



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MARSABIT**

**MISC. CIVIL APPLICATION NO.1 OF 2019**

**Hawe Abdi.....1<sup>ST</sup> APPLICANT**

**Adan Abdi.....2<sup>ND</sup> APPLICANT**

**Osman Abdi.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**Hussein Jillo.....1<sup>ST</sup> RESPONDENT**

**Abdikadir Jillo.....2<sup>ND</sup> RESPONDENT**

**Mohamed Jillo.....3<sup>RD</sup> RESPONDENT**

**RULING**

The respondents file succession cause no.19 of 2018 before the Marsabit Kadhi's court. The applicants herein filed a notice of motion dated 16.1.2019 seeking to have that succession Cause transferred to the Moyale Kadhi's court. The application is supported by the affidavit of Hawe Abdi, the 1<sup>st</sup> applicant. The 1<sup>st</sup> applicant is the deceased's daughter in law while the 2<sup>nd</sup> and 3<sup>rd</sup> applicant are the deceased grand children. It is clear that the husband to the 1<sup>st</sup> applicant Haw Abdi is deceased.

The applicant informed the court that the land in dispute is located in Sololo which is in Moyale. The family members and witnesses live in Moyale. They were requested by the family members to request this court to have the matter transferred to Moyale. The deceased lived in Moyale. The deceased had two wives its only the 1<sup>st</sup> respondent who lives in Marsabit.

The respondents filed a replying affidavit sworn by Hussein Jillo, the 1<sup>st</sup> respondent. They informed the court that the plot in dispute is in Sololo. Among the beneficiaries only Hawo Jillo lives in Moyale. She is married there. The 1<sup>st</sup> respondent lives in Marsabit. The 3<sup>rd</sup> respondent lives in Nairobi. Salad Jillo who is another beneficiaries lives in Kisumu. Isaack Jillo lives in Nairobi. Two other beneficiaries namely Hussein Jillo and Katu Jillo lives in Bubisa which is nearer Marsabit than Moyale. It is their contention that even he applicants lives in Turbi and Bubisa which is nearer Marsabit than Moyale. It will be easy to have the case heard in Marsabit as most to the parties live near Marsabit.

I have seen the petition for letter so administration dated 6.9.2018 which gives a list of beneficiaries. The applicants herein are not indicated as part of the beneficiaries. One of the beneficiaries is Abdi Jillo who is deceased. It appears that the applicants herein draw their claim from Abdi jillo. None of the deceased's children have come to court to seek the transfer of the matter to Moyale. The respondents informed the court that the deceased was survived by two widows who live in Marsabit. The deceased also died in Marsabit. According to them the applicants are merely frustrating the case because they have retained the property in dispute.

There are two Kadhi's court in Marsabit county. One is located in Marsabit town while the other one is in Moyale town, a distance of about 240 kilometers apart. Under Section 8 of the Kadhi's Court Act Chapter 11 Laws of Kenya. It is provided that the Civil Procedure Rules provided under the Civil Procedure Act do apply to the Kadhis court until rules of the Kadhis court are made under section 8(1) of the Kadhi's Court Act. Section 11 of the Civil Procedure Act provides for the court in which suit ought to be instituted. Section 11 (ii) states as follows:

**Nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same district.**

Under Section 12 of the Civil Procedure Rules a suit involving immovable property ought to be instituted within the local limits of the court or jurisdiction the property is situated or where the defendant resides. The dispute herein involves a deceased person. According to the respondents their late father died in Marsabit but the applicants went to extract a death certificate in Moyale. From the information give tot the court it is clear to me that apart from the applicants most of the beneficiaries would be well catered for if the matter is heard in Marsabit. Even if the plot in dispute which forms the deceased's estate is located in sololo, it will be convenient for the matter to be heard by the Kadhi in Marsabit. The Kadhi can visit the suit land in Sololo, He can also visit Sololo or Moyale and hear any witness who may be unable to travel to Marsabit. Apart from one beneficiary who is married in Moyale or the other beneficiaries would find Marsabit to be the most convenient place. The applicants will not suffer any prejudice if the case is heard before the Marsabit Kadhi's court. The applicants' contention that family members would like the matter to be heard in Moyale is unfounded. Their family members do not form part of the beneficiaries. The family of the late Abdi will be catered for if the Kadhi finds that he should be included as a beneficiary. The respondents

were within their right to file the matter in Marsabit as they wish to inherit the property of their late father.

In the end, I do find that the application dated 16.1.2019 lacks merit and hereby dismissed. Succession cause No.19 of 2018 that was filed before the Marsabit Kadhi's court shall be heard by the Kadhi in Marsabit. Costs of the application shall follow the outcome of the succession cause.

**Dated, Signed and Delivered at Marsabit this 13<sup>th</sup> day of February, 2019**

**S. CHITEMBWE**

**JUDGE**