



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET

Misc Civil Appli 84 of 2008

SOPHIA MUSTAFA & OTHERS APPLICANTS

VERSUS

ZULFA NGASIA JUMA & ANOTHER RESPONDENTS

RULING

This is an application under the provisions of Order 38, Rule 2 of the Civil Procedure Rules and Sections 3 and 3A of the Civil Procedure Act. It seeks the following orders:-

(a) That the Court do transfer proceedings in Vihiga SRMCC No. 123 of 2006 and Eldoret Kadhi's Court Case No. 14 of 2006 for determination to the Eldoret High Court.

The grounds on which the application is based are

1. That the suit property belongs to the Estate of Mustafa Amunia Abdalla who was a Muslim.
2. That fraud is alleged in the transfer of the property to the Respondents herein.
3. That the Court lacks the substantive jurisdiction to finally adjudicate on the matter where the litigants are Muslims.

The application is opposed by the Respondent.

I have considered the application and the two opposing affidavits. With regard to the case SRMCC No. 123 of 2006 at Vihiga, there is a Decree shown to the Court which is dated 22nd August, 2008. The existence or validity of Decree has not been denied. There is Judgment on behalf of the Respondents as against the Applicants herein. As a result there is nothing to be transferred to this Court for hearing. The Applicant could only move the same Court or lodge an appeal against the said decision.

In the Succession Cause No. 14 of 2006, the Respondent herein has filed proceedings in respect of the Estate of the late Musataf Amunia Abdalla. There is no dispute that the deceased and the parties are of the Muslim faith. The Kadhi's Court has the jurisdiction to deal with succession matters relating and between Muslims. In fact, it is the appropriate Court with such jurisdiction. Section 5 of the Kadhi's Court Act, Chapter 11 of Laws of Kenya stipulates:-

“A Kadhi's Court shall have and exercise the following jurisdiction, namely, the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all parties profess the Muslim religion but nothing in this Section shall limit the jurisdiction of the High Court or of any Subordinate Court in any proceedings which comes before it.”

While the High Court has original jurisdiction and is not excluded by the said Section, it is my view that since the Succession Cause is already filed in the Kadhi's Court then unless there are just and overriding and compelling reasons this Court will not interfere with the exercise of the said Court of its function and jurisdiction under the said Act. The said Court is a Special Court that has been established specifically to deal with the personal laws of Muslims.

In this case I find no facts, and circumstances which require or justify that the said Succession Cause to be transferred to

the High Court.

It is clear that the Applicant is aggrieved by certain orders granted by the Kadhi's Court. The right thing to do is for her to appeal or apply for review against the said orders in accordance with the law.

I find that this application is an abuse of the Court process and it is hereby dismissed with costs to the Respondents.

The Interim Orders are hereby discharged.

DATED AND DELIVERED AT ELDORET ON THIS 27TH DAY OF JANUARY, 2009.

M. K. IBRAHIM

JUDGE

In the presence of:-

Mr. Kitigin for the Applicant

Mr. Obwatinya holding brief for Mrs. Asunah