

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO.408 OF 1982
IN THE MATTER OF THE ESTATE OF MOHAMMED ABDULAH ALI – (DECEASED)

AHAMED MOHAMED.....

....**APPLICANT**
VERSUS

ABDALLA MOHAMED.....

RESPONDENT
R U L I N G

Before me is an application by the applicant purportedly made pursuant to the provisions of **Rule 63** of the **Probate and Administration Rules** and **Sections 1A** and **3A** of the **Civil Procedure Act** seeking an order from this court for the transfer of this succession cause from this court to the High Court sitting at Meru. The grounds in support of the application are stated on the face of the application. The applicant contends that the property and assets of the deceased are located within the jurisdiction of the said High Court at Meru. He further argued that all the beneficiaries of the deceased are residents of Meru town. It is the applicant's contention that it would be both economical and just for this succession cause to be transferred to Meru. The application is supported by the annexed affidavit of Ahamed Mohamed. The application is supported by another affidavit sworn by Fuad Mohamed Abdulla, a beneficiary to the estate of the deceased. He deponed that he was a resident of Meru since his childhood. He states that since all the properties of the deceased are located within the jurisdiction of the High Court at Meru, it is only just and fair that this succession cause be transferred to Meru. On his part, the respondent Abdalla Mohamed swore a replying affidavit in opposition to application. He denied the averments made by the applicant that the majority of the beneficiaries of the deceased reside at Meru. He attributes the delay in the determination of the succession cause to the applicant's failure to render accounts in respect of his management of the deceased's estate as ordered by the court. The respondent further deponed that it is the applicant who had frustrated the conclusion of the succession by unjustifiably objecting to the grant being confirmed. He urged the court to dismiss the application with costs.

At the hearing of the application, this court heard oral submissions made by Mr. Ogado for the applicant, Mr. Mutemi for the executor and Mr. Kiprop for one of the beneficiaries. The issue for determination by this court is whether the applicant put forward sufficient grounds to enable this court transfer this cause from this court to the High Court at Meru. This succession cause has been pending before this court for over twenty eight (28) years. During this period, several applications have been made in the cause. Several orders have been issued by various judges. In the entire period, none of the beneficiaries thought it appropriate to have the succession cause transferred to Meru for hearing and determination. It is a fact that in the period that this succession cause has been pending before this court, the applicant was aware that the properties and assets of the deceased were located in Meru. He was also aware, if the applicant can be believed, that the majority of the beneficiaries reside in Meru.

This court is of the view that although it has jurisdiction to transfer the succession cause from this court to any other court, it would not do so if it appears to it that the application seeking the transfer of the succession cause has been made with ulterior motive. It was clear to this court that the applicant was motivated to make this application so as to avoid rendering accounts in regard to his management of the deceased's estate as ordered by Gacheche J on 17th June 2009. It is evident that the application seeking the transfer of this cause from this court to the High Court sitting at Meru has been made in bad faith. This court is not persuaded that the reasons put forward by the applicant are sufficient grounds to enable this court order the transfer of this succession cause. This application is therefore an afterthought. If there was any delay in the prosecution of the succession dispute, the disputing parties to a large extent bear the blame. The fact that the succession cause was filed in Nairobi cannot be said to be the sole cause for the delay in the hearing and determination of this succession dispute. The parties to this succession dispute are advised to take serious the prosecution of the cause so that the real issues in dispute may be determined. They should avoid engagement in sideshows.

It is clear from the foregoing that the application lacks merits and is hereby dismissed with costs.

DATED AT NAIROBI THIS 9TH DAY OF NOVEMBER, 2010

L. KIMARU
JUDGE