however has a very wide jurisdiction so that no one need ever be turned away from the fountain of justice, merely by reason that the letter of the law does not spell out his/her specific problem. **Article 159** of the **Constitution** sets out principles that guide courts and tribunals in exercising judicial authority. **Clause (2)(b)** thereof provides that justice shall not be delayed, while **Clause (2)(d)** provides that justice shall be administered without undue regard to procedural technicalities. To demand that the succession cause is filed afresh would offend both principles.

12. For the foregoing reasons I invoke the inherent powers of the High Court to order for the transfer of Gatundu Senior Resident Magistrate Cause No. 21 of 2008, to the High Court of Kenya sitting at Nairobi, for its further hearing and determination.

Costs shall be in the cause.

SIGNED DATED and **DELIVERED** in open court this 22ND day of **October 2014**.

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L. A. ACHODE

JUDGE