



REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT MACHAKOS

Coram: D. K. Kemei - J

SUCCESSION CAUSE ADLITEM NO. E2 OF 2020

IN THE MATTER OF THE ESTATE OF KIMANI WANYOIKE (DECEASED)

RULING ON DIRECTIONS

1. The directions relate to the issue of *ratione loci*. I have perused the pleadings in this matter and noted that the deceased died in Nairobi Hospital that is within Nairobi. I also note that the bulk of the properties the subject of the instant suit are situate in Nyandarua and Dagoretti that are close to Nairobi.
2. The demands of geographical location (*ratione loci*) tilt in favour of Nairobi as the preferred location to adjudicate over the instant matter in terms of proximity to the bulk of the properties. The affidavits in support of the application also speak to the fact that the children of the deceased reside in Nairobi hence pointing towards Nairobi as the preferred venue for hearing the instant matter.
3. In the case of *Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd (2012) eKLR* Justice Odunga addressed conditions to be considered in determining whether or not to grant an order transferring a suit, thus:

“ ..In my view, which view I gather from authorities and from the law, the court should consider such factors as 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”.

4. There are also sections 1A and 1B of the Civil Procedure Act which are expressed in the following terms:

“1A (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

(2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).

(3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

1B. (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—

(a) the just determination of the proceedings;

(b) the efficient disposal of the business of the Court;

(c) the efficient use of the available judicial and administrative resources;

(d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and

(e) the use of suitable technology.

5. The Overriding Objective provided for under sections 1A and 1B is meant for the attainment of justice. It is clear therefore that it is a matter of balancing the interests of the parties with the ultimate aim of doing justice. In my view therefore, the High Court has discretion, where it so deems appropriate, to direct that a matter filed in one place be heard by the same Court sitting at a different place.

6. In the present case, the overriding objective aforesaid enjoins the Court to aim towards the efficient disposal of proceedings and the balance of convenience calls upon this court to have the matter heard in Nairobi.

7. In the premises, I direct that this suit be transferred to the Family Division of the High Court sitting in Nairobi. The matter shall be mentioned on 18.2.2021 before the duty judge for directions and further orders.

It is so ordered.

Dated and delivered at **Machakos** this **4th** day of **February, 2021**.

D. K. Kemei

Judge