



**In re Estate of Wasilwa Kisembe (Deceased) (Succession Cause
903 of 2007) [2023] KEHC 3220 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3220 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 903 OF 2007**

WM MUSYOKA, J

APRIL 19, 2023

RULING

1. When this matter was placed before S. Chirchir J, on February 28, 2023, the following order was recorded:

“The file to be delivered to Musyoka J for purposes of the judgment. Judgment will therefore be on notice.”
2. I delivered a comprehensive judgment herein on November 12, 2021. There is no other judgment outstanding. What remains outstanding is implementation of the judgment of November 12, 2021, and that can be done of by my successors, without reference to me. I am no longer seized of the matter.
3. I reject this notion, that a court file should chase after the transferred officer to his new station, for that officer to handle proceedings that he had handled at his previous station in one way or the other, just because handwriting happens to be on the file. An order or decree on record in any court file is an order made by the court, and the incoming judicial officer can handle the matter going forward, without reference to the transferred officer. Looking at it otherwise would be to deny parties the right to an easier access route to justice, and would have implications on the right to faster or speedier disposal of cases, by having the file in the matter chase after the transferred officer wherever he has been transferred to. It would also increase costs of litigation, both for the court and the litigants, if court case files have to be sent across the country, for transferred judicial officers to handle, while, in fact, their successors have jurisdiction to handle them. It defeats and makes nonsense of the essence of transfer, if judges continue to be seized of and to handle matters domiciled at their former stations. It causes unnecessary delays in prosecution of cases, and unjustifiably contributes to creation of backlog.
4. The policy operates the same way with what happens where a judicial officer ceases to be attached to a court or court station in other ways. Had he or she died, for example, would the file in the matter be taken to his or her grave for him or her to handle it? If he or she had exited the service, either on retirement or resignation or removal, would the matter still be sent to him or her in his or her retirement, or whatever, for him or her to deal with his or her decree or order? If he or she had been promoted to a higher court, say, in the case of a Judge of the High Court, to the Court of Appeal,



would the matter be placed before him or her, as a Judge of the Court of Appeal, to address orders that he or she had made or decrees that he or she had passed or to act in accordance with some direction that he or she had given in the matter when he or she was at the High Court?

5. What does the law say on this? Judicial policy, according to the relevant law, is that once an officer is transferred, matters that he or she was handling in the previous station should be taken over and handled by the officer succeeding him or her. There is no room for the file to be sent to the transferred judicial officer at their new station. The reasons for this are clear, and I have discussed them above. The policy is uniform for both civil and criminal processes.
6. The principle regarding what should happen upon transfer is what is stated at section 200 of the *Criminal Procedure Code*, cap 75, Laws of Kenya. The outgoing judicial officer ceases to be seized of the matters domiciled at the station that he is leaving, and the incoming officer takes over. The issue of any of those matters following the outgoing officer to his new station does not arise. The outgoing officer drops everything that he was handling at the court or station that they are leaving, including part-heard matters; and the incoming officer takes over everything, including the part-heard matters, and takes the steps, that are detailed in section 200 of the *Criminal Procedure Code*, to progress the cases, one way or other. Section 200 envisages that the incoming judicial officers takes over everything, including completed matters were judgements await, writing, he should write them. If the judgments are ready, he should deliver them, or otherwise hear the matter afresh. That is law. This practice of sending files from the previous station of a judicial officer to his new station for him or her to complete matters has no support in the law.
7. For avoidance of doubt, section 200 of the *Criminal Procedure Code* provides as follows:

“Conviction on evidence partly recorded by one magistrate and partly by another

- (1) Subject to subsection (3), where a magistrate, after having heard and recorded the whole or part of the evidence in a trial, ceases to exercise jurisdiction therein and is succeeded by another magistrate who has and exercises that jurisdiction, the succeeding magistrate may—deliver
 - (a) deliver a judgment that has been written and signed but not delivered by his predecessor; or
 - (b) where judgment has not been written and signed by his predecessor, act on the evidence recorded by that predecessor, or resummon the witnesses and recommence the trial.
- (2) Where a magistrate who has delivered judgment in a case but has not passed sentence, ceases to exercise jurisdiction therein and is succeeded by a magistrate who has and exercises that jurisdiction, the succeeding magistrate may pass sentence or make any order that he could have made if he had delivered judgment.
- (3) Where a succeeding magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be resummoned and reheard and the succeeding magistrate shall inform the accused person of that right.
- (4) Where an accused person is convicted upon evidence that was not wholly recorded by the convicting magistrate, the High Court may, if it is of the



opinion that the accused person was materially prejudiced thereby, set aside the conviction and may order a new trial.”

8. I reiterate that I was transferred from the High Court of Kenya at Kakamega to the High Court of Kenya at Busia, the effective date of transfer being March 1, 2023. My last day of duty at the High Court of Kenya at Kakamega was February 28, 2023. I ceased to be attached to the High Court of Kenya at Kakamega on February 28, 2023, and, effective from that date, I stopped being seized of the matters domiciled in that High Court station. My transfer meant that I dropped all the matters that I was seized of at the High Court of Kenya at Kakamega, except, perhaps, for rulings and judgments arising from hearings that I had conducted up to February 28, 2023, and I took over all the matters that my predecessor at the High Court of Kenya at Busia was handling, effective from March 1, 2023. So, the issue of any files following me from the High Court of Kenya at Kakamega to Busia should not arise. Since I am no longer seized of matters from the High Court of Kenya at Kakamega, I cannot touch any of those matters, unless I receive authorization from the Chief Justice, otherwise I would be encroaching on matters that are not within my docket.
9. My predecessor at the High Court of Kenya at Busia was very emphatic, when handing over to me, that I should not, under any circumstances, forward any file to him, at his new station. My understanding of the law, on this, rhymes with what my processor told me. My brother is no long attached to the High Court of Kenya at Busia. He is no longer seized of the matters that are domiciled at the High Court registry at Busia. I am the one seized of the matters here. The orders made and decrees passed by him, in matters at Busia, are now my business. I will complete any business that my predecessor left incomplete. I will have no business sending any file to chase after him at his new station. The same principle should apply to the matters that I was handling at the High Court of Kenya at Kakamega. Any orders that I made, decrees that I passed and directions I gave, while seized of matters at the High Court of Kenya at Kakamega, are orders, decrees and directions of that court, and not of the court at Busia. None of the matters that I handled at Kakamega should be send my way, except that I would allow some leeway for rulings and judgments, in respect of hearings that I had completed prior to the transfer. That is the law.
10. The file herein should not have been forwarded to me. I am no longer seized of it. My successors, at the High Court of Kenya at Kakamega, in this matter, are the ones now seized of it, and are the proper persons to handle it to completion. Consequently, I do hereby order and direct that the file be returned to the High Court of Kenya at Kakamega. Should my successors at Kakamega disagree, there is liberty to forward the file to the Chief Justice, or the Principal Judge of the High Court, for allocation of a Judge to deal with it.

RULING DELIVERED DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 19TH DAY OF APRIL 2023

W. MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

