



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Succession Cause 25 of 2005**

**IN THE MATTER OF THE ESTATE OF EVANS KAMAU MWAURA  
(DECEASED)**

**AND**

**IN THE MATTER OF AN APPLICANT BY**

**EVANS KAMAU MWAURA.....CAVEATOR/APPLICANT**

**RULING**

The applicant, Evans Kamau Mwaura, filed an application under the provisions of **rules 49** and **59(1)** and **rules 73** of the **Probate and Administration Rules** seeking transfer of this Succession Cause from this court to the High Court of Kenya at Kitale. The application was made on the ground that Parcel of land No 003174 Suwerwa Scheme, hereinafter referred to as “*the suit premises*”, which was listed in the Succession Cause as forming part of the estate of the deceased was in Trans Nzoia District and that the applicant and other people who were likely to be called as witnesses in the matter were also residing in Trans Nzoia District and the nearest court thereto was Kitale. The application was supported by the applicant’s affidavit sworn on 4<sup>th</sup> May 2006. In the said affidavit the applicant deponed that in the month of December 2005 he learned that the petitioners had listed the suit premises as belonging to the deceased thus forming part of the estate of the deceased, Evans Kamau Mwaura. The applicant stated that he was the lawful owner of the suit premises but the deceased was also bearing a name similar to his. He said that the deceased was a step brother in that they shared the same biological father and in accordance with the Kikuyu customs both were named after their paternal grand father.

The petitioners opposed the said application and filed an affidavit sworn by another Evans Kamau Mwaura who stated that he was one of the administrators of the estate of the late Evans Kamau Mwaura. He said that there was undue delay in making the caveator’s application because the caveator was all along aware of the petition herein from the time it was filed in court. He further stated that an application for grant of representation could be filed in either the Principal registry or in any other District registry within the Republic of Kenya and not necessarily where the subject matter for distribution was situated. He also stated that the beneficiaries of the deceased’s estate were scattered all over the Republic and in particular the widow to the deceased was residing within Nakuru District. He therefore urged the court to disallow the said application.

Mr. Mwangi for the caveator and Mr. Njagwa for the petitioner made brief submissions in support of their respective client’s affidavits. I have considered submissions by counsel and the contents of the affidavits on record. It is not in dispute that the suit premises herein is situated within Trans Nzoia District and the

applicant herein is also residing in Trans Nzoia District. At the commencement of the petition herein the petitioners obtained a letter from the Chief of Suwerwa Location of P.O. Box 11 Kitale which set out who the beneficiaries of the estate were. During the hearing of the matter the said chief may be an important witness. On 14<sup>th</sup> December 2005 the petitioners wrote a letter to the District Settlement Officer, Trans Nzoia District P. O. 203 Kitale alleging that his office had obstructed the efforts in administration of the suit premises. The said District Settlement Officer may also be called as a witness in this matter. There is also correspondence between the parties herein and the District Land Registrar, Trans Nzoia District. It may therefore be necessary for the said Land Registrar to be called as a witness as well.

Although the application for grant of representation in this matter could have been made either in the Principal registry or in any High Court District registry, considering the above reasons it was only fair and expedient that the application be made before the High Court of Kenya at Kitale District registry. Even if some of the members of the deceased's family who are likely to be witnesses in the matter, reside within Nakuru District, in my view it is much more desirable that the matter be heard and determined in the High Court of Kenya at Kitale. In the event that it would be necessary for the court to view the suit premises for any reason, it would be costly for this court to do so given the physical location of the property in dispute.

I do not agree that there was inordinate delay in filing the caveator's application since he became aware of the petition herein in December 2005.

For these reasons, I allow the application and I direct that this succession Cause be transferred to the High Court of Kenya at Kitale for hearing and disposal. The costs of the application shall be in the cause.

DATED, SIGNED and DELIVERED at Nakuru this 12<sup>th</sup> day of October, 2006.

**D. MUSINGA**

JUDGE

Ruling delivered in open court in the presence of Miss Njagwa for the respondent and N/A for the applicant.

**D. MUSINGA**

JUDGE