



**Towett & 2 others v Ngeno & 4 others (Miscellaneous Civil Application
E009 of 2023) [2024] KEHC 2625 (KLR) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CIVIL APPLICATION E009 OF 2023**

JK SERGON, J

MARCH 5, 2024

BETWEEN

**ZEDDY CHELANGAT TOWETT 1ST PETITIONER
FLORENCE RODA SINEI 2ND PETITIONER
JUDDY CHEROP 3RD PETITIONER**

AND

**GEOFFREY NGENO 1ST RESPONDENT
RICHARD KIRUI 2ND RESPONDENT
WESLEY KIRUI 3RD RESPONDENT
EDWIN KIRUI 4TH RESPONDENT
HILLARY KIRUI 5TH RESPONDENT**

RULING

1. The application coming up for determination is a notice of motion dated 18th October, 2023 seeking the following orders;
 - (i) That Kericho Chief Magistrate’s Court Succession Cause No. 234 of 2022 between the parties herein be transferred there from to Sotik Principal Magistrates Court for hearing and disposal
 - (ii) That the Sotik Principal Magistrate Court has the requisite jurisdiction to hear and determine the succession cause.
 - (iii) That an order do issue for a stay in proceedings in Kericho Chief Magistrates Court Succession Cause No. 234 of 2022 between the parties hereof pending hearing and determination of this application.



- (iv) That the costs of this application be in the cause
2. The application is supported by grounds on the face of it and the supporting affidavit of Zeddy Chelangat Towett the 1st applicant herein on behalf of her co - applicants.
 3. The applicants aver that their advocate on record inadvertently filed the present suit in Kericho Chief Magistrate's Court and it was assigned case number Kericho CMCC Succession Case No. 234 of 2022. The applicants contend that the place and territorial jurisdiction in view of the location of the subject parcel of land is the Sotik Principal Magistrate's Court. The applicants further aver that this Court is vested with the requisite jurisdiction to transfer the matter.
 4. The applicants aver that if the orders sought are not granted the applicants risk being condemned unheard and the matter consequently dismissed. The applicants aver that the respondents would not be prejudiced if the application were to be allowed and further that they are ready and willing to abide by the directions and conditions granted by this Court.
 5. The applicants filed a further affidavit in support of the application in which they aver that Elizabeth Sigei Tuei passed away on 4th March, 2021 and they instituted the instant succession cause vide a petition for letters of administration intestate and subsequently letters of administration intestate were granted to the petitioners as administrators to the estate of the deceased.
 6. The applicants reiterated that the instant succession cause was inadvertently filed in Kericho Law Court yet the parcel of land is within the jurisdiction of Sotik Law Court.
 7. The respondents filed a replying affidavit sworn by Geoffrey Ngeno on behalf of the 2nd - 5th Respondents in opposition to the instant application.
 8. The respondents aver that the respective parties had filed submissions in reference to the objectors' preliminary objection dated 27th March, 2023 in Kericho CMCC Succession Cause No. E234 of 2022 which challenged the territorial jurisdiction of the court to hear and determine the cause of an estate situated at Kapletundo in Sotik Sub-County and that the same was slated for ruling on 28th March, 2024 before the trial court.
 9. The respondents contend that upon the trial court coming to the realization that it lacks the requisite jurisdiction and upon downing its tools, nothing is left for the High Court to transfer and/or exercise its jurisdiction.
 10. The respondents aver that the inadvertence of the advocate of the applicants who filed the succession cause in Kericho and the instant application prejudiced and occasioned them loss in terms of time and money and therefore urged this court to dismiss the notice of motion with costs.
 11. I have considered the notice of motion and the replying affidavit filed by the parties herein and the sole issue for this court's determination is whether to transfer Kericho Chief Magistrate's Court Succession Cause No. 234 of 2022 to Sotik Principal Magistrates Court for hearing and disposal. I have considered the averments in the replying affidavit filed by the respondents that the parties had filed submissions in a preliminary objection dated 27th March, 2023 in Kericho CMCC Succession Cause No. E234 of 2022 which essentially challenged the territorial jurisdiction of the court to hear and determine the cause of an estate situated at Kapletundo in Sotik Sub-County and that the same was slated for ruling on 28th March, 2024 before the trial court. In light of the foregoing, I find that the instant application is premature as the issue of territorial jurisdiction is pending determination in the trial court.
 12. Consequently, the notice of motion dated 18th October, 2023 is dismissed with no order as to costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 5TH DAY OF MARCH, 2024.



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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Mr. Rutoh

No Appearance for the Parties

