



In re Estate of Amenya Misati Orenge (Deceased) (Family Miscellaneous Application E003 of 2024) [2025] KEHC 3112 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
FAMILY MISCELLANEOUS APPLICATION E003 OF 2024**

WA OKWANY, J

MARCH 13, 2025

IN THE MATTER OF THE ESTATE OF AMENYA MISATI ORENGE (DECEASED)

BETWEEN

TERESA MORAA MISATI 1ST PETITIONER

PATRICIA NYANGARA AMENYA 2ND PETITIONER

CONCEPTER NYABOKE AMENYA 3RD PETITIONER

AND

IN THE MATTER OF SABINA KINANGA NYAMOTI, JANE AMENYA, ALICE AMENYA AND JOSEPH MATANGA AMENYA OBJECTOR

RULING

1. The 2nd and 3rd Petitioners filed the Application dated 23rd April 2024 seeking the following orders: -
 - i. That the honourable court be pleased to transfer Succession Cause No. E048 of 2022 in the Chief Magistrate's Court at Nyamira and all proceedings therein to the High Court of Kenya at Nyamira for determination and disposal.
 - ii. That the costs of and incidental to this Application be costs in the cause.
2. The Application is supported by the joint Affidavit of the 2nd and 3rd Petitioners herein and is based on the following grounds: -
 1. That the pecuniary value of the Estate of the deceased is more than Kshs. 20 Million.
 2. That the Succession Cause in the Magistrate's Court was filed before the value of the property of the deceased was made known to the Petitioners and ascertained.



3. That this Application has been necessitated because of the pecuniary jurisdiction of the lower court (sic) does not cover causes beyond Kshs. 20 million.
 4. That no prejudice whatsoever will be occasioned to the Estate of the deceased if the transfer of the cause is allowed as prayed.
 5. That it is convenient and expedient that Succession Cause No. E048 of 2022 before the Chief Magistrate's Court at Nyamira is transferred to this court for determination and disposal.
3. The 1st Petitioner/Objector filed a Replying Affidavit dated 1st October 2024 in opposition to the Application in which she averred that the succession cause in the Chief Magistrate's court was instituted secretly without her knowledge and that the Petitioners did not serve her with the pleadings. She contended that the Applicants had fraudulently and illegally acquired the title for LR. No. Lietego Settlement Scheme/86 (hereinafter "the Suit Land") before the succession cause filed in the subordinate court was confirmed and that the houses referred to in the valuation report did not form part of the Estate of the deceased but were merely meant to mislead the Court.
 4. The Application was canvassed through written submissions.

The Submissions

5. The Applicants submitted that the Application ought to be allowed because the valuation report marked 'PNA1' dated 12th February 2024 confirmed that the value of the Estate exceeded the pecuniary jurisdiction of the Chief Magistrate's Court where the matter was filed.
6. The Objector/1st Petitioner submitted that neither the suit land parcel nor the properties listed in the valuation report formed part of the Estate of the deceased as it was registered in the joint names of the Petitioners and the title issued long after the succession cause was filed before the trial court.
7. It was submitted that the Applicants did not controvert the claim that the houses and properties shown in their supporting affidavit did not belong to the deceased. It was also submitted that no material was placed before the Court with respect to the Succession case before the Chief Magistrate's court to enable it determine the Application. It was the 1st Petitioner's case that the Court was being called upon to make orders in respect to a title that had been obtained fraudulently.

Analysis and Determination

8. I have carefully considered the Application and the parties' respective submissions. I find that the main issue for determination is whether the Applicant has made out a case for the granting of the order to transfer the Succession Cause from the Chief Magistrate's Court to this court.
9. Sections 17 and 18 of the *Civil Procedure Act* grants the High Court the power to transfer suits in the following terms: -
 17. Power to transfer suits which may be instituted in more than one court

Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.
 18. Power of High Court to withdraw and transfer case instituted in subordinate court



1. On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—
 - a. transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - b. withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
 - i. try or dispose of the same; or
 - ii. transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - iii. retransfer the same for trial or disposal to the court from which it was withdrawn.
2. Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

10. The *Law of Succession Act* also provides for the jurisdiction of the High Court as follows: -

47. Jurisdiction of High Court

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

11. It was not contested that the Estate of the deceased is yet to be distributed. I note that the Applicants did not attach any proceedings or documents in respect to the Chief Magistrates' Court Succession Case No. E048 of 2022 for my perusal so as to enable this court to determine the veracity of the averments made in the Application.

12. The gist of the Application is the jurisdiction of the Chief Magistrate's court. The *Civil Procedure Act* outlines the Magistrates' courts' jurisdiction as follows: -

7. Civil jurisdiction of a magistrate's court

1. A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—
 - a. twenty million shillings, where the court is presided over by a chief magistrate;
 - b. fifteen million shillings, where the court is presided over by a senior principal magistrate;
 - c. ten million shillings, where the court is presided over by a principal magistrate;



- d. seven million shillings, where the court is presided over by a senior resident magistrate; or
 - e. five million shillings, where the court is presided over by a resident magistrate.
2. The Chief Justice may from time to time, by notice in the Gazette, revise the pecuniary limits of jurisdiction set out in subsection (1), taking into account inflation and change in prevailing economic conditions.
 3. A magistrate's court shall have jurisdiction in proceedings of a civil nature concerning any of the following matters under African customary law—
 - a. land held under customary tenure;
 - b. marriage, divorce, maintenance or dowry;
 - c. seduction or pregnancy of an unmarried woman or girl;
 - d. enticement of, or adultery with a married person;
 - e. matters affecting status, and in particular the status of widows and children including guardianship, custody, adoption and legitimacy; and
 - f. intestate succession and administration of intestate estates, so far as they are not governed by any written law.

13. The *Law of Succession Act* further provides for the jurisdiction of the Magistrates Courts as follows: -

48. Jurisdiction of Magistrates

- (1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7 of the Magistrates' Courts Act (Cap 10).
- (2) For the avoidance of doubt it is hereby declared that the Kadhis' courts shall continue to have and exercise jurisdiction in relation to the estate of a deceased Muslim for the determination of questions relating to inheritance in accordance with Muslim law and of any other question arising under this Act in relation to such estates.

14. It was not disputed that the suit land whose valuation forms the basis of the instant Application does not form part of the deceased's estate. The valuation report in question indicates that the registered owners of the suit parcel LR. No. LIETEGO SETTLEMENT SCHEME/86 are Teresa Moraa Misati, Patricia Nyangara Amenya and Conceptor Nyaboke Amenya, the 1st, 2nd and 3rd Petitioners herein. It is my finding that the valuation report is not relevant to this case as it refers to property that does not belong to the deceased.

15. I find that the valuation report cannot form the basis for the transfer of the succession cause. On the claim that the Applicants obtained a fraudulent title before the confirmation of grant, I find that such an allegation, if true, borders on intermeddling with the deceased's estate which this court cannot deal with in this application for transfer of suit.



16. Having regard to the findings that I have made in this ruling, I find that the instant Application lacks merit and I therefore dismiss it with costs to the 1st Petitioner.
17. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 13TH DAY OF MARCH 2025.

W. A. OKWANY

JUDGE

