



REPUBLIC OF KENYA



**In re Estate of Joshua Ohuya Omuganda (Deceased) (Succession Cause
16 of 2018) [2025] KEHC 3277 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3277 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 16 OF 2018
SC CHIRCHIR, J
MARCH 13, 2025**

BETWEEN

LINET WASHIALI MUGANDA APPLICANT

AND

BRIAN MUGANDA RESPONDENT

RULING

1. The Applicant herein, who is also the Administrator of the Estate of Joshua Ohuya Omuganda (deceased) has filed the present application seeking orders as follows;
 - a. Spent
 - b. Spent
 - c. That this court be pleased to transfer High Court Succession Case No. 16 (this case) at Kakamega to Milimani High Court Family Division for hearing and determination.
 - d. That costs of the application be in the cause.
2. The grounds for seeking transfer are that the applicant and her 4 children reside in Nairobi; that most of the Assets are in Nairobi and that all the beneficiaries reside in Nairobi. It is further stated that moving this case to Nairobi will enable the beneficiaries to attend court.
3. The Applicant further states that since the death of her husband, the deceased, she has faced a lot of hostility from her in laws; that indeed her children have been attacked twice and there is a pending criminal appeal being Criminal Appeal No. 104 of 2019 arising from Kakamega Chief Magistrate's Court Criminal Case No. 1433/2019, in relation to the said attacks .
4. The application is opposed by Brian Omuganda, one of the beneficiaries (Respondent). He states that he has the authority of Joy Muganda (another beneficiary) and she is in Support the affidavit in reply.



5. He states that it is the applicant who filed the petition and when she did so, the deceased was domiciled in Kakamega, Esumeyia, Navakolo Sub – County, in Kakamega County; that they letter in support of the petition was issued by the chief of Butso location, Kakamega He further states that it is evident from the affidavit in support of the application that most of the deceased properties are located in Kakamega.
6. He denies any harassment directed at the applicant and that in any event a criminal case that had been instituted against his uncle was terminated. He states that the only reason why the applicant is seeking transfer is because she appointed her Advocates from Nairobi. Finally, he states since courts have adopted an hybrid of physical and on-line court sessions , any of the parties can access court from anywhere.

Determination

7. Both parties have filed submissions which I have considered. I have further considered the application and the respondent’s replying affidavit. The only issue for determination is whether there is a valid reason to have this matter heard and determined at Milimani High Court in Nairobi opposed to Kakamega High court.
8. The first ground is that most of the properties are located in Nairobi. A perusal of the petition of Letters of Administration Intestates filed on 7/8/2018 show the properties listed as:
 1. Title No. Butso/Esumeyia/2774.
 2. Title No. Butso/Esumeyia/2980.
 3. Title No. Butso/Esumeyia/168
 4. Title No. Butso/Emaya/2977
 5. Title No. Est Wanga/Eluche/460
 6. Title East Waya/Eluche/1470
 7. Title No. Bunyala/Budowa/608
 8. House on fined Plot No. 211901/418 and Plot No. 21190/419 (location not sited)
 9. House No. 12(c) at Jonathan Neno Estate.
 10. Mpesa & Mshwari Account on phone No. 0722-xxxxxx
9. This court takes judicial notice that as a matter of common notoriety, the immovable properties listed as No. 1 to 7 are based in Kakamega County and not in Nairobi County while Jonathan Neno Estate is in Nairobi.
10. The location of plot Nos. 21190/418 and plot 21190/418 are not easily ascertainable. However, what is evident is that contrary to the applicant’s submissions, most of the immovable properties are in Kakamega. Therefore, the location of the properties is not a reason to transfer this case.
11. On proximity to the court, that has become a non-issue with the advent of the virtual courts and any of the parties can currently access court from wherever they are. This is not also a valid reason for transfer.
12. The applicant has further submitted that she and her children have faced various threats to violence. The criminal cases cited have not been backed by documentary evidence. Further the presence of the beneficiaries on the ground for purpose of this cause is not necessary as aforesaid .



13. In my view, contrary to the Applicant's submission, in a succession case like this one, proximity of the courts to the immovable properties is a major consideration, as there may be need for visits to the properties by land surveyors ,other court officials . Consequently, it makes a lot of economic and logistical sense to have the case prosecuted within the geographical jurisdiction of the property.
14. In conclusion am not persuaded that there is any valid reason to transfer this cause.
15. The Application is dismissed. Each party to meet their own costs.

DATED, SIGNED AND DELIVERED, VIRTUALLY AT ISIOLO THIS 13TH DAY OF MARCH 2025.

S. Chirchir

Judge

In the presence of:

Godwin Luyundi – Court Assistant.

Ms Mburu for the Applicant.

