



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. E1564 OF 2020

IN THE MATTER OF THE ESTATE OF ROBERT JOHN SUMBI

SUZZY KHAADI NANDAMA.....1ST APPLICANT

NATALY NARANO SUMBI.....2ND APPLICANT

VERSUS

YVONNE TUNAI.....RESPONDENT

RULING

The Applicants have brought this Summons under Rule 73 of the Probate and Administration Rules seeking orders to have transfer of Kakamega CMCC Misc. Application No. E37 of 2020 Suzzy Khaadi versus Yvonne Tunai to Nairobi Probate Registry and consolidation with High Court Nairobi Succession Cause No. E1564 of 2020. She also seeks costs of this application to be in the cause. The Summons is supported by grounds found on the face of it and in the Supporting Affidavit of Suzzy Khaadi Nandama, the 1st Applicant, sworn on 28th April 2021.

I have read the grounds in support of this Summons. It is my understanding that the 1st Applicant is the initiator of both Succession Causes both in Kakamega Chief Magistrate's Court and Nairobi High Court. The 1st Applicant states that both matters relate to the estate of the deceased herein and that estate comprised of property situated in different jurisdictions hence making it conducive to have the Kakamega matter transferred to Nairobi where she and the children of the deceased live. She claims that she filed the Kakamega matter as an urgent matter trying to hinder intermeddling of the estate by other persons. In her view, it would be convenient to have the proceedings in the entire estate consolidated in one file for ease of determination.

I have considered this Summons. The power of this Court to transfer a matter from one court to another is donated by **Section 18 (1) (b) of the Civil Procedure Act**. This provisions states as follows:

(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— withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—

(a) transfer any suit, appeal or other proceeding 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

The Applicants have relied on Rule 73 of the Probate and Administration Rules which states that:

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

The Respondent did not attend court despite having been serving with the hearing Notice.

I have considered the matter. The estate of the deceased is the subject matter in both Kakamega Chief Magistrate's Court and Nairobi High Court. In my view no prejudice will be suffered by the Respondent. In the interest of justice therefore I do hereby allow the Summons dated 30th April 2021 and transfer Kakamega CMCC No. E37 of 2020 to the Probate Registry at the High Court of Kenya in Nairobi.

Dr Khaminwa in his brief submissions asked the court to refer to the order made by the Magistrate in Kakamega in Kakamega CMCC No. E37 of 2020 directing the Respondent Yvonne Tunai to hand over motor vehicle No. KCF 454D to the 1st Applicant and asked this court to have the Respondent transfer the motor vehicle to the 1st Respondent. I decline to do so for the reason that the order referred to is in a different cause before a subordinate court. The Applicants are at liberty to pursue modalities of executing court orders.

I order that costs in this application shall be in the cause. Orders to issue accordingly.

Dated, signed and delivered this 16th day of June 2021.

S. N. MUTUKU

JUDGE