



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**SUCCESSION CAUSE NO. 27 OF 2008**

**IN THE MATTER OF THE ESTATE OF MIRIAM JEMUTAI SANG – DECEASED**

**R U L I N G**

This is an application for transfer of this case to Kadhi's Court on grounds that the deceased was an Islamic faithful and that all the parties concerned in this matter are Muslims who profess Islamic faith. Further, the Kadhi's court do have jurisdiction to hear and determine this cause and it would therefore be just and fair for the cause to be transferred to the Kadhi's Court for determination according to the Islamic Law. The application is supported by the facts contained in an affidavit deposed by the applicant dated 26<sup>th</sup> November 2011.

Having considered the application in the light of the supporting grounds and the arguments put forth by both counsels for the applicant and the respondents, this court is of the view that in the interest of justice and expeditious disposal of this cause, it would be most appropriate to have the matter continue in this court rather than have it transferred to the Kadhi's court.

This is because, the subject grant was issued in this court on the 2<sup>nd</sup> October 2008. Its confirmation appears to have been obstructed by an application for revocation and/or annulment of the grant dated 3<sup>rd</sup> February, 2009.

The application is pending for hearing and due directions have been given regarding the mode of hearing. In the meantime, the parties seem to have engaged in negotiations to resolve the dispute. Some consent orders have since been recorded.

From all the foregoing, it is apparent that this present application is an after thought and coming rather belatedly considering the steady progress that has been made in the cause. This obviously mitigates against any transfer to the Kadhi's Court at this stage.

In any event it is doubtful whether all the parties to this cause profess the Islamic faith. Most of them were present at the hearing of the application and on being asked by the court about their religious beliefs about two or three of them said that they professed the Christian faith. That was not surprising. A person may be born a Muslim but later change his religion to Christianity and vice versa. In any event, consideration would be given to the faith of the deceased and not that of the beneficiaries.

In sum, the present application is devoid of merit. It is hereby dismissed with costs.

**J. R. KARANJA**  
**JUDGE**

**(Read and signed this 13<sup>th</sup> of April, 2011 in the presence of Mr. Yego for Omboto and Mr. Kigamwa for Kipseii)**