



**In re Estate of Alexius Kamundi Gichare (Deceased) (Succession Cause
123 of 1988) [2023] KEHC 2170 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2170 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 123 OF 1988
EM MURIITHI, J
MARCH 16, 2023**

BETWEEN

ISAACK KITHENJI KAMUNDE ADMINISTRATOR

AND

ROSE MUKWAMUGO KAMUNDE INTERESTED PARTY

RULING

1. By Summons dated October 4, 2021 under section 47 of the [Law of Succession Act](#) and rules 49 and 73 of the [Probate and Administration Rules](#), the applicant seeks transfer of this cause to the High Court at Chuka for hearing and determination.
2. The application is supported by the grounds that the deceased, who was domiciled at Ntumu village, Nthuguri Sub location Maara Sub County in Tharaka Nithi County, died at Nkubu Hospital. It is averred that all the properties belonging to the deceased which include LR Mwimbi/s.mugumango/48 and LR Mwimbi/mugumango/687/1 are situated at Ntumu Village, Nthuguri Sub location Maara Sub County in Tharaka Nithi County. The applicant and the respondent are both residents of Tharaka Nithi County, and it is in the interest of justice that this cause is transferred to Chuka in order to mitigate cost and time in terms of transport and subsistence for the litigants and witnesses.
3. The respondent, Rose Mukwamugo Kamunde, opposed the application *vide* her replying affidavit sworn on November 2, 2021. She wants the application to be dismissed as it is full of falsehood and unfold allegations meant to delay the hearing of this matter. She contends that the deceased owned property both in Meru and Tharaka Nithi Counties, and thus this case is properly before this court. She avers that while some of the beneficiaries of the deceased reside in Tharaka Nithi County, the majority of them reside in Meru County. She avers that the High Court at Chuka is overwhelmed with work since it has one sitting judge while the High Court at Meru has 3 judges, thus making the workflow efficient for the case to be fast tracked. She avers that the applicant has always conformed to



the jurisdiction of this court, and since he is a chief who has connections at Chuka law courts, he will endeavor to ensure this application is delayed.

4. The applicant swore a further affidavit on November 3, 2021 in support of his application.
5. In his submissions filed on June 21, 2022, the applicant urges that there is abundant evidence and reasons like mitigation of costs and expediency, to justify transfer of this cause to Chuka High Court for hearing and determination. He urges that since the deceased was domiciled at Tharaka Nithi where most of his properties are, this cause ought to be transferred to the High Court at Chuka. He urges that the majority of the beneficiaries reside within the borders of Tharaka Nithi save for Karimi Kithinji who resides in Meru, and if the matter is heard at Chuka, the respondent and the other beneficiaries will mitigate cost.
6. The respondent did not file any submissions.

Analysis and determination

7. The issue for determination is whether the applicant has put forward sufficient grounds to enable this court transfer this cause to the High Court at Chuka. According to the applicant, the High Court at Chuka, which serves Tharaka Nithi County was established in 2015, way after this cause had been lodged in this court. On April 26, 2016, the applicant applied to be substituted as the administrator of the estate of the deceased and rectification of the certificate of confirmation of grant following the death of the initial administrator, Margaret Kambura Kamunde. That request was granted *vide* the ruling of the court of May 18, 2017. In his said application, the applicant did not seek to have this cause transferred to Chuka for determination. It appears this application was triggered by the respondent's application dated April 27, 2021 seeking to have the grant revoked.
8. The record shows that there exists Chuka High Court Misc Succession Cause No E013 of 2021 (formerly Chuka CM Succ Cause No 86 of 2016). Although that cause relates to the estate of Margaret Kambura Kamunde, some of the properties in issue there belong to the deceased in this cause. It is undesirable to have 2 related succession causes pending before 2 separate courts. It is admitted that some of the beneficiaries of the deceased together with some of his properties are situated in Tharaka Nithi County.
9. Section 47 of the *Law of Succession Act* vests the High Court with 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.
10. The factors to be considered before transfer can be ordered were enlisted by the court (GV Odunga J as he then was) in *Hangzhou Agrochemicals Industries Ltd v Panda flowers Ltd [2012] eKLR* as follows:-

“...the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case.”
11. There is no dispute that the applicant and the respondent reside in Tharaka Nithi County. This court is minded that in hearing the summons for the revocation of the grant, which may require viva voce



evidence, the litigants herein together with their siblings and their witnesses will be expected to attend court to give evidence. This court finds that, in the interest of time and expenses, the High Court at Chuka for its proximity is the one best suited to hear and determine this cause.

12. This court is persuaded that the reasons advanced by the applicant are sufficient grounds to transfer this cause to the High Court at Chuka.

Orders

13. Accordingly, for the reasons set out above, the court finds the applicant's application dated October 4, 2021 to be merited, and it granted upon terms as follows:

1. This cause being Meru High Court Succession Cause No 123 of 1988 is hereby transferred to Chuka High Court for hearing and determination.
2. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED ON THIS 16TH DAY OF MARCH, 2023.

EDWARD M MURIITHI

JUDGE

Appearances:

Issak Kithinji Kamunde, applicant in person

Mr Kithinji advocate for the respondent.

