



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 644 OF 2015

IN THE MATTER OF THE ESTATE OF

SAITOTI KIDIIS.....(DECEASED)

GEORGE SANKALE KIDIIS.....APPLICANT

VERSUS

RESIAN ENE KIDIIS.....RESPONDENT

RULING

1. The summons before court is dated 26th November, 2018. The orders sought are;

1. **THAT** High Court Succession Cause Number 644 of 2015 at Nakuru be transferred to Narok Law Courts for hearing and disposal.

2. **THAT** costs of this application be costs in the course.

2. The application is premised on the affidavit of George Sankale Kidiis (hereinafter the applicant) and on grounds;

a) **THAT** all the properties of the deceased herein are located within Narok County.

b) **THAT** the applicant including his witnesses are all over 70 years old and sickly since the inception of this cause getting a lot of difficulties in travelling all the way from Narok upto Nakuru to prosecute the matter.

c) **THAT** the applicant and his witnesses have been also incurring a lot of expenses in terms of fare.

3. The gist of the application is that this matter should be heard at the High Court sitting in Narok as all the properties forming the estate herein are situate in Narok. It is urged that the applicant including his witnesses who are over 70 years old and sickly will encounter difficulties attending trial at Nakuru and it will be an expensive exercise.

4. The application is opposed and Resian Ene Kidiis (hereinafter, the respondent) has in a replying affidavit averred that the property in question is situate between Nakuru and Narok and both this court and Narok Court have jurisdiction.

5. The respondent offers to transport all the witnesses at his expense or to refund any expenses incurred by the applicant in that regard so that this matter is expedited.

6. The court is urged to apply the principles of overriding objective of **Section 1A** of the **Civil Procedure Act** and facilitate the just, expeditious disposal of the dispute.

7. **Article 159(2) (b)** of the **Constitution** has been invoked and I am urged that justice shall not be delayed.

8. I have considered the application and the opposition thereto. As per the letter by the chief dated 14th September, 2015, the deceased herein hailed from Enabelibel Location, Narok. The property forming the estate is Narok/CIS-Mara/Kisiriri.

9. The applicant is thus correct when he indicates that the subject matter is situate in Narok. It is not contested that the witnesses are based at Narok County.

10. The respondent is of the view that this matter will be expedited if it is heard at this court and it is averred that both courts (Nakuru and Narok) have jurisdiction.

11. Having considered the application and the opposition thereto, I am satisfied that since the subject matter of this litigation is situate at Narok and the witnesses (and this is not denied) hail from Narok, the applicant has met the necessary threshold for the transfer of this case from the High Court sitting at Nakuru to the High Court sitting at Narok.

12. I accordingly allow the application dated 28th November, 2018 and make the following orders;

- 1. The application dated 26th November, 2018 is allowed in terms of prayer 1.**
- 2. The Deputy Registrar of this court to move the file expeditiously to the High Court Registry Narok.**
- 3. That this matter be mentioned before the presiding judge Narok on a date to be fixed by the parties for directions.**
- 4. Each party to bear its own costs.**

Dated and Signed at Nakuru this 9th day of July, 2019.

A. K. NDUNG'U

JUDGE