



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1708 OF 2005

IN THE MATTER OF THE ESTATE OF HENRY WAMITING'ANG'A (DECEASED)

MIRIAM MUGURE WAMITI.....APPLICANT

Versus

JACINTA NJERI NGANGARESPONDENT

RULING

1. The Application coming for consideration in this Ruling is dated 30th July, 2019 seeking the following orders.

(i) THAT this Court be pleased to issue an Order for transfer of this Suit to the High Court in Murang'a for hearing and disposal.

(ii) THAT the Costs of the Application be in the cause.

2. The Application is based on the following grounds;

(i) The Deceased herein died on the 6.10.2004 domiciled in Kigumo Sub-County of Murang'a County.

(ii) THAT the estate property herein is land situate in Gacharage Scheme in Kigumo in Murang'a County and within the ordinary territorial and physical jurisdiction of Murang'a High Court as constituted and operational.

(iii) THAT further, all the parties, persons interested and anticipated and expected witnesses are from Murang'a County.

(iv) THAT there is all likelihood that the trial court shall be moved to conduct a scene visit to ascertain the existing mode of user and occupation of the estate property.

(v) THAT the filing of this matter in Nairobi was in the first place mischievous on the part of the respondent.

(vi) THAT the order sought herein is administrative in nature and does not unduly prejudice or inconvenience any party.

(vii) THAT the order sought now is necessary and deserving.

3. The Application is supported by the Affidavit of the Applicant JACINTA NJERI NG'ANG'A in which she has deposed that she is 80 years old and the widow of SAMUEL NG'ANGA and the Respondent is widow of WAMITI NG'ANG'A who was her husband's brother.

4. Further, the Applicant has stated that the Respondent filed this Succession cause behind her back with the sole intention of denying her and her family their rightful share of the suit property being LOC 2 GACHARAGE/670 which is situated in Kigumo Sub-County of Murang'a County.

5. She also stated that the Court seized with physical/territorial jurisdiction is in the Murang'a High Court and by extension the Senior Principal Magistrate's Court at Kigumo.

6. Further that the Respondent is running away from the Judgment in Muranga SPMCC CASE No. 38 of 2012 where the Court declared that

the Applicant is entitled to 6.0 Acres of the Suit Property by virtue of a binding trust.

7. The Applicant who said the Respondent has destroyed property on her side of the land and further that she has threatened her states that it will be imperative and necessary for the Court to visit the scene.

8. The Respondent filed a Replying Affidavit sworn by SAMUEL NG'ANG'A KANG'ANG'A on 21.10.2019 opposing the Applicant for transfer on the grounds that all the parties live and reside in Nairobi and further that this case has been in Court for a very long time.

9. The parties filed written submissions in the Application dated 30.7.2019 which I have duly considered. It is not in dispute that this Succession Cause was filed in Nairobi in the year 2005.

10. The Law requires that a matter be filed where the cause of action arose or where the defendants reside. Although the suit property is situated in Murang'a, there is evidence that most of the beneficiaries reside in Nairobi.

11. The High Court has unlimited Jurisdiction and therefore it cannot be said that this Court has no jurisdiction to entertain this matter. The jurisdiction of the High Court in civil matters is unlimited by virtue of **Article 165(3)** of the Constitution as follows:

“165 (3) Subject to clause (5), the High Court shall have—

(a) Unlimited original jurisdiction in criminal and civil matters;

(b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;

(c) Jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;

(d) Jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of--

(i) The question whether any law is inconsistent with or in contravention of this Constitution;

(ii) The question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;

(iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and

(iv) A question relating to conflict of laws under Article 191; and

(e) Any other jurisdiction, original or appellate, conferred on it by legislation.”

12. I find that the only outstanding issue in this Case is confirmation of grant.

13. I find that the Judgment in Muranga SPMCC No. 38 of 2002 was brought to the attention of this Court and the Hon. Justice Onyancha gave a Judgment dated 10.6.2008 based on that judgment.

14. The Applicant therefore has no basis for stating that the Respondent is running away from the said decision.

15. However, on 31.5.2016, Hon. Lady Justice Muigai reviewed the Judgment dated 10.6.2008 on the basis of discovery of new evidence which was not placed before Justice Onyancha when he gave the said Judgment.

16. The parties were directed to file new Summons for Confirmation in accordance with the elders award which divided the suit property LOC 2/GACHARAGE/670 as follows:

(i) JACINTA NG'ANG'A - 3.0 Acres

(ii) JONATHAN KANG'ANG'A - 3.0 Acres

(iii) WAMITI NG'ANG'A – 3.3 Acres

17. I find that the only issue remaining is filing of the new summons for confirmation and it will not serve the ends of justice to transfer this case at this stage.

18. I accordingly direct that the Summons for Confirmation of grant filed herein be heard within 30 days of this date.

19. All the beneficiaries to appear before this Court on 17.3.2020 for confirmation of grant.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 14TH DAY OF FEBRUARY, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.