



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC APPLICATION NO. 103 OF 2012**

**IN THE MATTER OF THE ESTATE OF CORNEL JOSEPH KIMANI (DECEASED)**

**RULING**

1. The Motion dated 28<sup>th</sup> June, 2012 and taken out under Sections 2, 45, 47, 48 of the Law of Succession Act and Rule 63 of the Probate and Administration Rules principally seeks the transfer of Githunguri Senior Principal Magistrate's Succession Cause No. 39 "A" of 1992 to the High Court for hearing and disposal. The other orders are ancillary and can be dealt with within the cause either at the High Court or at the resident magistrate's court.
2. The law on transfer of succession causes from a resident magistrate's court to the High Court is hazy, for there is no provision in the Law of Succession Act on the matter. However, this has been done on occasion in an effort to do substantive justice. This has happened in cases where there are two causes pending, one before the resident magistrate and the other at the High Court; the High Court may call for the cause before the lower court and consolidate it with what is before it. It has also been done where the value of the estate exceeds Kshs. 100, 000.00, which is pecuniary jurisdiction extended to the resident magistrate by section 48 of the Law of Succession Act.
3. The estate, from the papers placed before me, comprises of two landed properties situate at Githunguri, Kiambu, and shares in two limited liability companies. The applicant alleges that the landed property is valued at Kshs. 10, 000, 000.00 or thereabout. The respondent is of a contrary view. Both sides have however not filed valuations on the said properties. I am prepared to take judicial notice of the fact that landed property in Kiambu County is of pretty high value, and the two landed assets no doubt exceed the value of Kshs. 100, 000.00.
4. The interests of justice favour the situation where the Githunguri cause is transferred to the High Court for hearing and disposal. I hereby do direct the said transfer. The other prayers in the application are dismissed. The applicant shall raise those issues once the High Court is seized of the matter. Each party shall bear their own costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 11<sup>th</sup> DAY OF December 2014.**

**W. MUSYOKA**

**JUDGE**

**No appearance of the advocates for both parties.**