



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**MISCELLANEOUS SUCCESSION CAUSE 32 OF 2004**

**JOSEPH KIMETO CHEPKWONY ..... APPLICANT**

**VERSUS**

**KIPROP ARAP KORIR ..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN KIMENJO CHOGE ..... 2<sup>ND</sup> RESPONDENT**

**R U L I N G**

Before me is an application by the Applicant/Petitioner brought under Section 3 and 3A of the Civil Procedure Code seeking orders that Kapsabet PMCC Succession Cause No. 65 of 2000 be transferred to this Honourable Court for hearing and final determination. The application is based on the grounds that the value of the estate involved exceeds the jurisdiction of the Principal Magistrate's Court and that it is a principle of law that where there is a High Court all the matters relating to probate and administration should be heard and determined by the High Court.

In support of the application Joseph Kimeto Chepkwony has sworn an affidavit in which he avers that he filed a Succession Cause in the Principal Magistrate's Court the same being Succession No. 65 of 2000; that the assets of the subject matter of these proceedings are two pieces of land being LR. No. NANDI/KOYO/712 and LR. No. NANDI/KOYO/713; that he is informed by Counsel on record which information he believes to be true that the value of the Estate exceeds the jurisdiction of the Principal Magistrate's Court; that it is in the interest of justice that this matter be heard and be concluded by this Honourable Court; that the Applicant will suffer irreparable harm if this application is not allowed and that the Respondent will not be in any manner prejudiced by this application. The Respondent was served but did not file any papers to oppose the application.

Be it as it may when a suit is filed in a Court which does not have jurisdiction lacks legal validity and therefore it is not capable of being transferred to a Court that has jurisdiction to try the same as there is nothing to be transferred. The only option left for the Application is to have the same withdrawn and have it filed in a Court which has jurisdiction. That being the position of the law this application fails and the same is dismissed with no order as to costs.

**DELIVERED AND DATED AT ELDORET THIS 13<sup>TH</sup> DAY OF OCTOBER, 2009.**

**J. L. A. OSIEMO**

**JUDGE**