



Mwangi v Kamenju & another (Family Miscellaneous Civil Case E004 of 2023) [2024] KEHC 8510 (KLR) (12 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
FAMILY MISCELLANEOUS CIVIL CASE E004 OF 2023**

MA ODERO, J

JULY 12, 2024

BETWEEN

BETH WANGUI MWANGI APPLICANT

AND

JOSEPH WAWERU KAMENJU 1ST RESPONDENT

EDWARD GICHINGA 2ND RESPONDENT

RULING

1. Before this Court for determination is the Summons dated 27th June 2023 by which the Applicant Beth Wangui Mwangi seeks the following orders:-
 - “ 1. That the Honourable [court] does transfer Mukurweini PM Succession Cause No. 197 of 2018 to the High Court Probate court in Nyeri for hearing and determination.
 2. That costs of this application be in the cause.
2. The application which was premised upon Rules 47 and 73 of the *Probate and Administration Rules* and Sections 17 and 18 of the *Civil Procedure Act* Cap 21, Laws of Kenya and all other enabling provisions of the law and was supported by the Affidavit of even date as well as the Further Affidavit dated 27th March, 2024 both sworn by the Applicant.
3. The Respondents Joseph Waweru Kamenju And Edward Gichinga opposed the application through the Replying Affidavit dated 3rd January, 2024.
4. The Applicant averred that the Respondents herein had filed Succession Proceedings in relation to the estate of the late Francis Mwangi Gathondu (hereinafter ‘the Deceased’) at the Mukurweini Law Courts being Pm Succession Cause No. 197 of 2018.



3. That vide a ruling delivered on 28th July, 2022 the Magistrates Court in Mukurweini distributed the estate equally among all the beneficiaries.
3. Subsequently the Respondents filed a Summons seeking review of said orders on grounds that the Magistrates court lacked the jurisdiction to handle the matter as the value of the estate amounted to Kshs. 20 Million.
3. Upon considering that application the lower court agreed that it was devoid of the requisite Pecuniary Jurisdiction over the matter and quashed the orders made on 28th July, 2022. The Applicant now prays that the file be transferred to the Nyeri High Court for hearing and determination of the Succession Cause.
3. In opposing the application for transfer of the suit the Respondents aver that a suit filed without jurisdiction is 'void ab initio.' As such the suit filed at the Mukurweini Magistrates Court no longer exists thus there is nothing to transfer.
3. The matter was canvassed by way of written submissions. The Applicant filed submissions dated 27th March, 2024 whilst the Respondents did not file any submissions.

Analysis And Determination

10. I have considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
11. The Applicant seeks to have the Succession Cause transferred to the High Court as the value of the estate being Kshs. 20 million exceeds the pecuniary jurisdiction of the Magistrates court. The Respondents on the other hand submit that the suit filed in Mukurweini Magistrates court was void ab initio and thus there exists nothing to transfer;-

Section 18 of the [Civil Procedure Act](#) provides for transferring suits by the High Court as follows:-

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 proceedings 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.

12. In the case of *Boniface Waweru Mbiyu v Mary Njeri & Another* Hon. Justice J. B. Ojwang (as he then was) held as follows:-

“I will, in agreement with the decision in *Kagenyi v. Musiramo*, state here that the High Court will decline to assume jurisdiction in relation to any matter which has been filed before a Court lacking jurisdiction. Whenever a matter is filed before a Court lacking jurisdiction, the professional error there committed is a fundamental one, which cannot be excused as an ordinary mistake by counsel and which should not be held to prejudice the client. As between the advocate and his or her client, such a professional error could very well lead to claims in tort. As for the Court, the matter thus filed is so defective as to be a nullity. It is incompetent and void in law; and therefore, it is not a motion or suit that can be transferred to any other Court. It is the duty of the Court or tribunal before which such matter is first brought to declare its status as a nullity; and it follows that such matter has no capacity to be transferred to any other Court.” [own emphasis]

13. I have carefully perused the Ruling delivered on 4th May, 2023 by the learned Principal Magistrate (Annexure BWM ‘2’). In that Ruling the trial court found that the value of the Estate exceeded the Pecuniary jurisdiction of the Chief Magistrates Court which is set at Kshs. 20 Million. The court then went on to make the following orders:-

- “(i) The proceedings leading to the confirmation of grant before this Court and the confirmed grant are hereby quashed and set aside and the grant revoked.
- ii. The Petition for letters of Administration Intestate filed on 30th July, 2019 is hereby struck out and the matter is archived accordingly as a suit filed in a court without jurisdiction is a nullity ab initio and for that very reason it cannot be transferred to a court of competent jurisdiction because there is in effect nothing to transfer in the first place.
- iii. The Beneficiaries are at liberty to file a fresh succession cause before the High Court sitting at Nyeri.
- iv. The Protestor’s Summons General dated 28th November, 2022 and 23rd January, 2023 have been overtaken by events.
- v. This being a succession matter, there will be no order as to costs.
- vi. Any aggrieved party may apply or exercise right to appeal.”

14. This decision remains valid as neither party has appealed against or sought review of the same.

15. I do agree with the Respondents that a suit which is found to be ‘Void ab Initio’ on account of lack of jurisdiction is a suit which is effectively non-existent and such suit cannot be revived and/or saved by way of transfer. There therefore exists no file and no proceedings capable of being transferred to the High Court.

16. The Applicant is not however left without remedy. She is at liberty to file a fresh Succession Cause in the High Court which does have the requisite pecuniary jurisdiction over this succession cause.



17. Finally I find no merit in the Summons dated 27th June, 2023. The same is hereby dismissed in its entirety. This being a family matter each side will bear its own costs.

DATED IN NYERI THIS 12TH DAY OF JULY, 2024.

.....

MAUREEN A. ODERO

JUDGE

