



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
MISC. APPLICATION NO. 1001 OF 2014

SAMUEL KIMWELI KIENZE.....APPLICANT

-VERSUS-

PUBLIC TRUSTEES.....RESPONDENT

RULING

1. The application before me is the one dated 2nd September 2014 and filed in court on 5th September 2014 by the Applicant Samuel Kimweli Kienze. It is brought under **Section 3** and **3A Civil Procedure Act** and **Rule 73** of the **Probate and Administration Rules**. In it the Applicant seeks orders of court in the main, that this Succession Cause and succession Cause No. 163 of 2012 of Nyahururu be both transferred to Nakuru High Court and consolidated to proceed together. He also prays that costs be in the cause.
2. The grounds of the application as may be seen on the face thereof are that, the dispute in the petition contains comprehensive and complex matters which will require oral evidence to be adduced in court and also that all the beneficiaries and dependants reside in Nakuru. Hence it is stated that Nakuru High court would be better placed to ease the cost of attending court.
3. In the supporting affidavit sworn by the Applicant on 2nd September 2014 the Applicant has listed seven other beneficiaries beside himself. He depones that the said beneficiaries refused to take out letters of Administration causing him to file citations against them at Nyahururu Senior Resident Magistrate's court. That he served them through the Daily Nation of 18th February 2013 and when they did not respond, he was issued with the grant of letters of Administration of the intestate estate on 17th September 2013.
4. The Applicant deponed further that it was after he applied for the grant to be confirmed that the other beneficiaries proceeded to appoint the Public Trustee and he objected through Nairobi Succession Cause No. 338 of 2012.
5. Learned counsel Mrs. Kanogo representing the Public Trustee requested that the beneficiaries do respond in person if they were opposed to the application. One of the beneficiaries, Jack Dave Wambugu Muraguri responded on his own behalf and on behalf of the other seven beneficiaries who were all present in court.
6. Mr. Wambugu Muraguri argued that all the beneficiaries have family members in Nairobi and that two of the beneficiaries also live in Nairobi, whereas they have no relatives in Nakuru and most

have never been there before. He contended that they will be inconvenienced in procuring accommodation, subsistence and even locating other amenities and the High Court itself.

7. He urged that in Nairobi they all rely on each other's good will for such facilities as accommodation and subsistence. He contended further that the applicant signed a consent before the Public Trustee on 13th August 2012 to be represented by Public Trustee in Nairobi, only to turn around and file a citation on 10th September 2012, in Nyahururu alone and without notice to the other beneficiaries. He also asserted that the Applicant is hiding documents pertaining to the estate and for those reasons he cannot be trusted to look out for the interests of the other beneficiaries. He also pointed out that there are nine beneficiaries and not eight as stated in the application and that all are in agreement except the applicant.
8. Indeed it is easy to see that there is mischief afoot on the part of the Applicant herein. He was the first signatory to the consent which placed the estate of the deceased Kienze Ngumi Katuva under the administration of the Public Trustee Nairobi in the document dated 13th August 2012 and filed in court on 28th April 2014. The Public Trustee filed for representation of the estate of the deceased and the application was duly gazetted on 21st May 2014. There being no objection lodged against the application, letters of Administration Intestate were granted to the Public Trustee on 22nd July 2014.
9. It is not clear why the applicant decided to file a citation in Nyahururu Senior Principal Magistrate's court against the other beneficiaries while the Cause was already being processed through Public Trustee Nairobi. There is no evidence that he made any effort to serve or to involve the rest of the beneficiaries. In any case Nyahururu Senior Principal Magistrate's court lacked the pecuniary jurisdiction necessary to grant the letters of Administration since the estimated value of the estate as set out in paragraph 5 of the supporting affidavit filed together with the petition in the High Court is stated to be Kshs.2,501,000/=.
10. In view of paragraph 8 of this judgment it is not therefore, correct as stated by the Applicant that his siblings appointed the Public Trustee after he had applied for confirmation of grant. There are nine beneficiaries of the estate of the deceased and eight of them are in agreement that it would be more expedient for them all for the cause to be heard and determined in Nairobi. The Applicant holds no priority over the other beneficiaries and the comprehensive and complex matters adverted to in the grounds of the application, which will require oral evidence to be adduced can be attended to with no less keenness by the High Court at Nairobi.
11. I am therefore satisfied that the orders which do commend themselves to these circumstances are as follows:
 1. That the application for the transfer of Succession cause No.1001 of 2014 to Nakuru High Court for hearing and determination is denied.
 2. That Succession Cause No. 163 of 2012 Nyahururu Senior Principal Magistrate's Court be and is hereby transferred to Nairobi Milimani High Court for consolidation with Succession Cause No. 1001 of 2014. Deputy Registrar of this Division to facilitate the transfer.
 3. The Applicant to pay the costs of this application.

It is so ordered.

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

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L. A. ACHODE

JUDGE