



REPUBLIC OF KENYA



In re Estate of Jacob Oyieri Wambani (Deceased) (Miscellaneous Succession Application E006 of 2024) [2024] KEHC 15808 (KLR) (16 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15808 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

MISCELLANEOUS SUCCESSION APPLICATION E006 OF 2024

WM MUSYOKA, J

DECEMBER 16, 2024

IN THE MATTER OF THE ESTATE OF JACOB OYIERI WAMBANI (DECEASED)

RULING

1. The cause herein, vide a Motion, dated 6th December 2024, is for leave to transfer a substantive succession cause, pending at the Family Division, Milimani, Nairobi, being Milimani HCSC No. 987 of 2005, to the High Court at Busia.
2. There was no need to file a miscellaneous cause at the High Court at Busia, when there is another file, over the same estate, in a substantive succession cause, pending at Nairobi, in Milimani HCSC No. 987 of 2005. The proper thing should have been to file the application for transfer in the substantive cause in Milimani HCSC No. 987 of 2005, rather than initiate a fresh cause by way of a miscellaneous application for transfer.
3. I have no access to the content and substance of Milimani HCSC No. 987 of 2005, and, therefore, I cannot tell whether or not that cause only deals with Busia assets, or whether there could in there be assets situate within Nairobi, hence its filing there, for it is only when one is armed with such information that a decision can, properly, be made on whether to order transfer or not, for transfer ought not be ordered willy-nilly.
4. The prudent thing to do right now should be to order transfer of this cause, from the Busia registry, to the Family Division registry at Milimani, Nairobi, to be heard within Milimani HCSC No. 987 of 2005, which I hereby do. In the event that the transfer ordered above cannot be effected, given the configuration of CTS and e-filing, the Motion herein shall stand dismissed, and the file herein closed, to enable the applicants formally move the court in Milimani HCSC No. 987 of 2005, for transfer of the matter out of Nairobi to Busia.
5. Lastly, a miscellaneous cause ought not be filed at a High Court station, seeking transfer of a matter pending before another High Court station. Any application for transfer of a High Court matter, pending in one High Court station, to another High Court station, should be filed within the pending matter, instead of a miscellaneous cause being initiated, over the same estate, in the High Court station where the other matter is sought to be transferred to.



6. The practice, of filing miscellaneous causes at the High Court, for transfer of matters, is reserved for matters pending before a magistrate's court, sought to be transferred from one magistrate's court to another, or from the magistrate's court to the High Court, for, in such a case, there would be no matter pending at the High Court, hence the need to file a miscellaneous cause, as a vehicle to accommodate the transfer application.

DELIVERED ONLINE, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 16TH DAY OF DECEMBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Applicants

Bernadete Achieng Okoth, Carolyne Akech Wanzala and Elvine Odhiambo Makokha.

