



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS SUCCESSION NO. 5 OF 2018**

**MARY NGUYO.....1<sup>ST</sup> APPLICANT**

**ADELAIDA HOKA MULALAI.....2<sup>ND</sup> APPLICANT**

**NIFREDA MUNYELA.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**WILSON MARK WESA.....RESPONDENT**

**RULING**

1. The matter before me is a Motion, dated 18<sup>th</sup> March 2019, seeking transfer of a succession cause pending at the High Court of Kenya at Nairobi, being Nairobi HCSC No. 1477 of 1997 to the High Court of Kenya at Kakamega. It is argued that the estate comprises only of a property known as West Bunyore/Emusire/1029, and that the cause was initiated at Nairobi with a motive to disinherit some of the survivors and beneficiaries.

2. The response to the application is by way of the preliminary objection, dated 7<sup>th</sup> November 2019. It is argued that the succession cause had been finalized, the application offended section 7 of the Civil Procedure Rules, the application for transfer ought to have been filed in the cause at Nairobi, and that the registered proprietor of the of the suit parcel of land was the absolute proprietor of the subject land.

3. The Motion seeks a fairly straightforward order, transfer of the succession cause from Nairobi to Kakamega. The argument advanced is fairly simple, the estate comprised of assets situated at Bunyore, within the local limits of the High Court at Kakamega, and there were no assets situate at Nairobi to warrant the matter being in Nairobi. Access to justice would demand that a succession cause ought to be filed at the court nearest to where the estate is situated, so that the parties are able to access the court, and so that, in the event records are required from the lands registry, by either the court or the parties, there would be easier access. It would also be convenient for lands registry staff or officers to attend court where required.

4. The record before me indicates that the deceased died possessed of only one asset, West Bunyore/Emusire/1029. The cause ought not have been filed in Nairobi, some 400 kilometres away from where the asset is situated, and probably away from family members who reside at Bunyore. The grant was confirmed, and the property distributed. However, the office of administrator is for life, and at any time, after distribution, and completion of administration, an administrator can still be called upon to account, and the grant can still be revoked. It is never too late with succession causes.

5. I see nothing wrong with the application. No plausible reason has been given why the matter cannot be transferred from Nairobi. I shall grant it. It would appear that West Bunyore/Emusire/1029 is situated within Vihiga County. A High Court has been established at Vihiga. The matter should be transferred to that court, closest to the registry where the records relating to the assets is situated, and within the County from which the deceased hailed.

6. I consequently order and direct that the court file in Nairobi HCSC No. 1477 of 1977, in the matter of the estate of the late Mariko Munala Ndibo, be transferred from the Nairobi High Court registry to the High Court registry at Vihiga. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 17TH DAY OF SEPTEMBER 2021**

**W. MUSYOKA**

**JUDGE**