



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Succession Cause 378 of 2005

IN THE ESTATE OF SAMSON KAGUNDA CHEGEDECEASED

AND

RAHAB WANJA MICA.....OBJECTOR/APPLICANT

VERSUS

NAUMI WAMUI KAGIRI.....PETITIONER/RESPONDENT

RULING

The applicant herein through the firm of NABUTETE & CO. ADVOCATES has filed the notice of motion dated 28/4/2009 seeking the following orders:-

1. ***That EMBU H.C CAUSE NO. 378 OF 2005 and EMBU P.M.C. SUCCESSION CAUSE NO. 46 OF 1997, be transferred to High Court of Kenya at Nyeri.***
2. ***That costs of the application be provided for.***

The same is supported by the 5 grounds on its face and the supporting affidavit dated 28/4/2009. It is brought to court under Sections 3A, 12 and 18 of the Civil Procedure Act Cap. 21 of the Laws of Kenya.

To start with, I can say even at this stage that the court has been moved under the wrong provisions of the law Cap 21 i.e the Civil Procedure Act does not apply whole sale to Succession matters. Succession matters are governed by the law of Succession Act Cap 160 of the Laws of Kenya except where the Law of Succession Act itself imports specific Orders and Rules to cater for specific situations. These orders are very clearly set out under Rule 63(1) of the P&A Rule 5. They are Order V, X, XI, XV, XVIII, XXV, XLIX and together with the High Court (Practice and Procedure) Rules. Indeed no sections of the Law of the Civil Procedure Act apply to the law of Succession. The Civil Procedure Act applies to the court sitting in its civil jurisdiction arbitrating on disputes of a civil nature and not a court sitting as a Probate and Administration court. On that ground only, this application would fail.

If on the other hand I were to make a presumption that the application was properly before me and decide it on merit, it would still not succeed for the following reasons:-

Firstly Succession Cause No. 46 of 1997 was dealt with by the magistrate court pursuant to section 48 and 49 of the Law of

Succession Act. Under section 49 the magistrate empowered to deal with the Succession matter is;

The resident magistrate within whose area a deceased person had his last known place of residence.....”

and not the Resident Magistrate of the area where the deceased property is situated. Form P& A 5 filed by the applicant indicates at paragraph 3 thereof that the deceased’s last known place of residence was at EMBU TOWN. The Resident Magistrate was therefore seised of the territorial jurisdiction to deal with the matter. The forms filed by the petitioner indicated that the value of the property was 100,000/-. It was not upto the magistrate to call for a valuation report. In any event, if the issue was that the pecuniary jurisdiction exceeded that of the Resident Magistrate, that would be a ground to be raised in the application for the revocation of the grant and not one to justify the transfer of the case.

Secondly, an application for revocation of a grant or for any orders emanating from the grant issued by the subordinate court in Embu lies in this court and not in the High Court sitting in Nyeri.

I have no legal basis whatsoever to transfer this matter to the High Court sitting in Nyeri as prayed by the applicant. My finding is that this Application lacks merit and the same is hereby dismissed with costs to the Respondent.

W. KARANJA
JUDGE

Delivered, dated and signed at Embu this 4th day of March 2010.

In presence of: Mr. Gachie for applicant and Ms Ndorongo for Respondent.